

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2394/MUM/2018  
Assessment Year: 2014-15**

ACIT-24(1),  
Room No. 604, 6<sup>th</sup> floor,  
Piramal Chamber, Parel,  
Mumbai-400012.

**Vs.**

M/s Dreamz Dwellers LLP  
(Legal Representative of M/s  
Megacorp Developers Pvt.  
Ltd.)  
702, Natraj, M.V. Road,  
Junction, Western Express  
Highway Andheri East,  
Mumbai-400069.

**PAN No. AAFCM 0366 B  
Respondent**

**Appellant**

Revenue by : Mr. T. Shankar, CIT-DR  
Assessee by : Mr. Ajay Singh, AR

Date of Hearing : 29/10/2022  
Date of pronouncement : 30/11/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the Revenue against the order dated 29<sup>th</sup> January 2018 passed by the Ld. Commissioner of



Income Tax (Appeals) – 18, Mumbai [in short ‘the Ld. CIT(A)’] for  
A.Y. 2014-15, raising following grounds:

*1. The learned assessing officer has erred in making addition of Rs.1,22,87,70,000/-U/s 56(2)(viib) of the Income Tax Act, 1961 being Share Premium received Rs. 9,990/- each on issue of 1,23,000 Preference Shares during the year under consideration. It is submitted that addition is made by the Learned Assessing Officer on the pretext that Assessee has failed to justify the consideration received towards issue of shares at premium.*

*It is submitted that the Learned assessing officer has rejected the valuation report submitted by the Appellant during the course of Assessment Proceedings on the pretext that Discounted Cash Flow method adopted by the Valuer is not justifiable. It is submitted that Appellant has obtained necessary Share Valuation Report from an independent chartered accountant. It is submitted that Learned Assessing Officer has failed to understand the basic fact that Valuer has followed Dividend Discounting Model for valuing its shares. It is therefore submitted that addition made by the Learned Assessing Officer is unjustified and on the basis of assumptions & presumption and without understanding the facts of the case. It is therefore prayed to your honour that such addition made by the learned assessing officer should be deleted and necessary guidance shall be given in this regard.*



2. Briefly the facts of the case are that the assessee – M/s. Megacrop Developers Pvt. Ltd. (assessed as Dreamz Dwellers LLP), a real estate company had filed its return of income for A.Y. 2014-15 on 28.11.2014 declaring total income of Rs.1,08,28,783/-. Later, the case was selected for scrutiny and statutory notices under the Income Tax Act, 1961 [in short, “the Act”] were issued. In the assessment completed, the Assessing Officer was not satisfied with the explanation given by the assessee regarding the fair market value of 1,23,000 redeemable preference shares of face value of Rs. 10 each issued by it to M/s. Altus Developers Pvt. Ltd. at a premium of Rs.9,990/- per share and hence, he added the share premium of Rs.1,22,87,70,000/- u/s. 56(2)(vii)(b) of the Act. Aggrieved by the addition, the assessee preferred appeal before the Ld. Commissioner of Income Tax – Appeals [in short, “the Ld. CIT(A)] challenging the addition made u/s. 56(2)(vii)(b) of the Act. In the course of the first appellate proceedings, the Ld. Counsel of the assessee raised an additional ground that the statutory notice u/s. 143(2) has issued in the name of a non-existent entity and the assessment so completed is bad in law. The Ld. CIT(A) agreed with



the contention of the assessee and accordingly held that the assessment order passed u/s. 143(3) of the Act on the basis of a notice issued u/s. 143(2) in the name of a non-existent company is bad in law and allowed the additional ground of the assessee and did not decide further the other ground on merits of the case. Aggrieved by the order of the Ld. CIT(A), the department is in appeal before us and have raised the grounds of appeal referred above.

3. The ground no. 1 to 3 relates to the issue of quashing of the assessment order in view of the fact that the notice u/s. 143(2) was issued in the name of a non-existent company i.e. M/s. Megacorp Developers Pvt. Ltd. The Ld. Departmental Representative appearing for the revenue argued that in the present facts of the case, before issuing the statutory notice u/s. 143(2) of the Act, the assessee has never informed the jurisdictional Assessing Officer that the company M/s. Megacorp Developers Pvt. Ltd. had been merged with M/s. Dreamz Dwellers Pvt. Ltd. vide amalgamation order of the Hon'ble jurisdictional High Court dated 10.10.2014 and that the same was later converted into an LLP namely M/s. Dreamz



Dwellers LLP. He further emphasized that the fact that the final assessment order is passed in the name of correct entity on the basis of such information provided by the assessee to the Assessing Officer only during the assessment proceedings *vide* letter dated 21.11.2016. Accordingly, he argued that the decision of Hon'ble Delhi High Court in the case of **M/s. Spice Entertainment (ITA no. 475 of 2011)** is not applicable in the present case. He further stated that if at all there is any jurisdictional defect in issuing the notice u/s. 143(2), the same is curable u/s. 292B of the Act and has been taken care of while passing the assessment order in the name of the correct entity i.e. M/s. Dreamz Dwellers LLP.

4. On contrary, the Ld. Counsel of the assessee placed reliance on the order of the Ld. CIT(A) and the case laws referred therein being squarely applicable in this case. He referred to the Paper Book containing 323 pages and drew our attention to the letter dated 21.11.2016 filed before the Assessing Officer at page no. 39 of the Paper Book to show that in reply to the notice u/s 142(1), the Assessing Officer was informed that the preference shares of the



assessee company are not redeemed on account of merger of assessee company into M/s. Dreamz Dwellers Pvt. Ltd. and gave the copy of the order of merger order of the Hon'ble High Court. He also drew our attention to the submission filed before the Ld. CIT(A) which is reproduced in para 8 of the CIT(A)'s order wherein it is stated that a letter dated 09.07.2014 stating that the petition for merger was filed with the Assessing Officer on 10.07.2014; whereas the notice u/s. 143(2) was issued thereafter on 28.08.2015. Hence, the plea of the Ld. Counsel of the assessee is that once the Assessing Officer was aware about the merger petition being filed before the Hon'ble High Court, the notice issued u/s. 143(2) in the name of a non existing company is a nullity and consequently, the assessment framed on the basis of such invalid notice is also a nullity. He relied on the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki (SC)

5. We have gone through the rival contentions and perused the material on record. The brief fact qua the issue involved in these grounds of appeal is that although the assessee had informed the



Assessing Officer vide letter dated 09.07.2014 (filed on 10.07.2014) about the petition for merger being filed with the Hon'ble jurisdictional High Court, it did not file the copy of the final order of the Hon'ble High Court sanctioning the amalgamation on 10.10.2014. Nor the assessee has categorically informed the Assessing Officer about the said fact after the receipt of the said amalgamation order before the notice u/s. 143(2) was issued on 28.08.2015. Further, the intimation given by the assessee during the assessment proceedings *vide* letter dated 21.11.2016 was only a month prior to the expiry of limitation for completing assessment and that the due date of issuing notice u/s. 143(2) was already expired by that date. Hence, it was impossible for the Assessing Officer to issue a fresh notice u/s. 143(2) in the name of the new entity.

5.1 In light of the said fact, we are constrained to follow the decisions relied upon by the Ld. CIT(A) and the Ld. Counsel of the assessee as the facts of those cases and the present case are different in as much as the moot point involved here is that the



assessee has not informed about the fact of order passed by the Hon'ble High Court sanctioning the amalgamation prior to the issue of notice u/s. 143(2) of the Act. In this regard, gainful reference is made from the decision of the Hon'ble Supreme Court in the case of PCIT v. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann.com 91 (SC) wherein it is held that where post amalgamation, no indication was given to AO during search conducted at premises of assessee-amalgamating company about amalgamation and return filed pursuant to notice issued u/s. 153A suppressed fact of amalgamation, since conduct of assessee reflected that it consistently held itself as assessee, assessment order passed in name of assessee-amalgamating company was valid. The Hon'ble Supreme Court, after considering all the relevant decisions including the decision relied upon by the Ld. Counsel of the assessee, have held as under:-

*“40. The facts of the present case are distinctive, as evident from the following sequence:*

- 1. The original return of MRPL was filed under Section 139(1) on 30.06.2006.*



2. The order of amalgamation is dated 11.05.2007 – but made effective from 01.04.2006. It contains a condition – Clause 220 - whereby MRPL’s liabilities devolved on MIPL.

3. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised returns was 31.03.2008, after the amalgamation order.

4. A search and seizure proceeding was conducted in respect of the Mahagun group, including the MRPL and other companies:

“2. That all the liabilities and duties of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the Transferee Company”

(i) When search and seizure of the Mahagun group took place, no indication was given about the amalgamation.

(ii) A statement made on 20.03.2007 by Mr. Amit Jain, MRPL’s managing director, during statutory survey proceedings under Section 133A, unearthed discrepancies in the books of account, in relation to amounts of money in MRPL’s account. The specific amount admitted was ₹ 5.072 crores, in the course of the statement recorded.



(iii) *The warrant was in the name of MRPL. The directors of MRPL and MIPL made a combined statement under Section 132 of the Act, on 27.08.2008.*

(iv) *A total of ₹ 30 crores cash, which was seized- was surrendered in relation to MRPL and other transferor companies, as well as MIPL, on 27.08.2008 in the course of the admission, when a statement was recorded under Section 132 (4) of the Act, by Mr. Amit Jain.*

5. *Upon being issued with a notice to file returns, a return was filed in the name of MRPL on 28.05.2010. Before that, on two dates, i.e., 22/27.07.2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for AY 2007-08 (for which separate proceedings had been initiated under Section 153A) and not for AY 2006-07.*

6. *The return specifically suppressed – and did not disclose the amalgamation (with MIPL) – as the response to Query 27(b) was “N.A”.*

7. *The return – apart from specifically being furnished in the name of MRPL, also contained its PAN number.*

8. *During the assessment proceedings, there was full participation – on behalf of all transferor companies, and MIPL. A special audit was directed (which is possible only after issuing notice under Section 142). Objections to the special audit were filed in respect of portions relatable to MRPL.*



9. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending 31.03.2006, in the cross-objection before the ITAT, for the first time (in the appeal preferred by the Revenue), an additional ground was urged that the assessment order was a nullity because MRPL was not in existence.

10. Assessment order was issued – undoubtedly in relation to MRPL (shown as the assessee, but represented by the transferee company MIPL).

11. Appeals were filed to the CIT (and a cross-objection, to ITAT) – by MRPL “represented by MIPL”.

12. At no point in time – the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities, taken over by MIPL.

13. The counter affidavit filed before this court – (dated 07.11.2020) has been affirmed by Shri Amit Jain S/o Shri P.K. Jain, who- is described in the affidavit as “Director of M/S Mahagun Realtors(P) Ltd., R/o...”.

41. In the light of the facts, what is overwhelmingly evident- is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL.



*Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the CIT, and a cross appeal was filed before ITAT. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The AO, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.). The mere choice of the AO in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i.e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order – and Section 394 (2). Furthermore, it would be anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The*



*approach and order of the AO is, in this court's opinion in consonance with the decision in Marshall & Sons (supra), which had held that:*

*“an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Company.”*

*42. Before concluding, this Court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.*

*43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside. Since the appeal of the revenue against the order of the CIT was not heard on merits, the matter is restored to the file of ITAT, which shall proceed to hear the parties on the merits of the appeal- as well as the cross objections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs.”*

5.2 In view of the above discussion, respectfully following the aforesaid decision of Hon'ble Supreme Court in the case of Mahagun Realtors (supra), we are of the considered view that the



assessment order passed by the Assessing Officer is valid in eyes of law and accordingly, the ground nos. 1 to 3 of the appeal filed by the Revenue are allowed.

6. The ground no. 4 of the appeal relates to the issue of addition of Rs. 122,87,70,000/- made u/s. 56(2)(vii)(b) of the Act not been decided by the Ld. CIT(A) on merits of the case. In this regard, since we have held that the assessment order passed u/s. 143(3) as valid, it is necessary that the issue of addition made u/s. 56(2)(vii)(b) of the Act by the Assessing Officer be dealt with on merits by the Ld. CIT(A). Accordingly, we set aside this ground of appeal and restore the matter back to the file of Ld. CIT(A) to decide the same on merits of the case. It is needless to mention that adequate opportunity of being heard be granted to the assessee to file his submissions and relevant details or documents in the matter. Accordingly, this ground of appeal of the revenue is allowed for statistical purposes.

7. In the result, the appeal of the revenue is allowed for statistical purposes.



**Order pronounced under Rule 34(4) of the ITAT Rules,  
1963 on 30/11/2022.**

**Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/11/2022  
Rahul Sharma, Sr. P.S.

**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,  
  
(Sr. Private Secretary)  
**ITAT, Mumbai**