

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “G”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.2812/M/2022
Assessment Year: 2011-12**

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| Dy. Commissioner of Income Tax, Circle- 8(2)(1), Room No.624, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020 | Vs. | M/s. Siemens Ltd., 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018 PAN: AAACM6828M |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Jeet Kamdar, A.R.
Revenue by : Shri Dharmvir D. Yadav, D.R.

Date of Hearing : 02 . 03 . 2023
Date of Pronouncement : 31 . 03 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Dy. Commissioner of Income Tax, Circle-8(2)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 07.09.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter-alia that :-

“(1) On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in deciding the appeal without discussing the case on merit. (ii) On the facts and in the circumstances of the case and in law, Ld.CIT(A), erred in appreciating the fact that the Morgan Construction Company India Pvt. Ltd. was amalgamated with Siemens Limited with

effect from 1st October, 2011 vide Hon'ble Bombay High Court order dated 17.08.2012, however, the assessee has not filed revised ROI for A.Y. 2011-12, mentioning the above fact. Even for A.Y. 2012-13 the assessee has filed ROI under old PAN and in old name.

(iii) On the facts and in the circumstances of the case and in law, Ld.CIT(A), erred in appreciating the fact that the return was selected for scrutiny under CASS (Computer Assisted Selection of Scrutiny) as the assessee had filed ROI under old PAN and addition to the total income has been made in respect of transactions made/done under old PAN. (ii) On the facts and in the circumstances of the case and in law, Ld.CIT(A), erred in

appreciating the provision of section 292B of the Income-tax Act, 1961. (ii) On the facts and in the circumstances of the case and in law, Ld.CIT(A), while deciding the appeal, has not appreciated the provision of section 170(1)(a) of the Act.

(iv) The Ld.CIT(A), erred in appreciating the decision of Hon'ble Supreme Court in the case of PCIT v. Mahagun Realtors Private Limited (SC) delivered on 5 April 2022, wherein Hon'ble Supreme Court, after discussing judicial pronouncement in the case of PCIT vs Maruti Suzuki India Limited, held that corporate death upon amalgamation does not invalidate assessment as after amalgamation, the amalgamating entity is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues. Therefore, 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. The matter is restored to the file of ITAT to hear the parties on merit”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of manufacturing and trading of engineering products. Erstwhile assessee company M/s. Morgan Construction Company (I) Pvt. Ltd. filed the return of income declaring total income at Rs.34,82,61,570/-, subsequently revised on the same date to correct the tax calculation which was subjected to scrutiny. AO after declining the contentions raised by the assessee framed the

assessment under section 143(3) of the Act by making certain additions.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal on legal ground that the assessment order passed by the AO is void ab-initio having been made on a non-existent entity i.e. M/s. Morgan Construction Company (I) Pvt. Ltd. amalgamated with M/s. Siemens Ltd. vide order passed by Hon'ble Bombay High Court dated 17.08.2012. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Short question arises for determination in this appeal is as to “whether assessment order framed by the AO under section 143(3) dated 18.03.2015 is void ab-initio having been framed in the name of non-existent entity namely M/s. Morgan Construction Company (I) Pvt. Ltd. amalgamated with M/s. Siemens Ltd. vide order dated 17.08.2012 passed by the Hon'ble Bombay High Court.”

6. Undisputedly the assessment order has been framed by the AO in the name of M/s. Morgan Construction Company (I) Pvt. Ltd. It is also not in dispute that M/s. Morgan Construction Company (I) Pvt. Ltd. stood amalgamated with M/s. Siemens Ltd. vide order 17.08.2012 passed by the Hon'ble Bombay High Court.

It is also not in dispute that AO framed the assessment order under section 143(3) of the Act in the name of M/s. Morgan Construction Company (I) Pvt. Ltd. (PAN : AAACM6828M) which had ceased to exist due to order of amalgamation passed by the Hon'ble Bombay High Court. It is also not in dispute that the AO has recorded the factum of merger in his assessment order dated 28.02.2013 passed for A.Y. 2009-10.

7. In the backdrop of the aforesaid undisputed facts the Ld. CIT(A) quashed the assessment order passed by the AO being void ab-initio by following the order passed by the Tribunal in case of assessee for A.Y. 2012-13, which was passed by following the decision rendered by the Hon'ble Supreme Court in case of Pr. CIT vs. Maruti Suzuki India Ltd. (Civil appeal) No.5409 of 2019.

8. So in view of the decision rendered by Hon'ble Supreme Court in case of Maruti Suzuki India Ltd. (supra) and order passed by the Tribunal in assessee's own case for A.Y. 2009-10 and 2012-13 assessment framed by the AO in the name of erstwhile M/s. Morgan Construction Company (I) Pvt. Ltd., since merged with M/s. Siemens Ltd., a non-existent company is void ab-initio hence the issue has been rightly decided by the Ld. CIT(A). Finding no illegality or perversity in the impugned order passed by the Ld. CIT(A) the present appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 31.03.2023.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER
Mumbai, Dated: 31.03.2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.