

आयकर अपीलीय अधिकरण
मंबई पीठ " के ". मंबई
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " K ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं. 1497/मुं/ 2017 (नि.व. 2012-13)
ITA NO. 1497/MUM/2017(A.Y.2012-13)

Konecranes Private Limited
PAN:AAACW0328C(PAN of merged entity)
PAN of old entity AACCK9930E
Being Konecranes India Private Limited)
19, Level -2, Muttha Towers,
Don Bosco Road, Yerwada,
Dist. Pune – 411 006.

..... अपीलार्थी /Appellant

बनाम Vs.

Assistant Commissioner of Income-tax,
Circle 3(2)(2), Mumbai.
Room No.608, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dhanesh Bafna with
S/Shri Amol Mahajan & Hardik Nirmal
प्रतिवादी द्वारा/Respondent by : Ms. Samrudhi Dhananjay Hande

सुनवाई की तिथि/ Date of hearing : 15/12/2022
घोषणा की तिथि/ Date of pronouncement : 15/12/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 31/01/2017 passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 92CA(3) of the Income Tax Act, 1961 [in short 'the Act'], for the assessment year 2012-13.

2. The assessee has filed additional ground of appeal vide application dated 29/08/2019 assailing the validity of assessment order passed in the name of a Non-existing Entity. The additional ground raised by the assessee reads as under:

“ 8. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer ('AO') erred in passing the draft assessment order dated 17 March 2016 and final assessment order dated 31 January 2017 in the name of 'Konecranes India Private Limited', an entity which is not in existence on the date of passing the impugned orders on account of its amalgamation with the Appellant.

It is the humble prayer of the Appellant that the draft assessment order and final assessment order passed by Ld. AO be held as bad in law, illegal, null and void-ab-initio and as such deserve to be quashed.”

2. Shri Dhanesh Bafna appearing on behalf of the assessee submits that as of now he would be making his submissions only on the additional ground of appeal challenging validity of assessment order. The additional ground of appeal raised is legal in nature, no additional evidence /documents are required for adjudication of additional ground. The documents/orders are already on record for adjudication of the additional legal ground. The Id. Authorized Representative for the assessee further submits that, if additional ground is allowed the original grounds raised in appeal would become academic.

2.1 Narrating sequence of events the Id. Authorized Representative for the assessee submits, that consequent to approval of scheme of amalgamation approved by Hon'ble Bombay High Court vide order dated 02/11/2012 w.e.f. 01/04/2012 Konecranes India Pvt. Ltd. was amalgamated with WMI Konecranes India Ltd.. The assessee vide letter dated 21/05/2015 (at page 894 of the paper book) intimated the Transfer Pricing Officer (TPO) regarding the fact of amalgamation. Along with the said letter the assessee annexed copy of

the order of Hon'ble Bombay High Court approving the scheme of amalgamation. The TPO taking note of the said communication passed order u/s. 92CA(3) of the Act dated 23/12/2015 in the name of amalgamated entity i.e. WMI Konecranes India Ltd. Thereafter, the Assessing Officer passed draft assessment order dated 17/03/2016 in the name of Non-existing Entity, Konecranes India Pvt. Ltd. The assessee filed objections before the Dispute Resolution Panel (DRP) against the draft assessment order. The objections were filed before the DRP in the name of WMI Konecranes India Ltd. In the title of objections the name and address of the assessee was mentioned as under: -

“WMI Konecranes India Limited [for Konecranes India Private Limited, the erstwhile entity, now merged with WMI Konecranes India Limited w.e.f. April 2012]

19, Level 2, Muttha Towers, Donon Bosco Road, Yerwada, Pune – 411 006”

The DRP issued directions u/s. 144C(5) of the Act in the correct name i.e. WMI Konecranes India Ltd. In the cause title the DRP had mentioned the fact that Konecranes India Pvt. Ltd. the erstwhile entity, now merged with WMI Konecranes India Ltd. w.e.f. April 2012. The assessee filed letter dated 09/01/2017 (at page 922 of the paper book) before the Assessing Officer to give effect to the order of DRP. In the said communication assessee had clearly mentioned that the name of existing entity and the fact that Konecranes India Pvt. Ltd., erstwhile entity, now merged with WMI Konecranes India Ltd. Despite the fact that TPO and DRP passed the orders/directions in correct name and the Assessing Officer was well aware of the fact that pursuant to the amalgamation Konecranes India Pvt. Ltd. ceased to exist, the Assessing Officer passed the final assessment order in the name of Non-existing Entity. The assessment order in the name of Non-existing Entity is unsustainable being void-ab-initio. The Id. Authorized Representative for the assessee in support of

his submissions placed reliance on the decision of Hon'ble Supreme Court of India in the case of PCIT vs. Maruti Suzuki India Ltd., 107 taxmann.com 375/416 ITR 613.

3. Per contra, Ms. Samrudhi Dhananjay Hande representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that the assessee never communicated the fact of amalgamation of Konecranes India Pvt. Ltd. with WMI Konecranes India Ltd. to the Assessing Officer. The Id. Departmental Representative further submits that the order of amalgamation was passed way back on 02/11/2012 and it was only in 2015 the fact of amalgamation was brought to the notice of TPO only. The letter dated 09/01/2017 at page 922 of the Paper Book addressed to the Assessing Officer was in the context of giving effect to the directions of DRP. The said communication was not to inform the Assessing Officer about the amalgamation of assessee with WMI Konecranes India Ltd. Thus, at no point of time the assessee ever informed the Assessing Officer regarding change in name or the fact that Konecranes India Pvt. Ltd. ceases to exist. The Id. Departmental Representative vehemently argued that the decision rendered in the case of Maruti Suzuki India Ltd. (supra) would not apply in the present case as the facts are distinguishable.

4. We have heard the submissions made by rival sides and have examined the orders of the authorities below and the documents on record on which reliance has been placed by rival sides. The assessee has raised additional ground of appeal challenging validity of the draft assessment order dated 17/03/2016 and final assessment order dated 31/01/2017 being in the name of Non-existing Entity. The additional ground raised by the assessee is legal in

nature as it challenges the validity of the assessment order. No fresh evidence is required to be adduced for adjudication of additional ground of appeal, hence, the additional ground is admitted for adjudication.

5. The Id. Authorized Representative for the assessee has confined his submissions to address additional ground of appeal at this stage. The scheme of amalgamation of Konecranes India Pvt. Ltd. with WMI Konecranes India Ltd. was sanctioned by the Hon'ble Bombay High Court vide order dated 02/11/2012 w.e.f. 01/04/2012. The assessee vide letter dated 21/05/2015 intimated the TPO regarding amalgamation of assessee with WMI Konecranes India Ltd. The TPO took cognizance of the said intimation and passed the order u/s. 92CA(3) of the Act on 23/12/2015 in the name of amalgamated company i.e. WMI Konecranes India Ltd. The fact that Konecranes India Pvt. Ltd. ceased to exist was known to the Assessing Officer as is evident from draft assessment order dated 17/03/2016. The Assessing Officer still framed the draft assessment order in the name of Non-existing Entity. The Assessing Officer in the draft assessment order mentioned the name of assessee as under:

*“ M/s. Konecranes India Pvt. Ltd.
(Formerly known as WMI Konecranes India Ltd.)”*

Thereafter, the assessee filed objections before the DRP. The DRP disposed of the objections vide directions dated 29/11/2016 in the name of amalgamated company i.e. WMI Konecranes India Ltd., the successor to Konecranes India Pvt. Ltd. The Assessing Officer thereafter passed the final assessment order dated 31/01/2017 again in the name of Non-existing Entity i.e. Konecranes India Pvt. Ltd. The Assessing Officer committed same error in mentioning the name of assessee as was done while passing the draft assessment order. The final assessment order passed in the name of Non-existing Entity makes the

order invalid and without jurisdiction. The Hon'ble Apex Court in the case of Maruti Suzuki Ltd. (supra) has held that where the assessee company was amalgamated with another company and thereby loses its existence, the assessment order passed in the name of Non-existing Entity is without jurisdiction and is liable to be set-aside. Thus, in the light of facts of the case and the law expounded by Hon'ble Apex Court, the impugned order is quashed and the appeal of assessee is allowed on the legal ground raised by way of additional ground of appeal.

6. Since, the assessee succeeds on the legal issue, the grounds of appeal on merits have become academic and are left open.

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

Order pronounced in the open court on Thursday the 15th day of December, 2022.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/12/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

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., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar), ITAT, Mumbai