

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI S RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 498 & 499/Mum/2023
(Assessment Year: 2018-19 & 2017-18)

Universal Comfort Products Limited (Since Amalgamated with Voltas Limited) Voltas House A Block, 4 th Floor, Dr. Babasaheb Ambedkar Road, Chinchpokli (E), Mumbai-400 033	Vs.	DCIT, Circle-8(3)(1) Mumbai
PAN/GIR No. AAACU 4770 G		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Nitesh Joshi
Revenue by	:	Shri Ashok Kumar Ambastha
Date of Hearing	:	18.08.2023
Date of Pronouncement	:	25.10.2023

ORDER

Per Kavitha Rajagopal, JM:

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2017-18 and 2018-19.

2. The assessee has raised various grounds in these appeals challenging the order of the ld. CIT(A). The assessee has also raised an additional ground vide its submission dated 11.04.2023, wherein the assessment order dated 12.04.2021 is said to have been passed on a nonest company post amalgamation. As the additional ground goes to the very root of the case, we hereby admit the said ground in view of the decision of the

Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. vs. CIT* [1998] 229 ITR 383 (SC) and, hence, we are inclined to decide the additional ground before getting into the merits of the case. As the facts are identical, we hereby pass a consolidated order by taking ITA No. 499/Mum/2023 as the lead case.

3. The brief facts are that the assessee is a public limited company engaged in the business of manufacturing room air conditioners and is a wholly owned subsidiary of Voltas Ltd., pursuant to the scheme of merger vide order dated 11.09.2020 passed by the Hon'ble National Company Law Tribunal ('NCLT' for short), Mumbai Bench, the amalgamation came into effect from 26.11.2020. The amalgamating company by name and style Universal Comfort Product Ltd. was merged and amalgamated with Voltas Ltd. by the said scheme of merger and the appointed date of amalgamated was 01.04.2019. The assessee filed its return of income declaring total income at Rs.93,77,94,310/-. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee and the Id. A.O. passed the assessment order dated 12.04.2021 by determining the total income at Rs.94,37,95,310/- by making various additions/disallowances.

4. The assessee was in appeal before the Id. CIT(A) challenging the order of the Id. A.O.

5. The Id. CIT(A) dismissed the grounds raised by the assessee vide order dated 31.01.2023 and upheld the order of the Id. A.O.

6. The assessee is in appeal before us, challenging the impugned order on the grounds of disallowance of deduction u/s. 80G of the Act out of contribution made

towards corporate social responsibility along with the other grounds of appeal. The assessee has also challenged the jurisdiction by way of additional ground which was not raised before the first appellate authority.

7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the ld. A.O. passed the assessment order in the name of the amalgamating company inspite of the communication dated 02.12.2020 where the assessee has intimated the ld. A.O. about the merger of Universal Comfort Product Ltd. with Voltas Ltd. under the scheme of merger by absorption w.e.f. 01.04.2019. The ld. AR further contended that the amalgamating company ceased to exist w.e.f. 26.11.2020 vide order dated 11.09.2020 by Hon'ble NCLT. The ld. AR relied on the following cases for the proposition that the assessment order is invalid and bad in law when the same was passed in the name of the nonest company:

1. *CLSA India (P) Ltd. vs. Dy. CIT* (in Writ Petition No. 2462 of 2022)
2. *Teleperformance Global Services (P.) Ltd. vs. Asst. CIT* [2021] 127 taxmann.com 46 (Bom)
3. *Pr. CIT vs. Lionbridge Technologies (P) Ltd.* [2018] 100 taxmann.com 413 (Bom)
4. *Siemens Ltd. vs. Dy. CIT* [2023] 147 taxmann.com 118 (Mum-Trib)

8. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and stated that the assessee is not prejudiced by passing of the assessment order in the old entities name for the reason that the ld. A.O. at para 3 of the assessment order has mentioned the assessee by amalgamated companies name. The ld. DR further stated that the notice issued by the ld. A.O. is also not faulted as it was issued in the name of the right assessee. The ld. DR further contended that the facts of the case relied upon by the ld. AR are distinguishable on facts with that of the present case. The ld. DR relied on the decision of the Hon'ble Apex Court in the case of *Pr. CIT vs.*

Mahagun Realtors (P) Ltd. in Civil Appeal No. of 2022 (Arising out of Special Leave Petition (C) No. 4063 of 2020 vide order 05.04.2022).

9. We have heard the rival submissions and perused the materials available on record. It is observed that the Id. A.O. had passed the impugned assessment order dated 12.04.2021 which specifies the name of the amalgamating company namely Universal Comfort Product Limited. It is also evident from the assessment order at para 3 that the Id. A.O. was well within the knowledge of the amalgamation prior to the passing of the assessment order. It is a settled proposition of law that when the assessment order is passed in the name of the nonest company post merger, the same is held to be *void-ab-initio*. The Id. AR had relied on the decision of the Hon'ble Apex Court in the case of *Pr. CIT vs. Maruti Suzuki India Ltd.* (in Civil Appeal No. 5409 of 2019 vide order dated 25.07.2019) where the Hon'ble Apex Court has held that the assessment order passed in the name of the nonest company is held to be invalid and bad in the eyes of the law. The same is not a curable defect u/s. 292B of the Act. The Id. AR also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of *Teleperformance Global Services (P.) Ltd.* (supra) wherein it was held that the assessment order in the name of the non existing entity is a substantive illegality and not merely a procedural violation of section 292B of the Act. The relevant extract of the said decision is cited hereunder for ease of reference:

22. *The Supreme Court in the case of Maruti Suzuki (supra) had considered that income, which was subject to be charged to tax for the assessment year 2012-13 was the income of erstwhile entity prior to amalgamation. Transferee had assumed liabilities of transferor company, including that of tax. The consequence of approved scheme of amalgamation was that amalgamating company had ceased to exist and on its ceasing to exist, it cannot be regarded as a person against whom assessment proceeding can be initiated. In said case before notice under Section 143(2) of the Act was issued on 26.9.2013, the scheme of amalgamation had been approved by the high court with effect from 1.4.2012. It has been observed that assessment order 7 (2019) 416 ITR 613 (SC) 15 / 18 WP. 950-2020 passed for the assessment year 2012-13 in the*

name of non-existing entity is a substantive illegality and would not be procedural violation of Section 292 (b) of the Act.

The Supreme Court in its aforesaid decision, has quoted an extract from its decision in Saraswati Industrial Syndicate Ltd. Vs. CIT⁸. The Supreme Court has also referred to decision of Delhi high court in the case of CIT Vs. Spice Entertainment Ltd.⁹ and observed that in its decision Delhi high court had held that assessment order passed against non-existing company would be void. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estoppel against law. Such a defect cannot be cured by invoking provisions under section 292B. The Supreme Court had also taken note of decision in Spice Entertainment (supra) was followed by Delhi high court in matters, viz. CIT Vs. Dimensions Apparels (P.) Ltd.¹⁰, CIT Vs. Micron Steels (P) Ltd.¹¹; CIT Vs. Miscra India (P). Ltd.¹² and in CIT Vs. Intel Technology India Ltd.¹³ Karnataka high court has held, if a statutory notice is issued in the name of non-existing entity, entire assessment would be nullity in the eye of law. It has also been so held by Delhi high court in the case of Pr. CIT Vs. 8 (1990) 186 ITR 278 (SC) 9 (2018) 12 ITR-OL 134 (SC) 10 (2015) 370 ITR 288 11 (2015) 59 taxmann.com 470/233 Taxman 120/372 ITR 386 (Del.) (Mag.) 12 (2015) 57 taxmann.com 163/231 Taxman 809 (Delhi) 13 (2016) 380 UTE 272 (Kar.) 16 / 18 WP. 950-2020 Nokia Solutions and Network India (P) Ltd.¹⁴

23. *The Supreme Court in Spice Infotainment Ltd. Vs. CIT¹⁵ found that there is no reason to interfere with the impugned judgment of Delhi high court and it found no merits in the appeal and special leave petition and were dismissed accordingly.*

The Supreme Court had taken note of revenue resistance contending that contrary position emerges from decision of Delhi high court decision in Sky Light Hospitality LLP Vs. Assistant Commissioner of Income-tax¹⁶ and that it had been affirmed by the Supreme Court. However, the Supreme Court had also taken note of Sky Light LLP (supra) was in peculiar facts of the case, where the high court had categorically concluded that there was clerical mistake within the meaning of section 292B and the case had been distinguished by decisions of Delhi, Gujarat and Madras high courts in Rajender Kumar Sehgal Vs. ITO¹⁷; Chandreshbhai Jayantibhai Patel Vs. ITO¹⁸; and Alamelu Veerappan Vs. ITO¹⁹.

24. *In the circumstances, though the respondents refer to decision of Delhi High Court in case of Sky Light Hospitality LLP Vs. 14 (2018) 90 taxmann.com 369/253 Taxman 409/402 ITR 21 (Delhi) 15 (2012) 247 CTR 500 (Delhi) 16 (2018) 92 taxmann.com 93 (SC) 17 (2019) 10 taxmann.com 233/260 Taxman 412 (Delhi) 18 (2019) 101 taxmann.com 362/261 Taxman 137 (Guj.) 19 (2018) taxmann.com 155/257 Taxman 72 (Mad.) 17 / 18 WP. 950-2020 Assistant Commissioner of Income Tax, Circle 28(1), New Delhi 20 it would be of little avail for the respondents. The decision in the case of Maruti Suzuki (supra) would hold sway over present facts and circumstances.*

25. *Foregoing discussion and decisions referred to on behalf of petitioner lead us to consider that petitioner has made out a case for reliefs and it would be appropriate to allow petition in terms of prayer clause (a). Rule is made absolute in terms of prayer clause (a). The writ petition is disposed of.*

10. From the above observation, we hold that the assessment order passed in the name of the non existing company post amalgamation is invalid. The fact that the assessee has participated in the assessment proceeding does not rectify the error committed by the Id. A.O. We, therefore, quash the assessment order passed by the Id. A.O. As we have held

the assessment order to be invalid, the other grounds of appeal raised by the assessee becomes academic in nature.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 25.10.2023

Sd/-

Sd/-

(S Rifaur Rahman)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 25.10.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai