

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 1101/DEL/2022 [A.Y. 2017-18]

Dr. Willmar Schwabe India Pvt Ltd  
[Amalgamated Co. of Sanat Products Ltd  
H-36, Green Park Extension, New Delhi

Vs.

The Pr.C.I.T  
Ghaziabad

PAN: AAACD 0463 D  
(Applicant)

(Respondent)

Assessee By : Shri Satish Gupta, CA  
Shri Shikar Gupta, CA

Department By : Ms. Sapna Bhatia, CIT-DR

Date of Hearing : 14.03.2023

Date of Pronouncement : 17.03.2023

ORDER

PER N.K. BILLAIYA. ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 22.03.2022 framed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as The Act'] by the PCIT, Ghaziabad pertaining to Assessment Year 2017-18.

2. The grievances of the assessee read as under:

*“1. That the order passed under Section 263 of the Act is erroneous as is bad in law*

*2. That the order has been passed by Ld. PCIT in the name of Sanat Products Limited which is a non-existent entity as on the date of order. The Ld. PC IT completely disregarded the fact, that Sanat Products Limited had been amalgamated pursuant to the scheme of amalgamation in the appellant company effective from 01/09/2021.*

*3. That the appellant company wishes to place reliance on the principles laid down by the Hon'ble Supreme Court in the case of Marul; Suzuki India Limited (Civil Appeal No. 54090(2019) and plethora of other judgement that the order passed in the hands of a non-existent entity is bad in law and deserves to be quashed as void-ab-initio.*

*4. That the appellant company wishes to place reliance on the judgement of CIT vs. Kwalitv Steel Suppliers Complex (CIVIL APPEAL NOS. 815 ft 4923 OF 2007) that the order has been passed by the Ld. PCIT without adhering to the mandatory conditions as per the provisions of Section 263 of the Act.*

*5. The grounds of Appeal as submitted above are notwithstanding with each other. The Appellant Company craves to add, alter, amend, and/or substitute the aforesaid grounds of appeal.*

*That in view of the facts and legal position stated above, the order passed by the Ld PCIT be quashed or appropriate relief be granted to the Appellant Company in terms of the Ground of Appeal. ”*

3. The representatives of both the sides were heard at length. The case records carefully perused and relevant documentary evidences brought on record duly considered in light of Rule 18(6) of ITAT Rules.

4. Peculiar facts of the case are that proceedings u/s 263 of the Act have been initiated u/s 263 of the Act vide notice dated 04.02.2022 in the name of M/s Sanat Products Pvt Ltd having PAN AAACL 1711 A when this company has amalgamated with Dr. Willmar Schwabe India Pvt Ltd having PAN AAACD 0463 D vide notification of the National Company Law Tribunal order dated 30.07.2021.

5. Vide letter dated 09.09.2021, the Id. DCIT, Circle 2(1 )(1), Ghaziabad was informed that Sanat Products Ltd has amalgamated with Dr. Willmar Schwabe Pvt Ltd., New Delhi and the jurisdiction details of Dr. Willmar Schwabe India Pvt Ltd were intimated to the Assessing Officer alongwith PAN.

6. In spite of notice and knowledge, the Id. PCIT, Ghaziabad chose to frame revisionary order in the name of a non existing company, which is against the ratio laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki India Pvt. Ltd 416 ITR 613 and further by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs.

Sony Mobile Communications India Pvt Ltd ITA No. 115/2019 order dated 02.02.2023. The relevant findings of the Hon'ble Jurisdictional High Court read as under:

*“As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the Court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:*

*(i) There was no intimation by the assessee regarding*

*(ii) amalgamation of the concerned company.*

*(iii) The return of income was filed by the amalgamating company, and in the "Business Reorganization" column, curiously, it had mentioned "not applicable".*

*(iv) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.*

*(v) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated company, (v)*

*More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company i.e., the amalgamating company was in existence.*

*23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.*

*24. As noticed above, even after the AO was informed on 06.12.2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the*

*wrong path. This error continued to obtain, even after the DRP had made course correction.*

*25. Thus, for the foregoing reasons, we are unable to persuade ourselves with the contention advanced on behalf of the appellant/revenue, that this is a mistake which can be corrected, by taking recourse to the powers available with the revenue under Section 292B of the Act.*

*26. Therefore, we are of the opinion, that the question of law, as framed, deserves to be answered against appellant/ revenue, and in favour of the respondent/assessee. “*

7. The Hon'ble Supreme Court in the case of Maruti Suzuki India Pvt Ltd [supra] 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. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.*

*34 We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to A.Y. 2012-13.”*

8. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, the order dated 22.03.2022 framed u/s 263 of the Act by the Id. PCIT, Ghaziabad is in the name of a non-existing company and, therefore, liable to be quashed.

9. We, accordingly, restore the assessment order dated 21.12.2019 framed u/s 143(3) of the Act.

10. In the result, the appeal of the assessee in ITA No. 1101/DEL/2022 is allowed.

The order is pronounced in the open court on 17.03.2023.

Sd/-

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 17<sup>th</sup> March, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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