

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 556/DEL/2018
[A.Y 2013-14]

GE Exports Pvt Ltd
[Now amalgamated with GE
India Industrial Pvt Ltd
Phase - 3, Sector 25A, Gurgaon

Vs.

The Addl. C.I.T
Special Range - 4
New Delhi

PAN: AABCG1257 B

[Appellant]

[Respondent]

Assessee by : Shri Sachit Jolly, Adv
Shri Aayush Nagpal, Adv

Revenue by : Shri Surender Pal, CIT-DR

Date of Hearing : 22.02.2021
Date of Pronouncement : 22.02.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order dated 31.08.2017 framed u/s 143(3) r.w.s 144C of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] pertaining to A.Y 2013-14.

2. The challenge is three-fold - firstly, the assessee has challenged the jurisdiction of the Assessing Officer who has framed assessment on a non-existing entity. Secondly, the challenge is in respect of Transfer Pricing adjustments and thirdly, on Corporate Issues, challenge is in respect of disallowance made u/s 14A of the Act.

3. The assessment order dated 31.08.2017, which is under challenge, is framed in the name of GE India Export Pvt Ltd with its address in Bangalore. On 28.08.2017, the following letter was filed by the assessee in the Office of the Principal Commissioner of Income tax-3, Corporate Circle, Bangalore:



GE India Industrial Pvt. Ltd.
 (Division: GE Global Technology Solutions)
 Prestige Shantiniketan, Tower C Ground Floor to
 7th floor Sl no.70-78 Sadaramangala Hoodi
 Village, Mahadevapura post
 Bangalore- 560048
 T : +91 80 6190 6000
 CIN # U31500DL1992PTC194724
 Email: ira.shukla@ge.com
 Website: www.ge.com

August 24, 2017

The Principal Commissioner of Income tax-3,

Corporate Circle, Bangalore,

BMTC Building, 80ft Road,

Koramangala,

Bangalore - 560095

Dear Sir,



Assessee : **GE India Exports Private Limited ['GEIE' or 'the Company']**
(since merged with GE India Industrial Private Limited)

PAN : **AABCG1257B**

Subject : **Application for transfer of jurisdiction under section 127**
from Bangalore to New Delhi

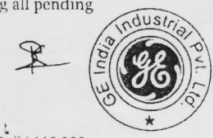
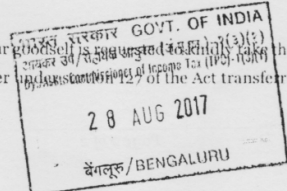
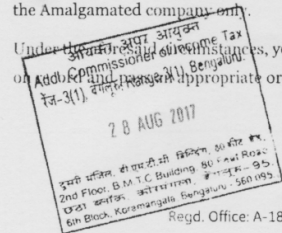
With reference to the captioned subject, it is respectfully submitted as under:

M/s GE India Exports Private Limited having Permanent Account Number ('PAN') AABCG1257B is currently assessed with your circle for the purposes of Income tax Act, 1961 ('the Act').

It is further submitted that recently, the Hon'ble National Company Law Tribunal ('NCLT'), Delhi Bench vide order dated 31.03.2017 and also, the Bengaluru Bench vide order dated 20.03.2017, *inter-alia*, approved the amalgamation of the above-named applicant company with **M/s. GE India Industrial Private Limited** ('the Amalgamated Company') [copies of both the NCLT's orders are enclosed herewith as **Annexure-A**].

Pursuant to the above amalgamation, the applicant company is no more into existence and for all intents and purposes, the Amalgamated company (PAN: AAACG4901D) having registered office at New Delhi would be the successor and all proceedings under the provisions of the Act has to be made in the name of the Amalgamated company only.

Under the above circumstances, your Hon'ble office is requested to take the aforesaid facts/documents on record and issue appropriate order under section 127 of the Act transferring all pending assessments to the office of the Principal Commissioner of Income Tax (PCIT), New Delhi.



Regd. Office: A-18, First Floor, Okhla Industrial Area Phase II, New Delhi 110 020

assessments/appeals/records etc. relating to the applicant company to the concerned officer at New Delhi under whose jurisdiction the Amalgamated company is being assessed currently.

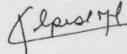
We trust our request shall be acceded to.

Thanking you,

Yours faithfully,

For GE India Exports Private Limited

(since merged with GE India Industrial Private Limited)



Authorised Signatory



Encl: As above

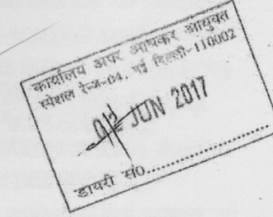
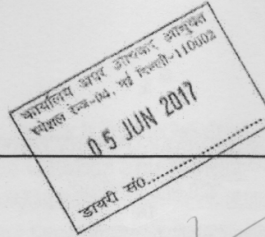
C/c: 1. ACIT, Circle-3(1) (2), BMTC Building, Koramangala, Bangalore.

2. DCIT (TP)-1 (3) (1), BMTC Building, Koramangala, Bangalore.

4. On 05.06.2017, the following letter was filed in the Office of the Additional Commissioner of Income Tax, Special Range - 4, New Delhi:



Building No. 7A, 4th Floor,
DLF Cyber City, DLF Phase
Sector 25A, Gurgaon – 122
Haryana
Tel: 0124-4906000; Fax: 01244906511
CIN: U31500DL1992PTC194724
Website: www.ge.com



1st June, 2017

To Additional Commissioner of Income Tax,
Special Range-4, Room No. 414,
C.R. Building, IP Estate,
New Delhi-110002

Respected Sir,

Sub: Intimation of merger of GE India Technology Centre Private Limited and GE India Exports Private Limited

Ref: GE India Industrial Private Limited
PAN: AAACG4901D

We, GE India Industrial Private Limited ('GEIPL'), wish to submit as under:
Pursuant to a scheme of amalgamation, GE India Technology Centre Private Limited ('GEITC') and GE India Exports Private Limited ('GEIE') merged with its parent company, GEIPL, with appointed date of 1st April, 2016.

The National Company Law Tribunal ('NCLT'), Bengaluru Bench has approved the merger *vide* order dated 20th March, 2017 (a copy of the order is attached as **Annexure 1**). The merger was also approved by NCLT, New Delhi Bench on 31st March, 2017 (a copy of which order is attached as **Annexure 2**). Pursuant to the approval of NCLT, we have filed such merger order with the Registrar of Companies ('RoC') on 3rd April, 2017 (a copy of acknowledgement of form INC 28 filed with RoC is attached as **Annexure 3**). Accordingly, the merger became effective on 03rd April 2017.

In view of above, we would like to inform you that all the transaction entered in to by GEITC and GEIE will be assumed by GEIPL and now onwards all the transactions will be entered in the name of GEIPL, being merged entity. The credit of prepaid taxes ie advance tax paid and TDS credit available to GEITC and GEIE shall be deemed to be available to GEIPL.

Further, we have filed appropriate letters with jurisdictional tax withholding officers for transferring the TAN of GEITC and GEIE (including various branch/ division) to GEIPL.

Merged entity – 1

Name of the merged entity: GE India Technology Centre Private Limited

5. In both these letters, it was informed that the National Company Law Tribunal [NCLT] Bangalore Bench and Delhi Bench have approved the merger of the appellant company with M/s GE India Industrial Private Ltd and as per the order of NCLT, Bangalore Bench, the following observations were made in the order:

"The Regional, Director,- Ministry of Corporate Affairs, South East ,Region, Hyderabad represented by Registrar of Companies who filed an affidavit on 8th February 2017. Inhis affidavit in para 3 & 4, he has made the following observations:

1. The notice dated 1 December 2016 was issued in the income tax department as required by the Ministry of Corporate Affairs General Circular No 1/2014 dated 13th January 2014 giving 5 days time to offer comments/objections, if any,. But no comments/objections have been received from the Income tax department by the office of the Regional Director, South East Region, Hyderabad till 09.01.2017."

6. And finally, the Principal Bench of NCLT at New Delhi made the following observations at para 7 of its order:

"We have heard the counsels for the petitioners and also considered the representations made by the Regional Director,

Northern Region vide representation dated 09.02.2017. An examination of the said representation/affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi discloses that despite letter dated 17.10.2016 to the Principal Commissioner of Income tax, New Delhi, no observations/specific comments have been received from the said office.”

7. In light of the above evidences, we have no hesitation to hold that the assessment order has been framed in the name of non-existent company inspite of notices.

8. The Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd 416 ITR 613 has held as under:

"19. (iii) Thirdly, the consequence of the scheme of amalgamation approved under [Section 394](#) of the Companies Act 1956 is that the amalgamating 24 8 ITA No. 583/Del/2020 company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations: "5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by

merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more 30 [2019] 260 Taxman 412 (Del.) 31 (2019) 261 Taxman 137 (Guj) existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity." (iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under [Section 2\(31\)](#) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed; (v) Fifthly, a notice under [Section 143](#) (2) was issued on 26 September 2013 to

the amalgamating company, SPIL, which was followed by a notice to it under [Section 142\(1\)](#); (vi) Sixthly, prior to the date on which the jurisdictional notice under [Section 143 \(2\)](#) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the [Companies Act 1956](#) with effect from 1 April 2012; (vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under [Section 143 \(2\)](#). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio."

9. Considering the factual matrix discussed elsewhere, in the light of the decision of the Hon'ble Supreme Court, we hold that the assessment order dated 31.08.2017 framed u/s 143(3) r.ws. 144C of the Act is in the name of non-existent company and, accordingly, void ab initio, making all subsequent proceedings non-est. Challenge to the jurisdiction of the Assessing Officer is allowed.

10. Since the assessment has been held to be void, we do not find it necessary to dwell into the merits of the case.

11. Before parting, after the conclusion of the hearing, the Id. CIT-DR filed the following application:

"BEFORE THE HON'BLE MEMBERS
INCOME TAX APPELLATE TRIBUNAL
1-1 BENCH, NEW DELHI

MAY IT PLEASE YOUR HONOURS :

In the case of : M/s GE India Exports Pvt. Ltd.
Appeal No. : 556/Del/2018
Asstt. Year : 2013-14
Date of hearing on : 22/2/2021

Subject: Request for Adjournment - Reg.

Respectfully submitted that in the above appeal, the assessee/AR has not filed any documents or Paper E'ook in this office. Therefore, it would not be possible for the undersigned to go ahead with the hearing.

Moreover, in view of the vital Gs OA No. 2 and 3, which challenge the very jurisdiction of the AO to pass the assessment order in this case, on the earlier entity, it is very important that the report of the AO is called for along with facts and documents in this case, which should include the replies and letters filed by the assessee before the AO/TPO, intimating the details of amalgamation and change of name of assessee entity. The AR of the assessee had also indicated to the staff of this office, through telephonic

communication, that they would not be able to proceed ahead with the hearing as the paper book has not been filed.

Therefore, it is requested that the case may kindly be adjourned to a regular date, as is convenient to your Honours.

I shall be highly grateful for this act of kindness.

Yours sincerely,

Surinder Pal, IRS
Income Tax Appellate Tribunal
CIT, DR, 1-1 Bench, ITAT, Delhi
Dated: 22/2/2021."

12. We have given thoughtful consideration to the aforementioned application of the CIT-DR but do not find any merit in the said application. The revenue was well aware of the challenge of the very jurisdiction of the Assessing Officer and the appeal was listed for the first time on 21.12.2020. The ld. DR did not make any effort to call for any report from the Assessing Officer. The letters filed by the assessee in the respective offices of the Income tax department at Bangalore and New Delhi cannot be considered as evidences prejudicial to the revenue. Moreover, the orders of NCLT at Bangalore Bench and New Delhi Bench are public documents and, therefore, cannot be considered as evidences for which the revenue needs any report from the Assessing Officer.

13. Most importantly, in both the orders of the NCLT, it has been specifically mentioned that despite the letter dated 17.10.2016 to the CIT, New Delhi, no observations/specific comments have been received from the said offices. In our considered opinion, in these trying times, if the soft copies of the aforementioned public documents were not available with the Id. DR, would not justify in keeping the appeal in abeyance. We are of the view that if such appeal can be disposed of easily with the help of the orders, there would not be any delay in the delivery of justice. We, accordingly, allow the appeal of the assessee.

14. In the result, appeal of the assessee in ITA No. 556/DEL/2018 is allowed.

The order is pronounced in the open court in the presence of both the representatives on 22.02.2021.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 22nd February, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	