

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH : BANGALORE**  
**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER**  
**AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.2428/Bang/2018</b>
<b>Assessment Year : 2015-16</b>

Serendipity Infolabs Pvt. Ltd., (amalgamate with ANI Technologies Pvt. Ltd.,) Regent Insignia, #414, 3 <sup>rd</sup> Floor, 4 <sup>th</sup> Block, 17 <sup>th</sup> Main, 100 Feet Road, Koramangala, Bengaluru-560 034.	<b>Vs.</b>	The Dy. Commissioner of Income Tax, Central Circle-6(1)(1), Bengaluru.
<b>PAN - AAPCS 4079 P</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Padamchand Khincha, C.A
Respondent by	:	Smt. R Premi, JCIT

Date of Hearing	:	11-12-2020
Date of Pronouncement	:	11-12-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order passed by Ld.CIT (A)-6, Bangalore for assessment year 2015-16 on following grounds of appeal:

*“1. The Assessment order passed by the learned Assessing Officer ('AO') and the order of the*

*Commissioner of Income tax (Appeals) ['CIT(A)'] under Income Tax Act, 1961 ('the Act') are not in accordance with the law, made in violation of the principles of equity and natural justice and is contrary to the facts and circumstances of the present case.*

*2. On the facts and circumstances of the case the Ld. CIT(A) and Ld. AO erred in revaluing the fair market value of the shares issued to Multi Sector Seed Fund and treating INR 6,216,077 as income from other sources as per the provisions of Section 56(2)(viib) of the Act.*

*3. The Ld. CIT(A) and Ld. AO erred by ignoring the valuation certificate issued by an independent Chartered Accountant for the fair value of the shares as per the Rule 11UA of the Rules.*

*4. The Ld. CIT(A) and Ld. AO erred in stating that capital introduction by the Multi Sector Seed Fund is prior to effective date of CBDT circular No. 52/2012 dated 29/11/2012 whereas the capital introduction made by the Multi Sector Seed Fund is on 21 May 2014.*

*5. The Ld. CIT(A) and Ld. AO erred in the fact that the 'Multi Sector Seed Fund' is SEBI registered venture capital fund vide registration number IN/VCF/10-11/0201 dated 07 January 2011 and the provisions of Section 56(2)(viib) is not applicable in the instant case.*

*6. The Ld. CIT(A) erred in stating that valuation certificate issued by an independent Chartered Accountant does not give an independent opinion but has merely prepared the report based on the figures provided by the Appellant's Management, which obviously would be subjective and self-serving in nature.”*

2. Assessee has also raised following additional ground vide application dated 14/10/2020:

*“7. The Learned Assessing Officer ("AO') erred in law and on facts in passing the assessment order under section 143(3) on non-existent and merged entity - M/s Serendipity Infolabs Private Limited (now amalgamated with ANI Technologies Private Limited). The order so passed on non-existent and merged entity is invalid, bad in law and liable to be quashed.”*

3. Ld.AR submitted that, additional ground relates to passing of assessment order under section 143(3) on a non-existent merged entity being M/s. Serendipity Info Labs Pvt.Ltd. Ld.AR

submitted that the fact of merger of M/s.Serendipity in for Labs Pvt.Ltd. with M/s.ANI Technologies India Pvt.Ltd., was brought on record before Ld.AO, vide letter dated 21/12/2017 which is placed at page 123 of paper book. He submitted that no new facts needs to be investigated upon for adjudicating the additional ground and therefore the same may be admitted.

4. On the contrary Ld.Sr.DR could not controvert admission of the legal issue raised by assessee.

5. We have perused submissions advanced by both sides in light of records placed before us.

5.1. Ld.AR in support of his contention is placed reliance on decision of *Hon'ble Supreme Court* in case of *National Thermal Power co. Ltd vs CIT reported in 229 ITR 383*.

5.2. We agree with the submission of Ld.AR that no new facts needs to be verified/considered for deciding the issue alleged by assessee in the additional ground. More so the ground pertains to a legal issue that goes to the root cause of assessment and therefore deserves to be admitted.

**Accordingly additional ground raised by assessee stands admitted.**

6. As the issue alleged by assessee in the additional ground goes to the root cause, we intend to decide the additional ground before going into the merits of the case.

6.1. Ld. A.R. submitted that assessment order passed by Ld. AO is in the name of nonexisting company and is nullity, *void ab initio* and bad in law. He submitted that even despite intimation to Ld.AO, assessment order has been passed in the name of M/s.Serendipity Infolabs Pvt.Ltd. It has been submitted by Ld.AR that, section 292B cannot be applied to the orders to cure illegality, and therefore the assessment order so passed by Ld.AO dated 26/12/2017 in the name of M/s.Serendipity Infolabs Pvt.Ltd., deserves to be quashed. He placed reliance on following decision in support of its contention:

- *PCIT vs Maruti Suzuki India Pvt.Ltd (2019) 416 ITR 613 (SC);*
- *PCIT vs BMA Capfin Ltd., reported in (2018) 100 Taxmann.com 330 (SC);*
- *Genpact India Pvt.Ltd vs DCIT reported in (2020) 118 Taxmann.com 40 (Del-Trib);*
- *Satyam Computer Services Ltd vs DCIT (2020) 117 Taxmann.com 593 (Mum-Trib);*

6.2. On the contrary, Ld.Sr.DR objected for the issue alleged in additional ground. She admitted that intimation was filed by assessee on 21/07/2017 while replying to the list of fixed assets held by assessee as on date. She submitted that, notice under section 143 (2) was issued to M/s.Serendipity Infolabs Pvt.Ltd., on 21/03/2016 and assessee started making submissions before Ld.AO vide its letter dated 01/12/2017, 15/12/2017, 19/12/2017 and 21/12/2017. Ld.Sr.DR submitted that, the merger was approved by NCLT on 28/07/2017 which was intimated to assessee by Ministry of corporate affairs on 31/07/2017. Ld.Sr.DR submitted that, assessee did not file

independent letter, immediately informing Ld.AO regarding approval of merger and that M/s.Serendipity Infolabs Pvt.Ltd., is no longer in existence. She submitted that, assessee had already filed details of providing additions to the fixed assets along with bills/invoices and the rate of depreciation claimed wide its reply dated 19/12/2017.

6.3. It was thus submitted by Ld.Sr.DR that, entire assessment proceedings carried out by Ld.AO was participated by the representative appearing for M/s.Serendipity Infolabs Pvt.Ltd., without any objection. He further submitted that income for financial year 01/04/2014 to 31/03/2015, filed in the name of M/s.Serendipity Infolabs Pvt.Ltd., was being assessed. Referring to the relevant dates of approval of merger by NCLT dated 28/07/2017 and its intimation by Ministry of corporate affairs dated 31/07/2017, she submitted that the scheme was made effective from 31/03/2015 being the last day of financial year relevant to assessment year under consideration.

6.4. Ld.Sr.DR submitted that, assessee had sufficient time to inform Ld.AO regarding the merger of M/s.Serendipity Infolabs Pvt.Ltd. with M/s.ANI Technologies Pvt.Ltd. However, 5 days prior to passing of assessment order, the same was informed to Ld.AO in the manner, which would not immediately come to the notice of assessing officer. She submitted that all the submissions filed by assessee before Ld.AO in response to notice under section 143 (2), was after the date of approval of merger and intimation of the same by Ministry of corporate affairs.

6.5. However not any intimation was filed informing about the change of name. It was in the middle of last reply dated 21/12/2017 filed by assessee there is a mention regarding the change of name. She submitted that, assessee filed rectification application dated 10/04/2018 before Ld.AO, against order dated 26/12/2017, which is pending as on date for disposal however it does not raise the issue of assessment order being passed in the wrong name.

6.6. It has thus been vehemently submitted by Ld.Sr.DR that, none of the replies filed by assessee before Ld.AO highlights change in the name of assessee. She thus submitted that, assessment order passed in the name of M/s.Serendipity Infolabs Pvt.Ltd., is rectifiable under 292B of the Act.

7. We have perused submissions advanced by both sides in light of records placed before.

7.1. It has been submitted by Ld.AR that, during March 2015, ANI Technologies Pvt.Ltd acquired 100% stake in M/s.Serendipity Infolabs Pvt.Ltd.. Subsequently, M/s.Serendipity Infolabs Pvt.Ltd., and ANI Technologies Pvt.Ltd., filed scheme of composite arrangement of merger under provisions of section 233 of Companies Act, before *Hon'ble National Company Law Tribunal*. *Hon'ble National Company Law Tribunal*, approved the scheme of merger on 28/07/2017 w.e.f. 31/03/2015. Assessee strongly relied on decision of *Hon'ble Supreme Court* in case of *DCIT vs Maruti Suzuki India Ltd.*, reported in (2019) for 16 ITR 613 and

challenged validity of assessment order dated 26/12/2017, as it is passed in the name of transferor company.

7.2. For the sake of convenience we tabulate relevant facts observed by *Hon'ble Supreme Court* in case of *Maruti Suzuki India Ltd (supra)* for comparing with facts of assessee before us.

<b>Facts in case of <i>Maruti Suzuki(supra)</i> before <i>Hon'ble Supreme Court</i></b>	<b>Facts in case of assessee before us.</b>
Assessment year involved is 2012-13, relevant financial year 01/04/2011 to 31/03/2012	Assessment year involved is 2015-16, relevant financial year; 01/04/2014 to 31/03/2015.
Amalgamation was approved on 29/01/2013 w.e.f. 01/04/2012	Merger was approved on 28/07/2017 w.e.f. 31/03/2015
Notice under section 143(2) was issued on 26/09/2013	Notice under section 143(2) was issued on 21/03/2016
Intimation regarding amalgamation to Ld.AO filed on 02/04/2013.	Intimation regarding merger while furnishing certain details on 21/12/2017
Date of assessment order 11/03/2016 in the name of amalgamated company	Date of assessment order: 26/12/2017 in the name of transferor company.

7.3. From the above, it is quite clear that, in the present facts of case, notice under section 143(2) was issued to M/s.Serendipity Infolabs Pvt.Ltd., much prior to date of approval of merger by *Hon'ble NCLT*, and that, the merger was approved during pendency of assessment before Ld.AO. One more fact brought to our notice by Ld.Sr.DR is that, replies to 143(2) notice are filed by assessee much after the date of approval of merger, and assessee never intimated the same to Ld.AO. She submitted that in final

reply dated 21/12/2017 in an internal paragraph assessee intimated it the form of passing reference.

7.4. We also note that, the assessment order passed is passed within 4 days of filing of reply dated 21/12/2017. We also note that, even when subsequently assessee filed rectification application before Ld.AO, the same has not been brought to the notice of Ld.AO for correcting the name. We fail to understand the reason, why assessee never brought to notice of Ld.AO regarding the merger and non-existence of *M/s.Serendipity Infolabs Pvt.Ltd.*, immediately after 31/07/2017 in accordance with law.

7.5. The facts of present assessee is not identical with the facts observed by *Hon'ble Supreme Court* in case of *Maruti Suzuki India Pvt. Ltd., (supra)*. Also the ratio laid down in the decisions relied upon by Ld.AR are based on different facts and do not come to rescue assessee in the present facts noted by us here in above. Under such circumstances, we find the assessment order being passed by Ld.AO in the name of *M/s.Serendipity Infolabs Pvt.Ltd.*, is mere irregularity, which is rectifiable under 292B of the Act. Ld.AO is directed to take necessary steps to rectify the same.

**We therefore dismiss the additional ground raised by assessee.**

**Ground No.1-6**

8. Coming to the facts on merits, Ld.AR in the submission dated 14/10/2020 stated that assessing officer had made following disallowances in the assessment order:

- disallowance of bad debts of Rs.4,22,000/-
- disallowance of interest on delayed payment of statutory dues amounting to Rs.18,62,000/-
- disallowance of amortisation of intangible assets under section 35D amounting to Rs.59,46,000/-
- revaluation of share premium under section 56(2)(viib) amounting to Rs.62,16,077/-

8.1. Aggrieved by additions, assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) deleted disallowance of bad debts. Ld.CIT(A) on considering submissions by assessee directed Ld.AO to verify if assessee has actually *suo moto* disallowed sum of Rs.15,68,759/- in its computation being interest payment and also directed Ld.AO to verify if assessee had disallowed a sum of Rs.59,46,000/- towards depreciation on software under section 35D.

8.2. In respect of addition made under section 56(2)(viiib) of the Act Ld.CIT(A) agreed with Ld.AO and observed that the report prepared by the chartered accountant is based on information given by the management which is a self-serving document which cannot be relied on.

8.3. Before us, assessee is in appeal only in respect of addition amounting to Rs.62,16,077/- under section 56(2)(viib) of the Act.

8.4 It is submitted by Ld.AR that assessee is a venture capital Undertaking receiving monies from other Venture Capital Funds. It has been stated that assessee is governed by Regulation 2 of the Venture Capital Regulations as per section 10(23FB) of the Act. He submitted that provisions of section

56(viib) do not apply to assessee as the funds are received from non resident Venture Capital Funds.

8.5 Ld.AR submitted that all the details in respect of the monies received by assessee were placed before authorities below. However Ld.CIT(A) held as under:

*11. On the issue of addition of Rs 6216,077/- made u/s 56(2)(viib) of the Act, it is no doubt true that the Act permits appellant to chose DCF method and adopt the valuation by a Chartered Accountant In the present case however, the report of the Chartered Accountant clearly states that the report is based on information given by the management and the accompanying annexure 2 to the report contains disclaimers by the CA, which clearly indicates that the CA does not give an independent opinion, but has merely prepared a report based on figures provided by the company management, which obviously would be subjective and self serving in nature. The does not make an independent verification based on market conditions. Hence this report cannot be accepted. The addition made by the AO therefore stands confirmed.”*

9. We note that, authorities below have not considered the materials available on record to decide the issue on merits. We are therefore remanding the issue back to Ld.AO. Assessee is directed to file all necessary documents and evidences in support of its claim and to establish itself to be a Venture Capital Company. Ld.AO shall then consider the issue afresh in light of evidences/documents filed in accordance with law. Needless to say that, proper opportunity shall be granted to assessee in accordance with law.

**Accordingly, grounds raised by assessee on merits stands allowed for statistical purposes.**

**In the result appeal filed by assessee stands partly allowed for statistical purposes.**

Order pronounced in the open court on 11<sup>th</sup> Dec, 2020

Sd/-  
(B. R. BASKARAN)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 11<sup>th</sup> Dec, 2020.

/Vms/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore