

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2406/MUM/2002
(Assessment Year: 1998-99)

J.P. Morgan India Private Limited,
(Formerly known as Jardinee Fleming
India Securities Limited successor to
Jardinee Fleming India Broking Limited,)
9th Floor, Mafatlal Centre,
Nariman Point, Mumbai - 400021
[PAN: AAEPM3473H

Appellant

.....

The Additional Commissioner of
Income Tax,
Special Range 22, Mumbai
Aayakar Bhavan, Mumbai - 400020

Vs

Respondent

.....

Appearances

For the Appellant/Assessee : Shri Madhur Agarwal
For the Respondent/Department : Shri Santhil Kumaran

Date of conclusion of hearing : 06.09.2022
Date of pronouncement of order : 05.12.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 28.02.2002, passed by the Ld. Commissioner of Income Tax (Appeals)-I, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 1998-99 whereby the Ld. CIT(A) had partly allowed the appeal filed by the Appellant against the Assessment Order, dated 16.03.2001 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The present appeal was filed by Jardinee Fleming India Securities Pvt. Ltd. (name changed to J.P. Morgan India Private Limited) being successor to Jardinee Fleming India Broking Limited pursuant to scheme of amalgamation approved by Hon'ble Bombay High Court, vide order dated 03.04.2000.
3. The Appellant has raised additional ground which read as under:
"The Appellant submits that as the assessment order was framed by the Assessing Officer on March 16, 2001 on Jardinee Fleming India Broking Ltd. which ceased to exist pursuant to its amalgamation into Jardinee Fleming India Securities Pvt. Ltd. with effect from April 01, 1999, the assessment in so far as it is framed on a non-existent entity is bad in law."
4. Ld. Departmental Representative objected to admission of additional ground and submitted that this has been raised for the first time before the Tribunal. The Ld. Authorised Representative for the Appellant, in response, submitted that the additional ground raised by the Appellant is in the nature of legal ground and can be raised for the first time before the Tribunal. We have considered the rival submission. In our view the additional ground raised by the Appellant is a legal ground and does not require examination of any facts not already on record. Accordingly, in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT: 229 ITR 383, the additional ground raised by the Appellant is admitted.
5. Pressing the additional ground into service the Ld. Authorised Representative for the Appellant submitted that the Assessment Order has been passed in the name of an entity

which was not in existence and therefore, the same was void-ab-initio. In order to substantiate the aforesaid submission he took us through the documents placed on records and submitted that the Revenue was put to notice about the amalgamation. Vide order, dated 03.04.2000, the Hon'ble Bombay High Court had sanctioned the scheme of amalgamation with 01.04.1999 as the appointed date. A certified copy of the aforesaid order was filed with the Registrar of Companies, Mumbai. On 06.09.2000 notice under Section 143(2) of the Act for the Assessment Year 1998-99 was issued in the name of Jardine Fleming India Broking Limited by Joint Commissioner of Income Tax, Special Range-22, Mumbai. On 13.12.2000, a letter was filed with the Joint Commissioner of Income Tax, Special Range-22, Mumbai specifically stating therein that Jardine Fleming India Broking Limited has been merged with Jardine Fleming India Securities Ltd. w.e.f. 01.04.1999. A copy of the order dated 03.04.2000 passed by the Hon'ble Bombay High Court was also enclosed with this letter. On 15.01.2001, the Appellant also filed letter before Commissioner of Income Tax (Appeals) - 22 intimating about the amalgamation in relation to pending appellate proceedings for Assessment Year 1996-97 and 1997-98. On 08.03.2001 the Appellant had also filed a letter with Additional Commissioner of Income Tax, Special Range -22, Mumbai, wherein it was stated in the subject: "*Re: Jardinee Fleming India Securities Limited ('JFISL') [as successor to Jardinee Fleming India Broking Limited]*".

6. In response the Ld. Departmental Representative vehemently contended that the Appellant had not given proper intimation to the Assessing Officer. The letters filed before other income

tax authorities were not relevant. He submitted that the letter dated 13.12.2000 was sent to the Joint Commissioner of Income Tax, Special Range, 22 Mumbai whereas the assessment order has been passed by Additional Commissioner of Income, Special Range-22, Mumbai. He further submitted even the communication to Joint Commissioner of Income Tax, Special Range, 22, Mumbai was made belatedly. The order of amalgamation was passed by the Hon'ble Bombay High Court on 03.04.2000 whereas the intimation to Joint Commissioner of Income Tax, Special Range-22 was sent on 13.12.2000. Referring to letter dated 14.12.2000 filed by the Assessee before the Additional Commissioner of Income Tax, Special Range- 22, Mumbai. He submitted that no disclosure regarding amalgamation was given in the aforesaid letter despite the fact that on 13.12.2000, a letter was filed with the Joint Commissioner of Income Tax, Special Range-22, Mumbai specifically disclosing therein the factum of amalgamation of Jardine Fleming India Broking Limited into Jardine Fleming India Securities Ltd. w.e.f. 01.04.1999.

7. In rejoinder, the Ld. Authorised Representative for the Appellant submitted that intimation were given to, both, the Joint Commissioner of Income, Special Range- 22 as well as Additional Commissioner of Income Tax, Special Range- 22 before the date of passing of Assessment Order (i.e. 16.03.2001). He further submitted that there was no delay in giving the intimation as certified copy of the order, dated 03.04.2000, passed by the Hon'ble Bombay High Court sanctioning the amalgamation was filed with the Registrar of Companies and thereafter, intimation was sent to the Joint

Commissioner of Income Tax, Special Range -22, Mumbai who issued notice under Section 143(2) of the Act.

8. We have considered the rival submission, perused the material on record and considered the legal position including the judgment of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Mahagun Realtors (P.) Ltd.: [2022] 443 ITR 194 (SC)[05-04-2022].
9. In the present case it is admitted position that notice under Section 143(2) of the Act, under which jurisdiction was assumed by the Assessing Officer, was issued to Jardine Fleming India Broking Limited, a non-existent/amalgamating company. Vide letter, dated 13.12.2000, Joint Commissioner of Income Tax, Special Range-22, Mumbai was put to notice about Jardine Fleming India Broking Limited having been amalgamated with Jardine Fleming India Securities Ltd. w.e.f. 01.04.1999. Copy of the order, dated 03.04.2000, passed by the Hon'ble Bombay High Court sanctioning the scheme of amalgamation with 01.04.1999 as appointed date was also enclosed with this letter. The letter, dated 08.03.2001, addressed to Additional Commissioner of Income Tax, Special Range-22, Mumbai also alluded to the factum of amalgamation. Thus, we hold that the Assessing Officer had intimation about the amalgamation of companies and yet he proceeded to frame assessment in the hands of non-existing entity/amalgamating company. Thus, the assessment framed in the hands of the amalgamating/non-existent company, vide assessment order dated 16.03.2001, is set aside as being invalid. Additional Ground raised by the Appellant is allowed.

All the other grounds raised in the Appeal are disposed off as being infructuous.

In the result, the present appeal is allowed.

Order pronounced on 05.12.2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.12.2022
Alindra, PS

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