

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 340/Mum/2022 (A.Y. 2017-18)**

**Solvay Specialities India Pvt. Ltd.**

**(Successor to erstwhile Rhodia  
Specialty Chemicals India Pvt. Ltd.)**

Equinox Business Park, Tower No.4,  
9<sup>th</sup> Floor, Unit No. 903, LBS Marg,  
Kurla West, Mumbai-400070.

**PAN: AAJCS0613F (AAACA3841L**

**Being the PAN of the Predecessor)**

..... Appellant

Vs.

Assessing Officer (NFAC),

Delhi

..... Respondent

Appellant by	:	Sh. Anuj Kishnadwala & Sh. Radhakant Saraf
Respondent by	:	Sh. Samuel Pitta, CIT-DR
Date of hearing	:	04/10/2022
Date of pronouncement	:	02/01/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of Assessing Officer (NFAC), Delhi dated 29.01.2022 under section 143(3) r.w.s. 144C (13) and 144B of

the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:

*"Being aggrieved by the order of the National Faceless Assessment Centre, Delhi (Assessing Officer - A.O.) u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act, your appellant prefers an appeal against the same on the following grounds, which, it is prayed, may be considered without prejudice to one another:*

*1. On the facts and circumstances of the case and in law, the Transfer Pricing Order passed by the Learned Assistant Commissioner of Income Tax, Transfer Pricing 4(1)(1), Mumbai (TPO) u/s. 92CA(3) of the Act and the draft assessment order passed by the Learned AO u/s. 144C(1) of the Act are bad in law.*

*2. On the facts and circumstances of the case and in law, the learned AO erred in making an upward adjustment of Rs. 3,72,93,124/- u/s 92CA(3) of the Act towards transfer pricing issues.*

*3. On the facts and circumstances of the case and in law, in the ITBA computation sheet enclosed with the assessment order, the learned AO erred in mentioning the losses to be carried forward to future years at Rs. 3,72,93,124/- instead of assessed loss at Rs. 8,36,24,516/-."*

2. Brief facts of the case are that assessee filed its return of income on 30.11.2017 declaring a total loss of Rs. 12,09,17,640/-. Assessee's case was selected for scrutiny and a notice under section 143(2) was issued to the assessee on 16.08.2018 by the prescribed Income Tax Authority. Notices under section 142(1) were also issued from time to time.

3. In the mean time assessee informed the AO vide letter dated 18.10.2018 (page no. 93 of Paper Book) about approval of the scheme of merger of Rhodia Specialty Chemicals India Pvt. Ltd. into Solvay Specialities India Pvt. Ltd. by the National Company Law Tribunal (NCLT) vide order dated 12.07.2018 and 19.09.2018 w.e.f. 01.04.2017. This fact has not been disputed by the Revenue. This fact of merger is acknowledged by the Assessing

Officer (AO) in his draft assessment order. Despite that the draft assessment order dated 31.03.2021 as well as final assessment order dated 29.01.2022 passed in the name of Rhodia Specialty Chemicals India Pvt. Ltd., in non-existing entity.

4. The Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd. has held that *"Where during pendency of assessment proceedings, assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside."*

5. Upon a scheme of amalgamation being sanctioned the amalgamated company is dissolved without winding up in terms of the Companies Act and the amalgamating company ceases to exist in the eye of the law. The amalgamating company cannot thereafter be regarded as a "person" in terms of section 2(31) of the Act against whom assessment proceedings can be continued and an assessment order passed.

6. In view of above facts and law pronounced by the Hon'ble Supreme Court of India in the case of Maruti Suzuki India Ltd., we do not have any hesitation to hold that assessment order passed subsequently in name of said non-existing entity would be without jurisdiction and was to be set aside.

7. Ground No.1 of the assessee is allowed and the whole proceedings under section 92CA (3), 144C (1), 144(3) r.w.s. 144C (13) and 144B of the Act are held to

be without jurisdiction and consequently set-aside. In the light of above, ground no. 2 & 3 of the assessee became academic and need not to be adjudicated.

**8. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 2<sup>nd</sup> day of January, 2023.

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 02/01/2023

SK, Sr.PS

**Copy 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.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai