

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

BEFORE PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 3882/MUM/2023

(Assessment Year: 2006-07)

DCIT Circle-3(4),
R.NO.559, 5th Floor,
Aaykar Bhavan,
M.K.Road,
Mumbai 400020

(Appellant)

Vs.

IDBI Bank Ltd.
22nd Floor IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai 400005

(Respondent)

CO No. 28/MUM/2024

(Arising in ITA No.3882/Mum/2023 for A.Y.2006-07)

IDBI Bank Ltd.
22nd Floor IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai 400005

(Appellant)

Vs.

DCIT Circle-3(4),
R.NO.559, 5th Floor,
Aaykar Bhavan,
M.K.Road,
Mumbai 400020

(Respondent)

PAN No. AABCI8842G

Assessee by : Shri C. Naresh, AR

Revenue by : Shri H M Bhatt, Sr. DR

Date of hearing: 25.04.2024

Date of pronouncement : 13.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 3882/Mum/2023 is filed by the Dy. Commissioner of Income Tax, Circle 3(4), Mumbai against the appellate order passed by the National Faceless Appeal Centre, Delhi

[the learned CIT (A)], for A.Y. 2006-07 dated 6th September, 2023, wherein the appeal filed by the assessee from the order passed by the Dy. Commissioner of Income Tax, Circle 3(4), Mumbai (the learned Assessing Officer) dated 31st March, 2021, under Section 154 of the Income-tax Act, 1961 (the Act), was allowed.

02. The learned Assessing Officer is aggrieved with that appellate order and has raised following grounds of appeal:-

" (i) "Whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee holding that the assessing Officer passed the rectification order u/s154 in the name of the non-existing entity ignoring the fact that the assessing office has mentioned the name of existing entity as successor to erstwhile non existing assessee while passing the order passed u/s 154 of Act dated 31.03.2021 as well as notice u/s 154 dated 20.03.2021?"

(ii) "Whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in allowing the assessee's appeal on technical ground relying on the cases whose facts are distinguished from the facts of the instant case?"

(iii) "Whether in the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not taking the cognizance of the decision of the Hon'ble Supreme Court in the case of Pr. CIT Vs M/S Mahagun Realtors (P) Ltd [2022] 137 taxmann.com

91 (SC) in which the Hon'ble Supreme Court has categorically held that in the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed. However, the business and the adventure lives on within a new corporate residence, i.e., the transferee company?"

03. The brief facts of the case shows that the learned Assessing Officer has passed an order under Section 154 of the Income-tax Act, 1961 (the Act) dated 31st March, 2021, in the name of United Western Bank Ltd. (through successor M/s IDBI Bank Ltd), despite the fact in his knowledge that United Western Bank merged with the IDBI bank as per Government of India notification dated 30th September, 2006, which was intimated to the learned Assessing Officer earlier. Despite the above fact in the knowledge of the learned Assessing Officer, the learned Assessing Officer on 30th May, 2016 passed the order giving effect to the order of the ITAT. Subsequently, the learned Assessing Officer issued the notice under Section 154 of the Act in the name of erstwhile United Western Bank Ltd., proposing to reduce the deduction already allowed. The learned Assessing Officer passed an order under Section 154 of the Act on 31st March, 2021, in the name of the United Western Bank Ltd. By such order the learned Assessing Officer revised the total loss of the assessee at ₹11.42 crores.
04. Against that order the assessee challenged in a appeal before the learned CIT (A) holding that the entire rectification proceedings and rectification orders is passed

on a non-existent entity, therefore, same is invalid. The reduction of deduction was also challenged. The learned CIT (A) as per the appellate order dated 6th September, 2023, held that as the United Western Bank Ltd. merged with the IDBI bank and same was also informed to the Revenue/ Assessing Officer on 26th August, 2015, requesting to transfer the Permanent Account Number. Several correspondence were also verified by the learned CIT (A) and therefore, he held that the contention of the assessee that the learned Assessing Officer was fully aware that United Western Bank Ltd. was not in existence on the date of passing of the rectification order under Section 154 dated 31st March, 2021, and entire proceedings are invalid in view of the decision of Hon'ble Supreme Court in case of Pr. CIT Vs. Maruti Suzuki India Ltd [2019] 107taxmann.com375 (SC) and decision of the Hon'ble Bombay High Court in case of Teleperformance Global Services (P.) Ltd. vs. Assistant Commissioner of Income Tax, Central Circle 25(1) [2021] 127 taxmann.com 46 (Bombay). Accordingly, he quashed the rectification order holding it to be bad in law.

05. The learned Assessing Officer is aggrieved with the appellate order.
06. The learned Departmental Representative referred to the grounds of appeal and submitted that the learned Assessing Officer has mentioned who is successor to the United Western Bank Ltd. and further it is merely a technical error. The learned Departmental Representative



further submitted that Hon'ble Supreme Court in case of Pr. CIT vs. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann.com 91 (SC) has categorically held that in case of amalgamation the business of the transferee company survives. Therefore, the learned CIT (A) is not correct in quashing the rectification order.

07. The learned Authorised Representative referred to his submission reproduced by the learned CIT (A) at paragraph no.3 and also the finding given in paragraph no.4. he submits that the CIT (A) has followed the decision of Hon'ble jurisdictional High Court and the Hon'ble Supreme Court. He submits that the decision cited by the learned Departmental Representative of Mahagun Realtors (P.) Ltd. (supra) does not apply to the facts of the case for the reason that the learned Assessing Officer was aware about the business reorganization.
08. We have carefully considered the the rival contentions and perused the orders of the lower authorities. Admittedly, in this case, the order under Section 154 of the Act was passed on United Western Bank Ltd. which merged with the IDBI Bank Ltd. The information of the merger was intimated to the Revenue on 5th August, 2015. There was also a specific request made by the assessee to the Income Tax Officer, Satara to transfer the PAN of United Western Bank Ltd. to LTU, Mumbai. Further, the internal correspondence of the Revenue also shows that the learned Assessing Officer was aware about the merger. Still the learned Assessing Officer chooses to pass the

rectification order in the name of a non-existent entity. Such order of rectification is quashed by the learned CIT (A) as under:-

"4.0 Decision on grounds of appeal and reasons thereof:- In this appeal 4 Grounds were raised. Vide Ground no. 1 appellant has challenged the validity and jurisdiction of the rectification order passed u/s 154 dated 31.03.2021 on the ground that rectification order was passed on an non-existent entity in the name of M/s. United Western Bank Ltd. PAN AABCT0177D. It is the submission of the appellant that the erstwhile United Western Bank Ltd. was merged with IDBI Bank Ltd. vide notification F.No. 15/7/2006-BOA (1) and the same was also informed to the department on 26.08.2015 to the Income Tax Officer, Satara with a request to transfer the PAN of erstwhile M/s. United Western Bank Ltd. to LTU, Mumbai. Appellant has also submitted on record of various correspondences by ACIT, (LTU)- 2, Mumbai to ITO (HQ.), LTU, Mumbai for transfer of PAN AABCT0177D in the case of M/s. United Western Bank Ltd. Further, a letter was written by CIT (LTU), Mumbai to PCIT-3, Pune regarding migration of PAN in the case of M/s. United Western Bank Ltd. to ACIT(LTU), Mumbai on 12.08.2015. Further, letter dated 27.08.2010 of DCIT, Satara written to ACIT, LTU, Mumbai with subject "Transfer of case records of United Western Bank Ltd., Satara (Now amalgamated with IDBI Bank)" is also submitted by the appellant during the course of appellate proceedings. Hence, appellant contended that AO was fully well aware that

the entity M/s. United Western Bank Ltd. was not in existence on the date of passing of impugned order u/s 154 dated 31.03.2021 and accordingly the entire proceedings are not valid as held by the Hon'ble Supreme Court in the case of Pr. CIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 and the Hon'ble Bombay High Court in the case of Teleperformance Global Services (P.) Ltd. (127 taxmann.com 46). Therefore, rectification order framed and passed on a non-existent entity is against the provision of law and liable to be quashed.

4.1 I have carefully gone through the ground of appeal, statement of fact, assessment order passed by the AO, written submission uploaded and judicial decisions relied upon by the appellant on the issue. It is an admitted fact that United Western Bank Ltd. was merged with IDBI Bank Ltd. vide notification F.No. 15/7/2006- BOA (1) and the same was also informed to the department on 05.08.2015 to the Income Tax Officer, Satara with a request to transfer the PAN of erstwhile M/s. United Western Bank Ltd. to LTU, Mumbai. Further, the internal correspondence of the department as mentioned in the preceding para, copy of which was submitted by the appellant during the course of appellate proceedings is also on record. All these facts prove that the department and Assessing Officer was fully aware about merger of erstwhile United Western Bank Ltd. with IDBI Bank Ltd. and United Western Bank Ltd. PAN AABCT0177D was not

in existence on 31.03.2021 i.e. on the date of passing the order u/s 154 of the Act by the AO.

4.2 Considering the above facts, I am of the view that appellant has discharged his onus by duly disclosing the fact of merger of M/s. United Western Bank Ltd. with IDBI Bank Ltd. to all concerned including the AO. However, AO has ignored this fact and passed the rectification order u/s 154 in the name of M/s. United Western Bank Ltd. a non existing entity. The case laws relied upon by the appellant is fully applicable in the case of appellant including the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC) wherein, it has been held that assessment order passed in the name of non-existing amalgamating entity would be without jurisdiction and is to be set aside. Further, Hon'ble Supreme Court in the case of Spice Enfortainment [TS-504-SC-2017] had dismissed Revenue's appeal and upheld the Hon'ble Delhi HC judgment, wherein it was held that assessment on non-existent entity is void and not curable under section 292B of the Act.

4.3 The Hon'ble Delhi High Court in a recent judgement had dismissed the appeal in the case of Commissioner of Income Tax vs Sony Mobile Communications India Pvt Ltd (company) and quashed the assessment by holding that the assessment order passed in the name of a non-existent company, despite being informed of the

amalgamation, was null and void by relying upon the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki.

4.4 In view of the above facts and respectfully following the decision of Hon'ble Supreme Court as well as Jurisdictional Hon'ble Mumbai High Court, I find force in the contention of the appellant that impugned rectification order passed u/s 154 by ACIT, Circle-3(4) Mumbai dated 31.03.2021 in the name of non-existent entity i.e. M/s. United Western Bank Ltd. PAN AABCT0177D is bad in law and without jurisdiction. Therefore, the rectification order u/s 154 framed and passed by the AO is quashed. Otherwise also impugned rectification order u/s 154 was passed on 31.03.2021. whereas, it is noticed that assessment order in the case of the appellant for the same A.Y. passed u/s 143(3)/147 of the Act on 29.11.2013, in the name of IDBI Bank (Successor of M/s. United Western Bank Ltd) PAN AABCI8842G. Therefore, AO was fully aware of the sequence of events regarding merger of M/s. United Western Bank Ltd. into IDBI Bank Ltd. Thus, Ground no. 1 of the appeal raised is allowed."

09. No infirmity was pointed out before us by the learned Departmental Representative. Decision of Honourable supreme court in case of Mahagun Realtors (supra) does not apply to the facts of the case as fact and intimation of



merger was within the knowledge of Id AO. In the result, we confirm the order of the learned CIT (A) and dismiss the appeal of the learned Assessing Officer.

010. The cross objection filed by the assessee in CO No.28/Mum/2024, is on the merits of deduction and on limitation. As we have dismissed the appeal of the learned Assessing Officer upholding the order of the learned CIT (A), quashing the rectification order, the CO does not survive and hence, dismissed.

011. In the result, the appeal of the learned Assessing Officer and CO of the assessee are dismissed.

Order pronounced in the open court on 13.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.05.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai