

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1170/MUM/2020 (A.Y.2010-11)

3i Infotech Consultancy Services Limited, Tower No.5, 3 rd to 6 th Floors, International Infortech Park Vashi, Navi Mumbai – 400 703 PAN : AAACZ3181E	vs	Assistant Commissioner of Income-tax-11(3)(1), 4 th Floor, Aayakar Bhavan, Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Mr. Bhupendra Karkhanis, CA & Akash
Department represented by	Shri Nihar Ranjan Samal, Sr. AR

Date of hearing	29/06/2022
Date of pronouncement	21/09/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee as against the order of Ld.Commissioner of Income-tax(Appeals)-18, Mumbai dated 14/10/2019 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2010-11.

2. The grounds of appeal raised by the assessee are as below:-

The grounds of appeal set out below are without prejudice to each other:

“1. On the facts and in the circumstances of the case and in law, the lower authorities erred in confirming the validity of reassessment order passed u/s. 143(3) r.w.s 147 of the Act, inspite of the fact that said assessment was reopened by issuing notice u/s. 148 of the Act on a non-existent company i.e, Delta Services (India) Pvt. Ltd. (amalgamated with 3i Infotech Consultancy Services Ltd.) without assigning any reasons for doing so which is wrong and contrary to the facts of the case, the provisions of the Income Tax Act and its Rules made thereunder.

2. On the facts and in the circumstances of the case and in law, the lower authorities erred in initiating and sustaining proceedings u/s. 147 by issue of notice u/s. 148 of the Income Tax Act, 1961 and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the Rules made thereunder.

3.(a) On the facts and in the circumstances of the case and in law, the lower authorities erred in making an addition of Rs.2,57,97,885/- as bogus purchases and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made thereunder.

(b) On the facts and in the circumstances of the case and in law, the lower authorities erred in making an addition of Rs.2,57,97,885/- as bogus purchases without giving proper opportunity of being heard which is against the principle of natural justice and wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made thereunder.

***(c) Without prejudice to above,** the learned Assessing Officer ought to have disallowed proportionate depreciation claimed on computers instead of entire purchase cost of acquisition of Rs. 2,57,97,885/- and not doing so is wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made thereunder.*

4. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in granting TDS credit of Rs. 6,21,64,004/- instead of Rs.7,09,54,281/- claimed by the appellant in its revised return of income which is short to the extent of Rs. 84,10,931/-, which is wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and Rules made thereunder."*

3. The brief facts of the case are that the assessee is engaged in the business of outsourcing voice management data, management, etc. The assessee filed its return of income for the assessment year under consideration on 29/09/2010 declaring total income at Nil. The return was revised by the assessee on 17/08/2011 declaring total income at Rs.6,74,21,281/- as M/s Delta Services (India) Pvt Ltd which is 100% subsidiary of M/s 3i Infotech Limited and Manipal Informatics Pvt Ltd which is a 100% subsidiary of M/s Delta Services (India) Pvt Ltd were merged with the assessee company subsequent to the approval of Hon'ble Bombay High Court with effect from 01/04/2009. The assessee's case was selected for scrutiny and assessment order under section 143(3) of the I.T. Act was passed on 23/03/2013 determining total income at Rs.8,41,65,130/-. The Assessing Officer made disallowance of Rs.1,56,99,159/- under section 72A read with section 2(1B) of the Income-tax Act, 1961 as business loss and unabsorbed depreciation. Subsequent to this, the assessee's case was reopened under section 147 of the I.T. Act on the information received by the Assessing Officer that the merged company was a beneficiary of accommodation entry to the tune of Rs.2,57,97,885/- received from M/s Stans Networking Private Limited. The assessment order under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 was passed on 24/03/2015 determining total income at Rs.10,99,63,015/- by

making a disallowance of Rs.2,57,97,885/- on account of bogus purchases. Aggrieved by this, the assessee preferred appeal before the Ld.CIT(A), who confirmed the addition made by the Assessing Officer. The assessee is in appeal before us as against the order of the Ld.CIT(A).

4. The Ld.AR insisted on taking up ground 1 challenging the re-assessment order passed under section 143(3) r.w.s. 147 of the Act on a non existing company by issuing notice under section 148 to M/s Delta Services (India) Pvt Ltd, which was amalgamated with the assessee company subsequent to the order of the Hon'ble Bombay High Court. The Ld.AR contended that the merger of the assessee company with M/s Delta Services (India) Pvt Ltd was with effect from 01/04/2009. The Assessing Officer in the assessee's case has issued notice under section 148 on 22/11/2013 in the name of Delta Services (India) Pvt Ltd i.e. subsequent to the merger. The Ld.AR relied on the judgement in the case of PR.Commissioner of Income Tax, New Delhi vs Maruti Suzuki India Limited (Supreme Court) (2019) 107 taxmann.com 375 (SC).

5. The Ld.DR, on the other hand, contended that though the notice under section 148 was issued in the name of the non existing company, the assessment order was passed in the name of the assessee company. The Ld.DR relied on the decision of the lower authorities.

6. We have heard the rival submissions and perused the materials on record. Ground 1 challenges the re-assessment order passed under section 143(3) r.w.s. 147 by issuing notice under section 148 of the Act on a non existing company. This fact is evident from the assessment order wherein the Assessing Officer on page 2 at para 4 has categorically mentioned that the notice under section 148 was issued on 22/11/2013 in the name of the merged company, M/s Delta Services (India) Pvt Ltd and has also specified that the

subsequent notice under section 142(1) was also issued to M/s Delta Services (India) Pvt Ltd. It is also evident that in response to the notice, the assessee company vide its letter dated 16/02/2015 has submitted that M/s Delta Services (India) Pvt Ltd has been merged with the assessee company with effect from 01/04/2009 alongwith Manipal Informatics Pvt Ltd and that M/s Delta Services (India) Pvt Ltd was no longer in existence. This contention of the assessee was overlooked by the Assessing Officer and from the very fact that the said communication of merger is mentioned in the assessment order substantiates the assessee's contention in ground 1. Further to this, we would like to place our reliance on the Hon'ble Calcutta High Court judgement in the case of SMJ Eximp Limited vs Union of India & Ors in WPO/1643/2021 dated 04th January, 2022.

7. On the decision cited by the Ld.AR in the case of Maruti Suzuki Limited (supra), we find that the Hon'ble Apex Court has held as under:-

"33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved 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. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law."

8. Respectfully following the above decision of the Hon'ble Apex Court in the case of Maruti Suzuki Limited (supra), we consider the fact that the jurisdiction invoked under section 148 of the Act was against the legal principle as the amalgamating entity ceases to exist on merger by way of the approved scheme of the Hon'ble High Court. The Assessing Officer has failed to consider the judicial precedents laid down by the Hon'ble Supreme Court and has also not considered the submission of the assessee in spite of the fact that it was

within the knowledge of the assessing officer. The Ld.CIT(A) has also failed to consider that the notice ought to have been issued in the name of the assessee company pursuant to the merger.

9. From the above observation, we deem it fit to allow this ground of appeal raised by the assessee and quash the impugned assessment order.

10. The other grounds of appeal become academic in nature in view of our decision on ground 1 above.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 21st September, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 21/09/2022

Pavanan

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER

(Dy./Asstt. Registrar)
ITAT, Mumbai