

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1800/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2004-05)

Novateur Electrical and Digital Systems Pvt. Ltd. (as Successor of Legrand (India) Pvt. Ltd.) 61/62 Kalpatru Square, 6 th Floor, Off Andheri Kurla Road, Mumbai-400059.	बनाम/ Vs.	DCIT, Range-10(3)(1) Room No.552, Aaykar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCE4671N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nikhil Tiwari
Revenue by:	Shri H. M Bhat (SR. DR) Shri Ashok Kumar Ambastha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 17/10/2023/(22.12.2023)

घोषणा की तारीख /Date of Pronouncement: 05/01/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 23.03.2023 for the assessment year 2004-05.

2. At the outset, the Ld. AR of the assessee Shri Nikhil Tiwari appearing for the assessee has drawn our attention to additional ground nos. 8 & 9 wherein assessee challenges the validity of the assessment order passed in the name of the non-existent entity [M/s.Legrand (India) Private Limited (hereinafter "M/s. Legrand"/non-existent/merged entity)] and not in the name of the successor entity i.e. M/s. Novateur Electrical and Digital Systems Pvt. Ltd. [hereinafter "M/s.



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Novateur”/successor entity/merged entity]. The additional ground raised by the assessee are reproduced as under: -

“8. The learned Assessing Officer erred in passing the order in the name of Legrand (India) Private Limited (i.e. the amalgamation entity) which is not in existence as on the date of passing the order and hence, the order should be quashed by treating the same as null and void.

9. the learned Commissioner of Income Tax (Appeals) erred in passing the order in the name of Legrand (India) Private Limited (ie. The amalgamation entity) which is not in existing as on the date of passing the order and hence, the order should be quashed by treating the same as null and void.”

3. The Ld. DR for the revenue opposes the admission of the additional ground, since the same were not raised before the Ld. CIT(A)/NFAC. Per contra, the Ld. AR for the assessee submitted that this is purely a legal issue which can be raised before Tribunal for the first time, since no new facts need to be ascertained and facts necessary for adjudication of the legal issue are available on record; and for supporting admission of legal issue for the first time before the Tribunal, he relied upon the decision of the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (229 ITR 383).

4. We have heard both the parties and perused the records. We note that the additional ground nos. 8 & 9 raised by the assessee is pertaining to jurisdiction of AO to have framed assessment order in the name of the non-existing/merged entity [*despite AO being aware about the amalgamation of the erstwhile entity with*



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successor/merged/amalgamated entity]. Therefore, the same are admitted, and since no new facts need to be ascertained and the relevant facts necessary for adjudicating of legal issue are available on record, we admit the additional grounds and proceed to adjudicate the same.

5. Brief facts regarding the legal issue regarding validity of the assessment order passed in the name of non-existent entity [M/s. Legrand (India) Pvt. Ltd.] instead of M/s. Novateur Electrical and Digital System Pvt. Ltd, it is noted that this is the second round of litigation before this Tribunal. In the first round, the AO had passed assessment order u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) on 29.12.2006 by assessing the income of the assessee at Rs.22,41,21,120/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who passed the First Appellate Order on 28.12.2007 which was challenged before this Tribunal; and the Tribunal was pleased to pass an order dated 05.10.2012 wherein the impugned order of the Ld. CIT(A) was set aside back to the file of AO for fresh consideration (*issues on which AO has made additions/disallowance*).

6. Pursuant to the restoration of assessment back to the file of the AO (supra), the AO in the second round issued statutory notice on 17.09.2013 u/s 142(1) of the Act and thereafter framed assessment u/s 143(3) r.w.s. 254 of the Act dated 16.12.2013 in the name of erstwhile merged entity/non-existent entity M/s. Legrand (India), despite the assessee having brought to the notice of the AO vide letter dated



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06.08.2012 placed at page no. 27 of PB, wherein the assessee filed the following letter dated 06.08.2012 which is reproduced as under: -

Date: 06th Aug, 2012

The Assistant Commissioner of Income-tax
Circle-6(3)
Aayakar Bhavan
Mumbai-400020.

Dear Sir,

Re: Amalgamation of Legrand (India) Private Limited (LIPL) with Novateur Electrical & Digital System Private Limited (NEDSPL) formerly known as Indo Asian Electric Private Limited).

LIPL was engaged inter-alia engaged in the business of manufacturing and trading of LV Switchgear, Wiring Devices, Home Automation, Lighting Management, Structured Cabling and Cable Management Products. LIPL had its registered office situated at 61 / 62 Kalpataru Square, Andheri Kurla Road, Near Vits Hotel, Andheri (East), Mumbai - 400059. LIPL is assessed to income-tax at Circle -6 3 Aayakar Bhavan Mumbai -400 020. Its PAN is AAACM5009Q

NEDSPL is engaged inter-alia engaged in the business of manufacturing of electrical goods, light engineering goods, fusegears, switchgears, controlgear, H.R.C. fuses, miniature circuit breakers. It has its registered office situated at A/303, Prathamesh, Raghuvanshi Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai - 400013. NEDSPL is assessed to income-tax at Circle - 6(2) - 4 Aayakar Bhavan Mumbai -400 020. Its PAN is AACCE4671N.

Merger of LIPL into NEDSPL

LIPL has been merged with NEDSPL, as per the provisions of sections 391 to 394 of the Companies Act, 1956. The Scheme of Arrangement ("Scheme") has been approved by the Bombay High Court. The merger is effective from the Appointed Date i.e. April 1, 2011 (a copy of the High Court Order approving the Scheme is enclosed herewith as Annexure A). The said order has been filed with the jurisdictional Registrar of Companies, as on 1 August, 2012.

Pursuant to the approved Scheme, all assets and liabilities along with all rights, obligations, registrations etc., of LIPL shall be transferred to NEDSPL. Since the Scheme is effective from April 1, 2011, the income arising in the hands of LIPL from April 1, 2011 would be assessed in the hands of NEDSPL

We request you to take the aforesaid information on record.

Should you require any further information in the matter, we shall be glad to provide the same upon hearing from you.

Thank you.

Yours faithfully,

For Novateur Electrical & Digital Systems Private Limited



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7. The assessee informed the AO that the erstwhile entity i.e. M/s. Legrand (India) Pvt. Ltd. has amalgamated with M/s. Novateur Electrical and Digital System Pvt. Ltd as per the scheme of arrangement approved by the Hon'ble Bombay High Court w.ef. 1st April, 2011 and that the order of the Hon'ble High Court has been filed on 06.08.2012 with Registrar of the Company [*and annexed with this letter copy of the Hon'ble High Court order approving the scheme of arrangement*]. This letter was served upon the AO, and in order to prove the fact of service of ibid letter, the Ld. AR drew our attention to the official stamp affixed on the said letter which is noted to be date-stamped of 13.08.2012 affixed on it of the office of ACIT-6(3). Thus, according to the Ld. AR, the aforesaid notice conveying the information regarding amalgamation of M/s. Legrand with M/s. Navateur was served upon the AO and the official stamp of AO affixed on the copy of the letter would show that the AO has been informed about the factum of amalgamation of the assessee company with M/s. Novateur as early as on 06.08.2012. Further, according to the Ld. AR, the AO cannot deny the fact of amalgamation and the existence of new entity M/s Novateur, which fact is discernable from the actions of the very same AO, who was initiating parallel proceeding against the assessee i.e. assessment proceedings for AY. 2010-11, wherein notice u/s 142(1) of the Act dated 20.07.2013 was issued in the name of the amalgamated entity by describing it as M/s. Legrand India Pvt. Ltd. amalgamated with M/s. Novateur Electrical and Digital System Pvt. Ltd; and drew our attention to page no. 154 to



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156 of PB which we find it to be correct. Thereafter, he drew our attention to page no. 105 of PB wherein on 17.09.2013, the AO issued notice u/s 142(1) of the Act in assessee's case (*for AY. 2004-05*) wherein he issued notice in the name of the non-existent entity i.e. M/s. Legrand India Pvt. Ltd. which we note from the perusal of page no. 105 of PB. The Ld. AR drew our attention to the reply of the assessee, pursuant to the notice of the AO dated 17.09.2013 (Page no. 97 to 107 PB) wherein the assessee had clearly described itself as M/s. Legrand India Pvt. Ltd. merged with M/s. Novateur. And also mentioned the PAN of M/s. Legrand as well as that of the PAN of new entity M/s. Novateur. And the Ld. AR drew our attention to the contents of the submission/reply wherein assessee had mentioned at more than 10 places about the amalgamation and the name of the new entity instead of erstwhile non-existent entity M/s. Legrand. The Ld. AR also drew our attention to page no. 108 to 111 of PB wherein also assessee had replied to the query of AO vide letter dated 11.11.2013 that the M/s. Legrand had merged with M/s. Novateur. Despite the factum of merger of M/s. Legrand (India) Pvt. Ltd. with M/s. Novateur Electrical and Digital System Pvt. Ltd. was brought to the notice of the AO, still the AO framed the assessment on 16.12.2013 for AY. 2004-05 in the name of the M/s. Legrand India Pvt. Ltd. instead of merged entity M/s. Novateur which action according to Ld. AR is bad in law and prays for quashing the assessment framed on 16.12.2013 and for such a proposition has raised the additional ground nos. 8 & 9 and



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cited the following decisions supporting the legal issue, which are as under:

- National Thermal Power Co. Ltd. Vs. CIT (229 ITR 383) dated 04.12.1996 (SC).
- PCIT Vs. Maruti Suzuki India Ltd. (107 taxmann.com 375) dated 25th July, 2019 (SC)
- CIT Vs. Spice Entertainment Ltd. (Civil Appeal No.285 of 2014) dated 2nd Nov, 2017 (SC)
- New Age Buildtech (P.) Ltd (2023) 151 taxmann.com 66 (Bom)
- CLSA India (P.) Ltd. (2023) 149 taxmann.com 380 (Bom)

8. Per contra, the Ld. DR submitted that the Assessing Officer was not aware of the merger of M/s. Legrand with M/s. Novateur. And that the department has also passed the order u/s 154 of the Act dated 13.01.2014 in the name of M/s. Legrand (India) Pvt. Ltd. amalgamated with M/s. Novateur Electrical and Digital System Pvt. Ltd. The Ld. DR also cited the decision of the Hon'ble Delhi High Court in the case of Skylight Hospitality LLP W.P. (C) 10870/2017 wherein the Hon'ble Delhi High Court took specific note of the fact that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity, and repelled similar contention of the assessee. According to the Ld. DR, since the assessee participated in the assessment proceedings, section 292B of the Act would come to the aid of the revenue, therefore, the additional ground raised by assessee should be dismissed. Further, Ld. DR submitted that the merger order of Hon'ble High Court was dated 6.07.2012 and Tribunal has passed the order in the first round on 05.10.2012 in the name of



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erstwhile entity (M/s. Legrand). Therefore, according to Ld. DR, the AO has given effect to the order of Tribunal in the name of M/s. Legrand and therefore the action of AO cannot be faulted.

9. We have heard both the parties and perused the records. We find that this is the second round of litigation before this Tribunal in assessee's appeal for AY. 2004-05. First, we will deal with the objection of the Ld. DR that the Tribunal order in the first round was in the name of M/s. Legrand dated 05.10.2012 which was after the merger order of Hon'ble High Court dated 06.07.2012. Therefore, according to Ld. DR, no fault could be attributed on the part of AO to have passed the assessment dated 16.12.2013 in the name of M/s. Legrand. In this regard, we note that the Hon'ble Bombay High Court had passed the amalgamation/merger order on 06.07.2012, a copy of which was received by the assessee on 20.07.2012. It is a fact that the Tribunal in the first round had heard the appeal on 29.08.2012 and passed the order on 05.10.2012. Neither the assessee revised Form 36 in the name of merged entity (M/s. Novateur) nor the Ld. AR brought to the notice of Tribunal about the merger order passed by Hon'ble High Court. Be that as it may, nothing turns on this contention of Ld DR, since the Tribunal has passed the order in the name of erstwhile entity because none pointed out the factum of merger of assessee and therefore Tribunal passed the order in the name of erstwhile merged entity ie. as per Form 36, in the name of M/s. Legrand [*Refer Hon'ble Supreme Court decision in the case of PCIT Vs. Mahaggun Realtors (P.) Ltd. (2022) 443 ITR 194 (SC)*]. Moreover, we find that the order



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of Tribunal dated 05.10.2012 has attained finality since neither assessee nor revenue assailed the action of Tribunal before the Hon'ble High Court of Bombay. Therefore, objection raised by the Ld. DR about the Tribunal passing order dated 05.10.2012 in the name of M/s. Legrand is rejected.

10. Pursuant to the Tribunal order dated 05.10.2012 for AY. 2004-05, the AO passed the assessment order u/s 143(3)/254 of the Act on 16.11.2013 in the name of M/s. Legrand (India) Pvt. Ltd. which was non-existing after amalgamation with M/s. Novateur Electrical and Digital System Pvt. Ltd. (successor entity) despite AO was informed about the factum of merger as discussed infra. We note that the assessee had informed the AO as early as on 06.08.2012 about the merger of M/s. Legrand (India) Pvt. Ltd with M/s. Novateur Electrical and Digital System Pvt. Ltd. (*by order of the Hon'ble Bombay High Court order dated 06.07.2012*) approving the Scheme of Arrangement w.ef. 1st April, 2011 and a copy of the same was also filed with the AO and the Registrar of the company as on 1st Aug, 2012. The Ld. DR's assertion that the AO was not aware of the amalgamation cannot be accepted because it is evident from perusal of the letter dated 06.08.2012 that the ACIT-6(3) had received the letter on 13.08.2012 (*official date-stamp of ACIT-6(3) dated 13.08.2012 affixed on copy of letter shows receipt of it by AO*). And we note that the very same AO had issued notice dated 20.07.2013 u/s 142(1) of the Act to amalgamated entity by describing it as M/s. Legrand India Pvt. Ltd. amalgamated with M/s. Novateur Electrical and Digital System Pvt.



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Ltd. for AY. 2010-11 which clearly shows that the AO was aware of the amalgamation of M/s. Legrand (India) Pvt. Ltd. with M/s. Novateur Electrical and Digital System Pvt. Ltd. as early as on 28.07.2013 (*Refer page no. 154 to 156 of PB*), and we also find that the assessee had replied to the AO's notice dated 17.09.2013 by reply dated 17.10.2017 & 11.11.2013 (at page no. 976 to 111 of PB) about the factum of amalgamation of M/s. Legrand (India) Pvt. Ltd. with M/s. Novateur Electrical and Digital System Pvt. Ltd. And despite that the AO has passed the impugned assessment order u/s 143(3) r.w.s. 254 of the Act on 16.12.2013 for AY. 2004-05 in the name of M/s. Legrand (India) Pvt. Ltd. (non-existent company) which action of the AO cannot be countenanced in the light of the order of Hon'ble Supreme Court decision in the case of Maruti Suzuki India Ltd. (*supra*) wherein the Hon'ble Supreme Court has discussed the decision of Hon'ble Delhi High Court in the case of Skylight Hospitality LLP (*supra*) cited by Ld. DR; and the Hon'ble Apex Court has taken note of similar plea of Ld. DR that section 292B of the Act would come to the rescue of the revenue since assessee participated in the proceedings before AO. The Hon'ble Apex Court in the case of Maruti Suzuki India Limited (*supra*) held at para no. 33 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



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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 Enfotainment (supra)* on 2 November 2017. The decision in **Spice Enfotainment** 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 Enfotainment (supra)*.”

11. In the present case, we apply the ratio laid by Hon’ble Apex Court in *Maruti Suzuki India Ltd. (supra)*, and find that despite the fact that the AO was informed that the amalgamated company [*M/s. Legrand (India) Pvt. Ltd.*] have ceased to exist as a result of the approved Scheme of Amalgamation, still, the impugned assessment order was passed by the AO dated 16.12.2013 which is null in the eyes of law. Since the amalgamated entity [*M/s. Legrand (India) Pvt. Ltd.*] ceased to exist upon the approved Scheme of Amalgamation, participation in the proceedings by the assessee in the circumstances discussed supra cannot operate as an estoppel against law. Thus, section 292B of the Act would not come to the rescue of the revenue. The decision of the Hon’ble Delhi High Court in the case of *Skylight Hospitality LLP (supra)* is distinguishable on the facts of the case and therefore, would not come to the rescue of the department. Therefore, we find merit in the legal issue raised by the assessee and hold that the



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assessment order framed by the AO dated 16.12.2013 in the name of non-existent entity M/s. Legrand (India) Pvt. Ltd. is invalid/bad in law. And therefore, is quashed.

12. The other grounds of appeal raised by the assessee has become academic and not adjudicated as the assessee succeeds on the legal issue.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 05/01/2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/01/2024.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai