IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

IT(TP)A No.1246/Bang/2015
Assessment year : 2010-11

The Joint Commissioner of Income Tax (LTU), Bengaluru.	Vs.	M/s. Dell International Services India Pvt. Ltd., (now merged entity M/s. Perot Systems Business Process Solutions India Pvt. Ltd.,) 12/1, 12/2A, 13/1A, Diyashree Greens, Challaghatta Village, varthur Hobli, Bengaluru-560 071. **PAN : AAACV 9201 H**
APPELLANT		**RESPONDENT**

IT(TP)A No.1248/Bang/2015
Assessment year : 2010-11

M/s. Dell International Services India Pvt. Ltd., (now merged entity M/s. Perot Systems Business Process Solutions India Pvt. Ltd.,) Bengaluru-560 071. **PAN : AAACV 9201 H**	Vs.	The Joint Commissioner of Income Tax (LTU), Bengaluru.
APPELLANT		**RESPONDENT**

Revenue by	:	Shri. Muzzafar Hussain, CIT(DR)(ITAT), Bangalore
Assessee by	:	Shri. T.Suryanarayana, Advocate

Date of hearing	:	05.07.2021
Date of Pronouncement	:	07.07.2021

O R D E R

Per N. V. Vasudevan, Vice President:

IT(TP)A.No.1246/Bang/2015 is an appeal by the Revenue while IT(TP)A.No.1248/Bang/2015 is an appeal by the Assessee. Both the appeals are

directed against the order dt.23.07.2015 of CIT (A) - XIV, Large Taxpayers Unit, Bengaluru, relating to Assessment Year 2010-11.

2. In its appeal, the Assessee has filed an application dated 13.12.2017 for admission of the following additional ground of appeal:-

Assessment under section 143(3) r.w.s. 144C of the Act is bad in law, as the same has been made on a non-existent person and is liable to be quashed.

a) *The Learned Assessing officer ('AO') has erred in issuing notice under section 143(2) of the Act dated 29 August 2011 to Perot Systems Business Process Solutions India Private Limited ('Perot BPS') and Vision Health Source India (P) Limited without appreciating the fact that it is not in accordance with law to issue notice to two different persons by way of single notice.*

b) *The Learned AO has failed to appreciate the facts that the Perot BPS has merged with Dell International Services India Private Limited. The scheme of amalgamation is effective from 27 September 2011 and the appointed date of the aforesaid merger is 01 April 2010.*

c) *The Learned AO has erred in issuing notices under section 142(1) of the Act on various dates (26 December 2013, 09 January 2014, 24 January 2014, 19 February 2014) in the name of Perot BPS without appreciating the fact that there cannot be an assessment on a non-existent person. The Assessing officer ought to have issued notice to the merged entity i.e. Dell International Services India Private Limited, for completing the assessment.*

d) *The Learned AO has erred in issuing order dated 12 March 2014 under section 143(3) r.w.s. 144C of the Act in the name of Perot BPS without considering the fact that the entity was non-existent on that date by virtue of it being amalgamated with the appellant. The assessment order passed by the learned AO is without jurisdiction and deserved to be set aside and quashed.*

3. The Assessee is a company engaged in the business of outsourcing services including data processing, software development and medical billing. It is the plea of the Assessee that the final assessment order dated 12.3.2014 passed under section 143(3) read with Sec.144C of the Income-tax Act, 1961 [the Act] by the JCIT, LTU, Bangalore (AO) being passed in the name of Perot Systems Business Process Solutions India Private Limited, an entity which was not in existence on the date of passing the above mentioned order on account of its amalgamation with Dell International Services India Private Limited. It is the

plea of the Assessee that under section 391 to 394 of the Companies Act, 1956, Perot Systems Business Process Solutions India Private Limited amalgamated with Dell International Services India Private Limited, under a scheme of Amalgamation which was approved by the Company Law Board, Chennai Bench vide its order dated 13.10.2010. The appointed date being fixed as 1st April, 2010. Pursuant to the scheme, the entire business and undertaking of Perot Systems Business Process Solutions India Private Limited stood transferred on a going concern basis to Dell International Services India Private Limited. The intimation of amalgamation was made to the AO at Chennai by letter dated 4.1.2011 who was assessing Perot Systems Business Process Solutions India Private Limited at Chennai. It is the plea of the Assessee that the order of assessment passed in the name of an entity that ceased to exist on the date when it is passed is void-ab-initio, illegal and bad in law and deserves to be quashed as such orders are passed in the name of Perot Systems Business Process Solutions India Private Limited, an entity which was not in existence on the date when the order of assessment dated 12.3.2014 was passed. It is the plea of the Assessee that the additional ground now sought to be raised is purely a legal ground and that the facts necessary to adjudicate the additional ground is already available on record and hence the additional ground should be admitted in the interest of justice.

4. The learned counsel for the Assessee while reiterating plea as set forth in the application for admission of additional ground.

5. We have considered the prayer for admission of additional ground of appeal and are of the view that the additional grounds of appeal deserve to be admitted for adjudication as the facts for adjudication of additional grounds of appeal are already available on record. In the following judicial pronouncements it has been held that additional grounds which has a bearing on tax llability of an Assessee has to be admitted for adjudication.

- **CIT vs. S. Nelliappan [66 ITR 722 (SC)]** wherein it was held that Tribunal may give leave to the assessee to urge grounds not set forth in the memorandum of appeal, and in deciding the appeal the Tribunal is not restricted to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal.

- **Ahmedabad Electricity Co. Ltd. and Godavari Sugar Mills Ltd. vs. CIT [199 ITR 351 (Bom)]** wherein it was held that there is nothing in section 254(1) of the Income Tax Act which limits the jurisdiction of the Appellate Tribunal in any manner. The phrase "pass such order thereon" found in Sec. 254(1) of the Act does not in any way restrict the jurisdiction of the Tribunal but, on the contrary, confers the widest possible jurisdiction of the appellate Tribunal including jurisdiction to permit any additional ground of appeal if, in its discretion, and for good reason, it thinks it necessary or permissible to do so."
- **National Thermal Power Co. Ltd. vs. CIT 229 ITR 383 (SC)** wherein it was held that the view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income Tax (Appeals) takes too narrow view of the powers of the Appellate Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

6. The judicial precedents support the plea of the Assessee for admission of additional ground of appeal. We therefore admit the additional ground for adjudication.

7. We have heard the ld. Counsel for the Assessee on the additional ground of appeal. It is the plea of the Assessee that under section 391 to 394 of the Companies Act, 1956, Perot Systems Business Process Solutions India Private Limited amalgamated with Dell International Services India Private Limited, under a scheme of Amalgamation which was approved by the Company Law Board, Chennai Bench vide its order dated 13.10.2010 and the order of the High Court of Karnataka dated 29.8.2011. The appointed date being fixed as 01 April 2010. Pursuant to the scheme, the entire business and undertaking of Perot

Systems Business Process Solutions India Private Limited, chennai stood transferred on a going concern basis to Dell International Services India Private Limited, Bangalore. The intimation of amalgamation was made to the AO at Chennai by letter dated 4.1.2011 who was assessing Perot Systems Business Process Solutions India Private Limited at Chennai. It is the plea of the Assessee that the order of assessment passed in the name of an entity that ceased to exist on the date when it is passed is void-ab-initio, illegal and bad in law and deserves to be quashed as such orders are passed in the name of Perot Systems Business Process Solutions India Private Limited, an entity which was not in existence on the date when the order of assessment dated 12.3.2014 was passed. He relied on the decision rendered by Hon'ble Supreme Court in case of *Pr.CIT vs Maruti Suzuki India Limited (Civil Appeal No. 5409 of 2019) (SLP No. 4298 of 2019) Judgement dated 25.7.2019).*

8. The Ld. DR for the revenue by relying upon the decision rendered by the Hon'ble High Court of Delhi in Sky Light Hospitality LLP vs. ACIT - (2018) 405 ITR 296 contended that notice issued in the name of erstwhile private limited company, despite company ceasing to exist, would not invalidate the assessment proceedings as the same was not a jurisdictional error but an irregularity and procedural / technical lapse which could be cured under section 292B of the Income-tax Act, 1961 (for short 'the Act'). He also submitted that the Assessee never brought to the notice of the AO, the factum of the erstwhile company having ceased to exist.

9. We have carefully considered the rival submissions. The issue that arises for consideration is as to, whether assessment order passed by the AO against non-existent company is sustainable in the eyes of law?

10. As per the Scheme of Arrangement which was approved by the Company Law Board, Chennai Benches and the Hon’ble High Court of

Karnataka, Perot Systems Business Process Solutions India Private Limited amalgamated with Dell International Services India Private Limited, under a scheme of Amalgamation and ceased to exist as a company on its dissolution without winding up prior to 14.3.2014 when the order of assessment u/s 143(3) read with Sec.144C of the Act was passed by the AO.

11. The following chart will explain the facts of the Assessee's case and the facts of the case decided by the Hon'ble Supreme Court in the case of *M/s.Maruti Suzuki India Limited (supra)*:

Facts in the case of Maruti Suzuki India Ltd.	**Facts in the case of Assessee**
• Suzuki Powertrain India Limited (SPIL or amalgamating company) had amalgamated with Maruti Suzuki India Limited (MSIL or amalgamated company) by a scheme of amalgamation approved by the High Court (HC) on January 29, 2013, with effect from fiscal year commencing on April 1, 2012. • The scheme provided that all the assets, liabilities and duties of the amalgamating company be transferred to the MSIL and that the SPIL would stand dissolved without winding up. • On April 2, 2013 - the Assessee informed the AO that SPIL has amalgamated with MSIL. • On September 26, 2013 , the AO issued notice u/s.143(2) for AY 2011-12.	• The Assessee filed return of income on 14.10.2010 in the name of M/s Perot Systems Business Process Solutions India Private Limited • By order of Company Law Board, Chennai Benches and the order of the Karnataka High Court, Perot Systems Business Process Solutions India Private Limited amalgamated with Dell International Services India Private Limited, under a scheme of Amalgamation and ceased to exist as a company on its dissolution without winding up with effect from the effective date of the scheme which was 1.4.2010. • On 4.1.2011, the AO of Perot Systems Business Process Solutions India Pvt.Ltd., was informed by the said company regarding the factum of

• On September 4, 2015, the AO issued letters to the Assessee with the following description:- *"The Principal Officer M/s Suzuki Powertrain India Limited (Now known as M/s Maruti Suzuki India Limited)"* • On March 11, 2016, the AO passed draft assessment order in the name of SPIL. • On April 12, 2016, the Assessee filed objections against the proposed additions in the draft assessment order before the Dispute Resolution Panel (DRP). The objections were filed by MSIL as successor in interest of erstwhile SPIL. • On October 14, 2016, DRP gave its directions to the AO on the objections to the draft assessment order of the AO. • On October 31, 2016, the AO passed the final order in the name of SPIL (amalgamated with MSIL). • The Tribunal by its order dated April 6, 2017, held that the assessment order was invalid on the ground that it was void ab initio having been passed in the name of a non-existent entity by the TO. The Hon'ble Delhi High Court affirmed the order of the Tribunal. The Assessee filed appeal before the Hon'ble Supreme Court.	amalgamation and transfer of the assessment records to the AO. • On 14.3.2014, the AO passed order of assessment in the name of Perot Systems Business Process Solutions India Private Limited

Decision of the Hon'ble Supreme Court: While upholding HC's decision, SC held that the assessment done in the name of amalgamating company was void ab initio. The Hon'ble Supreme Court held that when once the scheme of amalgamation is approved the amalgamating company ceases to exist and therefore cannot be regarded as "person" u/s.2(31) of the Act against whom assessment proceedings can be initiated or an order can be passed. Prior to the AO assuming jurisdiction by issuing notice u/s.143(2) of the Act, the Scheme of Amalgamation had already been approved and the AO was duly informed about the factum of the Assessee no longer being in existence. Therefore notice issued under section 143(2) of the Act in the name of amalgamating company, a non-existent entity, was invalid and thereby the initiation of assessment proceedings was void ab initio. The fact that the amalgamated company participated in the assessment proceedings would not operate as estoppel.	

12. The facts of the Assessee's case is identical to the facts of the case decided by the Hon'ble Supreme Court in the case of *M/s.Maruti Suzuki India Ltd.(supra)*. Since the assessee company ceased to be in existence as on the date when the AO passed the order of assessment, assessment so framed is not sustainable in the eyes of law, being a nullity. The Hon'ble Supreme Court in

the case of M/s.Maruti Suzuki India Ltd. (supra) also dealt with the decision of the Hon'ble Delhi high court in case of Sky Light Hospitality LLP vs. ACIT (supra) on which the learned DR placed reliance in the following words:

> *"27. The submission however which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in Skylight Hospitality LLP which was affirmed on 6 April 2018 by a two judge Bench of this Court consisting of Hon'ble Mr Justice A K Sikri and Hon'ble Mr Justice Ashok Bhushan33. In assessing the merits of the above submission, it is necessary to extract the order dated 6 April 2018 of this Court:*
>
> > *"In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act.*
> >
> > *The special leave petition is dismissed.*
> >
> > *Pending applications stand disposed of."*
>
> *Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court Skylight Hospitality, an LLP, had taken over on 13 May 2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd upon conversion under the Limited Liability Partnership Act 200835. It instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30 March 2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the income tax department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it.*
>
> *Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company*

into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner.

The PAN number of the LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292B for the following reasons:

> *"18...There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."*

28. The decision in Spice Entertainment was distinguished with the following observations:

> *"19. Petitioner relies on Spice Infotainment Ltd. v. Commissioner of Service Tax, (2012) 247 CTR 500.Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Section 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal."*

29. From a reading of the order of this Court dated 6 April 2018 in the Special Leave Petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292B. The decision in Skylight Hospitality LLP has been distinguished by the Delhi, Gujarat and Madras High Courts in:

(i) Rajender Kumar Sehgal;

(ii) Chandreshbhai Jayantibhai Patel; and

(iii) Alamelu Veerappan.

30. There is no conflict between the decisions of this Court in Spice Enfotainment (dated 2 November 2017)36 and in Skylight Hospitality LLP (dated 6 April 201837).

31. Mr Zoheb Hossain, learned Counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292B.

32. A close reading of the order of this Court dated 6 April 2018, however indicates that what weighed in the dismissal of the Special Leave Petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity.

33. Hence, while dismissing the Special Leave Petition this Court observed that it was the peculiar facts of the case which led the court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292B. Thus, there is no conflict between the decisions in Spice Enfotainment on the one hand and Skylight Hospitality LLP on the other hand.

13. The decision in the case of Skylight Hospitality LLP, is therefore not applicable to the facts and circumstances of the present case. Consequently, we hold that since the assessee company ceased to be in existence as on the date when the AO passed the order of assessment, assessment so framed is not sustainable in the eyes of law, being a nullity. The order of assessment is liable to be annulled and is hereby annulled. Since the assessee company ceased to be in existence as on the date when the AO passed the order of assessment, assessment so framed is not sustainable in the eyes of law, being a nullity. The order of assessment is liable to be annulled and is hereby annulled.

14. In view of the decision on the additional ground of appeal holding the assessment order to be invalid and consequent annulment of the same, we do not deem it necessary to decide any other issue on merits raised in the appeal by the Assessee as well as the revenue.

15. In the result, the appeal by the Assessee is allowed while the appeal by the revenue is dismissed.

Order pronounced in the open court on this 7th day of July, 2021.

Sd/-	Sd/-
(CHANDRA POOJARI)	**(N. V. VASUDEVAN)**
Accountant Member	**Vice President**

Bangalore.
Dated: 07.07.2021.
/NS/*

Copy to:

1. Appellants	2. Respondent
3. CIT	4. CIT(A)
5. DR	6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.