

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No. 34/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT-8(2)(1) Room No.624, 6 th Floor, Aayakar Bhawan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Siemens Ltd. (Successor in interest to M/s. Morgan Construction company (I) Pvt. Ltd.) 130, Pandurang Budhkar Marg, Worli, Mumbai-400016.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS0764L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri B. K. Bagchi (Sr. AR)	
Assessee by:	Shri Jeet Kamdar	

सुनवाई की तारीख / Date of Hearing: 30/05/2022

घोषणा की तारीख /Date of Pronouncement: 14/06/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by revenue against the order of the Ld. Commissioner of Income Tax (Appeals)- 15, Mumbai dated 31.08.2020.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) holding that since the notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter “the Act”) was issued by AO on 07.08.2013 in the name of M/s. Morgan Construction Company Ltd (hereinafter “MCCPL”) when M/s. MCCPL was no longer in existence and had already amalgamated with M/s. Siemens Limited and when the AO was aware that M/s. MCCPL had already merged with M/s. Siemens Ltd w.e.f. 1st October, 2011 vide Hon’ble Bombay High Court order dated 17.08.2012, [which fact was brought to the notice of AO vide



letter dated 17.09.2012], the assessment order framed resultantly was held to be bad in law. According to Ld CIT(A), since the mandatory notice u/s 143(2) of the Act was issued to non-existing company M/s. MCCPL, all consequent action was held to be non-est and void in the eyes of law. Against this action of the Ld. CIT(A) on the legal issue held in favour of the assessee, the revenue is before us.

3. Brief facts of the case as noted is that the erstwhile M/s. MCCPL was amalgamated/merged with M/s. Siemens Ltd. w.e.f. 1st October, 2011 pursuant to the Hon'ble Bombay High Court merger order dated 17.08.2012. This fact was brought to the notice of the AO vide letter dated 17.09.2012 (refer page no. 37 of the P.B). Despite the assessee bringing to the notice of the AO about the fact that M/s. MCCPL has merged with M/s. Siemens Ltd vide letter dated 17.09.2012, the AO issued notice u/s 143(2) of the Act dated 07.08.2013 (refer page no. 110 of the P.B) in the name of M/s. MCCPL. Thereafter, the AO has made assessment order in the name of the M/s. MCCP/successor M/s. Siemens Ltd, vide order dated 31.03.2009 (refer page no. 162 of the P.B). In the light of the aforesaid facts, the assessee challenged the jurisdiction of the AO to have framed scrutiny assessment u/s 143(3) of the Act without issuance of valid notice u/s 143(2) of the Act to the amalgamated company i.e. M/s. Siemens Ltd. and not to the non- existing company i.e. M/s. MCCPL. This legal issue was found in favour by the Ld. CIT(A) who has held as under: -



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“4.1.2 I have carefully gone through the submission and argument of the AR of the Appellant Company. I have also gone through the findings made by the AO in the assessment order. The case laws relied by the Appellant Company have been duly perused and considered. It is a fact that the appellant had informed the AO during the course of the assessment proceedings via its letter dated 17.09.2012 the fact that Morgan Construction Company (I) Pvt. Ltd. (PAN-AAACM6828M) was amalgamated with Siemens Limited (PAN-AAACS0764L) effective from 1 October 2011. This was in the knowledge of the AO is borne by the fact that the assessment order contains

“...The company has been merged with M/s. Siemens Ltd. with effect from 1st October, 2011 vide Bombay High Court order dated 17th August 2012. Accordingly, the jurisdiction was transferred to the undersigned vide forwarding letter dated 06.02.2013. Also notice u/s 142(1) dated 7th February, 2013 was issued.....”

It is also a fact that notice u/s 143(2) was issued on 07.08.2013 in the name of M/s Morgan Construction Company (1) Pvt. Ltd. (PAN-AAACM6828M) when it was in existence and it had been amalgamated with M/s Siemens Ltd. Subsequently notice u/s 142(1) was also issued in the name of M/s Morgan Construction company (I) Pvt. Ltd. (PAN-AAACM6828M) and the assessment order passed u/s 143(3) on 29.03.2016 also mentions PAN as AAACM6828M which is PAN of M/s Morgan Construction Company (I) Pvt. Ltd. Supreme Court in the case of Pr. CIT vs Maruti Suzuki India Limited (Civil Appeal No 5409 of 2019) has clearly held that

“Despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approval scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.”

Moreover, in a similar case jurisdictional ITAT in the case of M/s Siemens Technology and Services Pvt. Ltd. (Successor of Siemens Information Processing Services Pvt Ltd - SIPSPL) (ITA NO. I1527/MUM/2014 and ITA NO. 1665/MUM/2015) for AY 2010-11 held that mentioning PAN in the assessment order of the amalgamating company is akin to making assessment on a non existing entity and the said assessment is void ab-initio and nullity in the eye of law.



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Various court judgements including the Apex Court have held that assessment framed against a non-existing entity goes to the root of the matter and matter and it is not a procedural irregularity but a jurisdictional defect and there cannot be any assessment against a non-existing entity or a dead person. As a result, the assessment order passed by the AO is void ab initio and the ground of appeal of the appellant is allowed. The rest of the ground of appeal become inconsequential and are therefore not adjudicated upon.

8. In the result the appeal is treated as allowed.”

4. Aggrieved by the aforesaid action of the Ld. CIT(A) upholding the legal issue of non-issue of mandatory notice u/s 143(2) of the Act to its successor company (M/s. Siemens Ltd.) before framing of assessment order u/s 143(3) of the Act, despite prior notice of amalgamation/merger of M/s. MCCPL with M/s. Siemens Ltd, the revenue is before us.

5. We note that M/s. Siemens Ltd. (successor company of M/s. MCCPL) had duly informed the AO well in advance on 17.09.2012 of the fact of amalgamation of M/s. MCCPL with M/s. Siemen Ltd. vide letter dated 17.09.2012 found placed at page no. 37 of the paper book copy of which is reproduced as under: -



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SECRET

September 17, 2012 ✓

To
Deputy Commissioner of Income tax,
Circle-3 (2),
Mumbai.

Dear Sir,

Ref.: Morgan Construction Company Private Limited (PAN: AAACM6828M)
(Through their successor Siemens Limited (PAN: AAACS0764L))
Sub: 2nd installment of Advance tax- Assessment Year: 2013-14

With respect to telephonic communication we had with the your office on the above captioned subject we have to state as under:

Morgan Construction Company Private Limited has been amalgamated with Siemens Limited vide court order dated 17th August 2012 of Hon'able Mumbai High Court (authenticated copy attached for your reference) and thus Morgan Construction Company Private Limited has now amalgamated with Siemens Limited subject to procedural formalities as mentioned in the court order, having registered office at 130, Pandurang Budhkar Marg, Worli, Mumbai-400018, Maharashtra.

Income for the year under consideration is offered for tax in the advance tax installment of Siemens Ltd with PAN number AAACS0764L having jurisdiction ACIT-7(2), Mumbai.

In view of the above no separate installment of advance tax of Morgan Construction Company Private Limited for Assessment Year 2013-14 is paid.

Thanking you.

Yours faithfully,
For Siemens Limited
(Successor to Morgan Construction Company Private Limited)


Authorized Signatory

Encl: As above



Certified True Copy


17/09/2012

6. This fact is acknowledged by the AO which is discerned from perusal of the assessment order wherein the AO has noted as under: -

“....The company has been merged with M/s. Siemens Ltd. with effect from 1st October, 2011 vide Bombay High Court order dated 17th August 2012. Accordingly, the jurisdiction was transferred to the undersigned vide forwarding letter dated 06.02.2013. Also notice u/s 142(1) dated 7th February, 2013 was issued.....”



7. Despite the AO taking note about the merger of M/s. MCCPL with M/s. Siemen Ltd. (successor to M/s. MCCPL), the AO had issued the mandatory scrutiny notice u/s 143(2) of the Act dated 07.08.2013 to M/s. MCCPL which fact is evident from perusal of page no. 10 of the paper book (notice u/s 148 of the Act). Therefore, we find that the mandatory notice u/s 143(2) of the Act was issued by the AO on 07.08.2013 to a non-existing company i.e. M/s. MCCPL on the date of issue of notice. Therefore, all consequential action become null in the eyes of law. We note that on this legal issue, the Ld. CIT(A) has rightly taken note of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. M/s. Maruti Suzuki India Limited (Civil Appeal No.5409 of 2019) wherein their Lordship have observed regarding invalid notice u/s 143(2) of the Act is as under: -

“Despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approval scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.”

8. In the light of the aforesaid dictum of law on the facts which could not be controverted, we do not find any infirmity in the order of the Ld. CIT(A). So we uphold the same and dismiss the revenue appeal.



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9. In the result, the appeals filed by the revenue are hereby dismissed.

Order pronounced in the open court on 14/06/2022.

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 14/06/2022.

Vijay Pal Singh, (Sr. PS)

Sd/-

(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai