

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA. No.110/PUN/2018

Assessment Year : 2013-14

Lear Automotive India Private Limited, (successor in the interest of Lear Oragadam Automotive India Private Limited), E-25, 26, 27, MIDC, Bhosari, Pune 411 026 Maharashtra PAN : AADCL1978K	Vs.	ACIT, Circle-9, Pune
Appellant		Respondent

Assessee by Shri Dhanesh Bafna &
Mr. Hardik Nirmal
Revenue by Shri Mallikarjun Utture
Date of hearing 03-05-2023
Date of pronouncement 04-05-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 10-11-2017 passed by the Assessing Officer (AO) u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2013-14.

2. The assessee has raised the following additional ground :

“ On the facts and circumstances of the case and in law, the ld. AO has erred in passing assessment order u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 dated 10 November 2017 on a non- existing entity, i.e. Lear Oragadam Automotive India Private Limited which has been merged into Lear Automotive India Private Limited with effect from 1 April 2016 vide order of Hon’ble National Company Law Tribunal dated 1 March, 2017.

The Appellant prays that the assessment order in the name of a non-existent entity, be held as bad in law, illegal and without any jurisdiction and therefore liable to be quashed.”

3. Since the additional ground involves a pure legal issue and that no further verification of fresh facts is warranted, we admit the same in the light of judgment of the Hon’ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)*, wherein the Hon’ble Apex Court has observed that “the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law”. The additional ground is thus admitted and espoused for disposal on merits.

4. Succinctly, the factual panorama of the case is that the assessee filed its return in the name of M/s. Lear Oragadam Automotive India Private Limited (LOAI) formerly known as

Tacle Automotive India Private Limited (TAIP) declaring total income at Rs.15.69 crore. Tacle Automotive India Private Limited was the earlier name of the assessee prior to 2015, when it got changed to Lear Oragadam Automotive India Private Limited. The draft order was notified on 02-12-2016 in the same name of LOAI (formerly known as TAIP) at total income of Rs.32.25 crore. The assessee filed objections before the Dispute Resolution Panel (DRP). The directions dated 28-09-2017 were issued by the DRP in the name of LOAI [now merged with Lear Automotive India Private Limited (LAIP)]. The final assessment order was passed on 10-11-2017 in the name of LOAI (formerly known as TAIP).

5. The case of the assessee is that the assessment order dated 10.11.2017 passed in the name of a non-existent entity LOAI is liable to be quashed because LOAI got amalgamated with LAIP in the Scheme of amalgamation which was duly approved by order dated 01-03-2017 of the National Company Law Tribunal (NCLT) effective from 01-04-2016. The ld. AR submitted that the assessee duly intimated the change in its status to the AO/DRP and despite that the final order of the AO as well as the

directions issued by the DRP were in wrong name. In support of his contention, the Id. AR relied on the judgment of Hon'ble Supreme Court in *Pr.CIT Vs. Maruti Suzuki India Private Limited (2019) 416 ITR 613 (SC)*.

6. *Au contraire*, the Id. DR refuted the contention by submitting that the return was filed by the assessee in its old name, namely, LOAI; a letter dt. 19-04-2017 was addressed to the Secretariat DRP on letter head of LOAI; a letter dt. 27-04-2017 was filed on the letter head of LOAI; and also the appeal before the Tribunal was filed in Form No.36B showing the name LOAI (since merged with LAIP). Relying on the judgment in the case of *Pr.CIT Vs. M/s. Mahagun Realtors (P) Ltd. (2022) 443 ITR 194 (SC)*, the Id. DR contended that there was no illegality in the assessment order so as to warrant its quashing.

7. We have heard the rival contentions and gone through the relevant material on record. The undisputed facts are that the NCLT passed the order on 01-03-2017 amalgamating LOAI into LAIP in the scheme of amalgamation effective from 01-04-2016. Naturally, the proceedings prior to that date could not have been in the name of amalgamated entity, namely, LAIP. That is the

raison d'etre for the assessee to have filed its return in the old name and also the draft order notified in such old name only. The assessee intimated the fact of amalgamation to the AO vide its letter dated 10-04-2017 in the proceedings for the A.Y. 2017-18. Even though, the AO continues to remain the same, still the assessee again wrote a letter to the AO on 27-10-2017 furnishing certain details in the proceedings for the A.Y. 2013-14 clearly mentioning on the top of the letter as LOAI (now merged with LAIP). During the course of the proceedings before the DRP for the year under consideration, the assessee sent a letter dated 09-08-2017 to the Secretariat of DRP addressing itself in the same manner as given to the AO vide letter dated 27-10-2017. However, the final assessment order dated 10-11-2017 came to be passed by the AO in the name of `M/s Lear Oragadam Automotive India Private Limited (Formerly known as Tacle Automotive India Private Limited)'. This shows that despite the assessee specifically pointing out the fact of its amalgamation into LAIP vide its letter dated 27-10-2017, the AO chose to pass the final assessment order in the name of the non-existing amalgamating company `M/s Lear Oragadam Automotive India

Private Limited (Formerly known as Tacle Automotive India Private Limited)'. In this backdrop of facts, we need to examine if the action of the AO in passing the final order is in accordance with law?

8. The facts of *Maruti Suzuki India Private Limited (SC)(supra)*, as relied by the ld. AR, are that there was a joint venture between Suzuki Motor Corporation and Maruti Suzuki India Limited (MSIL). The assessee changed its name to SPIL. The return was filed by SPIL in its original name on 28-11-2012 as no amalgamation had taken place at that point of time. Thereafter, a scheme of amalgamation of the assessee SPIL and MSIL was approved by the Hon'ble High Court on 29-01-2013 w.e.f. 01-04-2012. On 02-04-2013, MSIL intimated the AO about the amalgamation. The draft order was passed on 11-03-2016 in the name of `Suzuki Power Train India Limited (amalgamated with Maruti Suzuki India Limited)'. The directions were issued by the DRP in the name of `Maruti Suzuki India Limited (as successor in interest of erstwhile SPIL since amalgamated)'. However, the final assessment order dt . 31-10-2016 was passed in the name of `SPIL (amalgamated with Maruti

Suzuki India Limited)’. Since the final assessment order was passed in the name of SPIL, being a non-existent entity, the Hon’ble Supreme Court held that it was an illegality, which made the assessment order void. From the facts of this case, it clearly transpires that the final assessment order passed in the name of amalgamating company (merged with the amalgamated company), was held to be void because the assessee had clearly informed the AO about the amalgamation well before the passing of the assessment order.

9. The facts of *Mahagun Realtors (SC)*, as relied by the Id. DR, are that Mahagun Realtors (P) Ltd.(MRPL) got amalgamated with Mahagun India Private Limited (MIPL) by virtue of an order dated 10-09-2007 of Hon’ble High Court effective from 01-04-2006. After a search and seizure action, the assessee filed its return on 28-05-2010 describing itself as MRPL. The assessment order was also passed in the old name MRPL as represented by MIPL. The Tribunal quashed the assessment order by accepting the assessee’s plea that no order could have been passed in the name of MRPL, a non-existent entity. The Hon’ble High Court also accorded its imprimatur to the Tribunal’s view. The Hon’ble

Supreme Court accepted the view-point of the Revenue and held the assessment order passed in the name of MRPL represented by MIPL, to be valid. In reaching this conclusion, the Hon'ble Summit Court did take notice of its earlier judgment of 2019 in the case of *Maruti Suzuki (SC) (supra)* and, held that the same was not applicable because despite the amalgamation, the assessee chose to file its return in the old name. Not only that, even the fact of amalgamation was not mentioned in the return against a specific column requiring the details of amalgamation etc. to be filled up. The assessee represented itself with the old name during the course of search proceedings taking place after the amalgamation. From the facts of this case, it clearly emerges that despite the amalgamation taking place prior to the filing of the return of income, the assessee still filed its return in the old name and further did not disclose the fact of amalgamation even in the body of the return and mentioned 'Not Applicable' against the requisite column.

10. The crucial distinction between *Maruti (SC) (supra)* and *Mahagun (SC) (supra)* is the disclosure or non-disclosure by the assessee to the AO of the fact of amalgamation after the Scheme

of amalgamation has been approved, and in any case, before the passing of the assessment order. If such a fact is disclosed, it brings the case within the purview of *Maruti (SC)* wherein the passing of the assessment order in the name of the amalgamated company becomes obligatory; but where such a fact is withheld, then the assessee cannot later on claim that the assessment order ought to have been passed in the name of the amalgamated company, thereby bringing the case within the purview of *Mahagun (SC)*. This indicates that the *ratio decidendi* laid down in *Maruti (SC)* is a rule and that in *Mahagun (SC)* an exception. The corollary which, ergo, follows is that the proposition that assessment order passed in the name of the amalgamating company after amalgamation is void, applies to all the cases except where the assessee hides the fact of amalgamation from the AO.

11. Now we turn to the argument of the ld. DR that the assessee in its letters depicted the name of amalgamating company prior to that of the amalgamated company and hence lost its right to claim the quashing of the assessment order on the ground of wrong mentioning of the name. In this regard, we find that there are

different sets of obligations of the assessee as well as the AO pursuant to amalgamation. An assessee is required to disclose the fact of amalgamation to the AO after the Scheme of amalgamation has been approved by the Competent Court. In case the amalgamation took place before the filing of the return of income, then the return is required to be filed in the name of the amalgamated entity. In case the order of approval to the scheme of amalgamation is passed after the filing of the return, then to intimate this fact to the AO. The manner of intimation is irrelevant so long as the factum of amalgamation is clearly brought out. Even if the assessee intimates by writing the name of the amalgamating company first and then that of the amalgamated company or *vice-versa*, the object and purpose of communication gets satisfied on the declaration of the changed status pursuant to amalgamation. This results in discharging the burden of compliance on the part of the assessee, which is confined simply to bring the changed status to the notice of the AO. On the other hand, the obligation of the AO, after the receipt of such communication from the assessee, is to pass the assessment order thereafter correctly in the name of the amalgamated company,

with or without mentioning the name of amalgamating company after that of the amalgamated company.

12. Adverting to the facts of the extant case, it is seen that the return was filed by the assessee in the name of the amalgamating company as the scheme of amalgamation was not approved till then. As soon as the amalgamation got approved by the NCLT on 1.3.2017, the assessee intimated this fact to the AO on 11.4.2017 in the assessment proceedings for the A.Y. 2017-18 and on 27.10.2017 in the proceedings for the year under consideration. Even though the assessee, in its letters addressed to the AO/DRP, represented itself as LOAI (amalgamating company) now merged with LAIP (amalgamated company), but the factum of amalgamation was duly brought to the notice of the authorities. Despite that, the assessment order was passed thereafter on 10.11.2017 in the name of the `amalgamating company (formerly known as erstwhile name of the amalgamating company, namely, TAIP), rather than the amalgamated company or the amalgamated company (formerly known as amalgamating company). The AO ought to have correctly passed order in the name of `LAIP' or `LAIP (formerly known as LOAI)'. The

assessment order, referring only to the name of the amalgamating company without any reference to the name of the amalgamated company, which was passed after due communication of the amalgamation, in our considered opinion, suffers from illegality and is incapable of countenance. We, therefore, hold that the facts of the case are governed by *Maruti (SC)(supra)* and the consequential assessment order is liable to be set-aside. We order accordingly.

13. In view of our decision on the legal ground *supra*, there is no need to go into the merits of the additions challenged in the appeal.

14. In the result, the appeal is allowed in above terms.

Order pronounced in the Open Court on 04th May, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th May, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	03-05-2023	Sr.PS
2.	Draft placed before author	04-05-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

**