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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.927, 928 & 929/Bang/2024
Assessment Years : 2013-14, 2015-16 & 2016-17

The Dy. Commissioner of Income Tax, Circle - 2(1)(1), Bengaluru.	Vs.	Cisco Systems India Private Limited, SEZ Unit, Kadubeesanahalli, Bengaluru-560 130. **PAN – AABCC 0258 Q**
APPELLANT		RESPONDENT

Assessee by	:	Shri Nageshwar Rao, Advocate
Revenue by	:	Shri D.K Mishra, CIT (DR)

Date of hearing	:	10.07.2024
Date of Pronouncement	:	31.07.2024

O R D E R

PER BENCH :

These appeals filed by the Revenue are against the order passed by the NFAC, Delhi all dated 27/02/2024 in DIN No.ITBA/NFAC/S/250/2023-24/1061572858(1) for the assessment year 2013-14, No.ITBA/NFAC/S/250/2023-24/1061574927(1) for the assessment year 2015-16 and No.ITBA/NFAC/S/250/2023-24/1061575626(1) for the assessment year 2016-17.

2. The only effective issue raised by the revenue is that the learned CIT(A) erred in quashing the assessment order passed under section 147

of the Act by holding that it was framed in the name of non-existing company.

3. The facts in brief that the assessee namely Scientific Atlanta India Technology Pvt Ltd (hereafter SA India) merged with Cisco Systems (India) Pvt Ltd (hereafter Cisco India) w.e.f. 1st April 2010 in a scheme of amalgamation approved by the Hon'ble Karnataka High Court vide order dated 19th November 2010. Subsequently, the assessee vide letter dated 14th February 2012 filed tax authority at Chennai and Bangalore communicating about the amalgamation of SA India with Cisco India and requested to transfer of records and jurisdiction of SA India from Chennai to Bangalore where jurisdiction of Cisco India lies. The prayer of the assessee was approved by the tax authority acknowledging the amalgamation of SA India vide order dated 5th June 2012. Thus, the assessee namely SA India ceased to exist with effect from appointed date of amalgamation i.e. 1st April 2010.

4. However, the National Faceless Assessment Center Delhi issued notice dated 31st March 2021 under section 148 of the Act on account of escapement of income for the AY 2013-14. Finally, the assessment order was framed under section 147 r.w.s. 143(3) of the Act dated 27th March 2022 in the name of SA India which was not in existent in relevant assessment year i.e. 2013-14.

5. The successor assessee (Cisco India) preferred an appeal before the National Faceless Appellate Center Delhi (NAFC)/learned CIT(A) and challenged the validity of assessment order framed in the name of nonexistent assessee. The NAFC/learned CIT(A) vide order dated 27th

.

February 2024 quashed the assessment order. The relevant finding is extracted as under:

"4.4 I have gone through the above facts, the appellant has filed the copy of the letter regarding the merger before the Chief Commissioner of Income Tax ('CCIT)-II, Chennai, on February 14, 2012. The appellant has also filed copy of letter of transfer request of Scientific Atlanta's files from ACIT, Circle VI(1) Chennai to DCIT, Circle 11(2) Bangalore which was approved by CCIT -I I, Chennai, through a letter dated June 05, 2012. Copy of High Court order dated November 19, 2010 has also been filed. It is seen from the assessment order that the assessment order has been passed in the name of Scientific Atlanta which ceased to exist in the assessment year 2011-12.

4.5 In the case of Infosys BPM Limited vs. JCIT (Income Tax Appellate Tribunal. Bangalore). The Hon'ble Tribunal held that the assessment order framed in the name of a non-existent entity after it ceased to exist was considered ab initio void and null in the eyes of the law. A similar precedent was cited from a case involving ACIT vs. iGate Infrastructure Management Services Ltd where it was held that an assessment order passed by the Income Tax authorities in a jurisdiction different from the changed registered office of the company is without jurisdiction and bad in law. In the event of amalgamation of companies: a. The income of the amalgamating company up to the date of amalgamation should be assessed in the hands of the amalgamating company (predecessor) if the amalgamating company is in existence at the time of initiation of assessment. b. If the amalgamating company is not in existence at the time of initiation of assessment proceedings, the income of the amalgamating company up to the date of amalgamation should be assessed in the hands of the amalgamated company (successor) under the caption "successor of predecessor" in a similar manner and to the same extent as it would have been made on the predecessor. The consequence of the above position of law is that the assessment made and the order passed on the amalgamating company when it is dissolved or not in existence is considered a nullity. Therefore, the judgment concluded that the impugned assessment order in the case of Infosys BPM Limited vs. JCIT was non-est and ab initio void, and hence annulled.

4.6 Further, in the case of India Medtronic Pvt. Ltd. (IMPL), The Income Tax Appellate Tribunal (ITAT) Mumbai held that the entire assessment order passed in the name of a non-existing entity, i.e., the amalgamated entity, is null and void and therefore liable to be quashed.

Facts of the Case:

.

The assessee, India Medtronic Pvt. Ltd. (IMPL), was incorporated on 02/05/2002 and was primarily engaged in trading and marketing of medical devices, medical equipment products, and related services.

M/s. Covidien Healthcare India Pvt. Ltd. (CHIPL), in whose name the orders were passed, including the draft assessment order, transfer pricing order, and final assessment order, was merged with IMPL with effect from 26/08/2016 pursuant to the order of the National Company Law Tribunal (NCLT) dated 10/08/2017.

CHIPL ceased to exist from the appointed date upon the filing of the NCLT order with the Registrar of companies, with the effective date of merger being 01/09/2017.

Prior to its merger, CHIPL filed its return of income for A.Y. 2016-17 on 30/11/2016, later revised on 03/08/2017.

Notice u/s. 143(2) dated 29/08/2017 was issued by ACIT, Corporate Circle 1(2) Chennai, in the name of CHIPL for scrutiny assessment proceedings. The assessee informed the assessing officer (AO) about the merger vide letter dated 26/12/2017, filed in the name of CHIPL.

The ITAT Mumbai held that the decision of the Hon'ble Apex Court in the case of Mahagun Realtors Pvt. Ltd. is not applicable to the facts of the assessee's case. However, the facts of the case were found to be covered by the judgment of the Apex Court in the case of Maruti Suzuki India Ltd. Consequently, the entire assessment order passed in the name of the non-existing entity was deemed null and void, and hence, quashed.

4.7 Considering the facts of the case of the assessee wherein the assessment order has been passed on 27.03.2022 in the name of non-existing entity, i.e., Scientific Atlanta which ceased to exist in the assessment year 2011-12 is null and void, and hence, quashed."

6. Being aggrieved by the order of the learned NAFC/CIT(A) the revenue is in appeal before us.

7. The learned DR before us submitted that the assessee has not filed any income tax return in response to the notice issued under section 148 of the Act. Therefore, there was no option left with the AO

.

except to frame the assessment ex-parte to the assessee in the manner provided under section 144 of the Act. As per the learned DR, the ratio laid down by the Hon'ble Apex Court in the case of PCIT Vs. Maruti Suzuki India Limited reported in 416 ITR 613 cannot be applied to the assessee on hand on account of non-compliance by the assessee during the assessment proceedings. As such, the assessee has made huge payment towards the credit card in the year in dispute which has not been verified during the assessment proceedings. Likewise, the AO was not aware of the new address of the assessee and therefore the notice under section 148 of the Act were issued at the old address of the assessee. Furthermore, the learned CIT-A erred in placing reliance on the submission filed by the assessee without calling for any remand report from the AO.

8. On the other hand, the learned AR before us filed a paper book running from pages 1 to 183 and the case law compilation running from 1 to 97 pages and contended that the scheme of amalgamation was duly informed to the tax authorities based in Chennai and Bangalore which was also acknowledged by the revenue. The ld. AR in support of his contention drawn our attention to pages 1 to 33 containing the order of Hon'ble Karnataka High Court approving the scheme of amalgamation. Likewise, the details about the communication to the income tax office based in Chennai and Bangalore about such scheme of amalgamation was placed on pages 34 to 39 of the paper book. Similarly, there was a communication from the Chennai income tax office, placed on page 40 of the paper book, regarding the handing over of the records to the Bangalore income tax office and the transfer of the jurisdiction of the assessee.

.

9. Both the learned DR and the AR before us vehemently supported the order of the respective authorities below as favourable to them.

10. We have heard the rival contentions of both the parties and perused the materials available on record. Regarding the legality of the order framed by the AO under section 147 r.w.s. 143(3) the Act, we note that the AO on the first page of his order has mentioned the name of the assessee SA India which was erstwhile company. Thus, the assessment order was framed in the name of non-existent entity (SA India), as SA India was merged with Cisco India w.e.f. 1st April 2010. This fact has communicated by the successor Cisco India to the tax authority vide letter dated 14th February 2012 which been recognized by the tax authority vide order dated 5th June 2012 by transferring the jurisdiction and record of the erstwhile company. The relevant evidence/ details in this regard are available on pages 34 to 39 of the paper book. All these facts were not controverted by the ld. DR appearing on behalf of the revenue. Likewise, the ld. DR has also not brought anything on record contrary to the findings of the ld. CIT-A.

10.1 In view of the above, it is seen that the assessment has been framed by the AO in the name of amalgamating company which ceased to exist for the assessment year (2013-14) after the date of amalgamation.

10.2 The Hon'ble Supreme Court observed and agreed in the case PCIT Vs. Maruti Suzuki India Limited reported in 416 ITR 613 to the ratio laid down in Saraswati Industrial Syndicate Ltd. v. CIT [1990] 53 Taxman 92/186ITR278(SC), wherein the Hon’ble Apex Court observed

.

that once the amalgamation is sanctioned, the amalgamating company is dissolved without winding up in terms of Section 394 of the Companies Act, 1956. The amalgamating company ceases to exist in the eyes of law, thus becoming non-existent. Since it does not exist in the eyes of law, it cannot be regarded as a 'person' (under Section 2(31) of The Act) against whom assessment proceedings can be initiated or an order passed. Therefore, the assessing officer does not have jurisdiction to issue such notice or pass any order against a non-existent entity. The rationale can also be applied to a dead individual. Since a deceased would not be considered as a 'person' under The Act, thus any such notice/order issued in that name will be invalid or void.

10.3 Thus, the AO in the instant case framed the assessment in the name of the assessee which ceased to exist even though the scheme of amalgamation was brought to notice of the taxing authorities. In other words, the department was aware of the complete facts that the company was no longer in existence, yet the AO has framed the assessment in the name of non-existing company. Therefore, in the given facts and circumstances, the assessment order is not maintainable in the eyes of law as the same is void ab intio. Hence, we do not find any infirmity in the order of the learned NAFC/CIT(A) and accordingly the ground of appeal of the revenue is hereby dismissed.

11. In the result, appeal of the revenue is hereby dismissed.

Coming to ITA Nos.928 and 929/Bang/2024 for the assessment year 2015-16 and 2016-17

.

12. The facts of the case for the assessment year 2015-16 and 2016-17 are identical to the facts of the case discussed above in ITA No.927/Bang/2024 for the assessment year 2013-14, therefore, respectfully following the same, we do not find any infirmity in the order of the learned NAFC/CIT(A) and accordingly the ground of appeal of the revenue in both the assessment years mentioned above are also hereby dismissed.

13. In the result, both the appeals of the revenue are hereby dismissed.

14. In the combined result, the appeals of the Revenue are dismissed.

Order pronounced in court on 31st day of July, 2024

Sd/- Sd/-

(KESHAV DUBEY) **(WASEEM AHMED)**
Judicial Member Accountant Member
Bangalore
Dated, 31st July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

.