आयकर अपीलीय अधिकरण
मुंबई पीठ "आई "
श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 2130/मुं/2017 (नि.व .2012-13)
ITA NO.2130/MUM/2017(A.Y. 2012-13)

Culver Max Entertainment Private Limited
[Formerly known as Sony Pictures Networks
India Private Limited (As successor to SPE Networks-
India Inc. ('SPENI') which has merged into SPNI
With effect from an appointed date of 1 April 2015)
Erstwhile Multi Screen Media Private Limited]
Interface Building No.7, 5th Floor,
Off Malad Link Road, Malad (W)
Mumbai – 400 064.
PAN: AABCS-1728-D ..... अपीलार्थी /Appellant

बनाम Vs.

Asstt.Commissioner of Income-tax
(International Taxation), Range-4(2)(2),Mumbai,
Room No.!624, 16th Floor, Air India Building,
Nariman Point, Mumbai – 400 021. ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri P.J.Pardiwala, Sr. Advocate
with Ms.Aarati Sathe,
Anchal Gupta and Umedmal Jain.

प्रतिवादी द्वारा/Respondent by : Ms. Surabhi Sharma with
Shri Soumendu Kumar Dash

सुनवाई की तिथि/ Date of hearing : 08/08/2022

घोषणा की तिथि/ Date of pronouncement : 19/09/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against assessment order dated 31/01/2017 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act'].

2. Shri P.J.Pardiwala appearing on behalf of the assessee submitted at the outset that at this stage he is only pressing legal issue that is: The impugned assessment order has been passed in the name of a non-existing entity. Hence, the assessment order is bad in law.

3. Narrating the facts, the ld.Counsel for the assessee submitted that the assessee had filed return of income for the impugned assessment year in the name of SPE Networks India Inc.[in short 'SPENI']. The draft assessment order dated 15/03/2016 was passed in the name of 'SPENI'. Even the Dispute Resolution Panel (DRP) issued directions dated 22/12/2016 under section. 144C(5) of the Act in the name of 'SPENI'. The Hon'ble Bombay High Court vide order dated 01/07/2016 approved the Scheme of Amalgamation of 'SPENI' with Sony Pictures Networks India Private Limited ['SPNI']. Consequent to amalgamation, SPENI ceases to exist from effective date as defined in the Scheme. The assessee vide communication dated 16/01/2017 intimated the Assessing Officer that consequent to the merger, the final assessment order be passed in the name of successor entity i.e. 'SPNI'. A copy of the order of Hon'ble Bombay High Court approving the Scheme of Amalgamation was also furnished along with said request. The Assessing Officer despite being aware of the fact of amalgamation and name of successor entity passed the final

assessment order dated 31/01/2017 in the name of a non-existing entity. The ld. Counsel for the assessee submitted that in the light of the law laid down by Hon'ble Supreme Court of India in the case of PCIT vs. Maruti Suzuki India Ltd. reported as 416 ITR 613, the assessment order passed in the name of non-existing entity is non-est and unsustainable in the eye of law.

4. Per contra, Ms. Surabhi Sharma representing the Department vehemently defended the assessment order. The ld.Departmental Representative submitted that intimation regarding change of name was conveyed to the Assessing Officer after finalizing of the draft assessment order and the directions of the DRP. The Assessing Officer passed the final assessment order in the same name as was mentioned in the income tax return, draft assessment order and the directions of the DRP.

5. Both sides heard, orders of authorities below examined. The short issue agitated in appeal before us is, validity of assessment order passed in the name of a Non-existing entity. Undisputedly, the draft assessment order and the directions of the DRP are in the name of 'SPENI' i.e. the erstwhile entity. The Hon'ble Bombay High Court approved the Scheme of Amalgamation of 'SPENI' with 'SPNI' vide order dated 01/07/2016. The assessee vide communication dated 16/01/2017 informed the Assessing Officer about the fact of merger of 'SPENI' with 'SPNI' and the consequent change in name. The fact of intimation of change in name has not been disputed by Revenue. The ld. Counsel for the assessee has placed on record photocopy of the communication dated 16/01/2017 bearing the office stamp of DCIT(IT), Circle 4(2)(1) to substantiate that the Assessing Officer was informed about the change in name of assessee consequent to amalgamation well before passing

of the final assessment order. The Assessing Officer passed the final assessment order on 31/01/2017. The documents on record clearly indicate that the Assessing Officer was informed about the change in name. Despite intimation, the Assessing Officer passed the final assessment order in the name of a non-existing entity. The Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd (supra) held that where assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in the name of the said non-existing entity is without jurisdiction, hence, liable to be set-aside. In the facts of case and in the light of law expounded by Hon'ble Apex Court, the impugned assessment order passed in the name of non-existing entity suffers from jurisdictional defect, hence, the same is set-aside. The assessee succeeds on ground No.1 raised in the appeal.

6. Since, submissions made by both sides were restricted only on the legal issue raised in ground No.1 of the appeal, the other grounds raised in the appeal are not deliberated upon as they have become academic.

7. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Monday the 19th day of September, 2022.

Sd/-	Sd/-
(PRAMOD KUMAR)	(VIKAS AWASTHY)
उपाध्यक्ष/VICE PRESIDENT	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 19/09/2022
Vm, Sr. PS(O/S)

<u>प्रतिलिपि अग्रेषितCopy of the Order forwarded to</u> :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai