

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.842/Del/2021
Assessment Year: 2016-17

Mentor Graphics (India) Pvt. Ltd., (Calypto Design Systems India Pvt. Ltd. – Amalgamated Company), P-24, Green Park Extension, New Delhi – 110 016.	Vs	DCIT, Circle-16(1), New Delhi.
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PAN: AABCM5494Q

(Appellant)

(Respondent)

Assessee by	: Shri Vishal Kalra, Advocate & Shri Ankit Sahani, Advocate & Shri Yishu Goel, AR
Revenue by	: Shri S.K. Jadhav, CIT-DR
Date of Hearing	: 09.01.2025
Date of Pronouncement	: 17.01.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the final assessment order dated 30.03.2021 passed u/s 143(3) r.w.s. 144C (13) r.w.s. 143(3A & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the National e-Assessment Centre, Delhi (hereinafter referred to as the Ld. AO).

2. On hearing both the sides, it comes up that primarily the assessee is contesting the ground No.2 by which the impugned assessment order has been

challenged for the reason that the same was passed in the name of erstwhile and non-existing entity Calypto Design Systems India Pvt. Ltd. which stood merged with Mentor Graphics (India) Pvt. Ltd.

3. The Id. AR has submitted that the Assessing Officer was duly informed during the assessment proceedings of the merger. It was submitted that even the draft assessment order was passed in the name of Mentor Graphics (India) Pvt. Ltd.

3.1 The Id. DR has however, opposed this assertion on the basis that in Form No.35A, the assessee had mentioned the name of the assessee as Calypto Design Systems India Pvt. Ltd. and the verification was also done by the Managing Director of Calypto Design Systems India Pvt. Ltd.

4. We have given thoughtful consideration to the material on record and the submissions. It came up during hearing that the notice u/s 142(1) of the Act dated 06.11.2019 was issued in the name of Calypto Design Systems India Pvt. Ltd and the name of Mentor Graphics (India) Pvt. Ltd. and its PAN AABCM5494Q was mentioned along with the PAN AACCC4164C of Calypto Design Systems India Pvt. Ltd. It further comes up that on 19.11.2019, the assessee had filed submissions before the AO informing about date of merger and PAN details of transferee entity i.e., Mentor Graphics (India) Pvt. Ltd., and the copy of the same has been made available to the Bench at page No.34 and

35 of the paper book and acknowledgement of uploading the same on ITBA portal has been attached with it as Annexure-1.

5. It is further brought on record on behalf of the assessee that on 19.03.2018, a no-objection was filed on behalf of the Department and jurisdictional AO before the National Company Law Tribunal that the Department has no objection in the merger and the copy of this is placed before us in the paper book at pages 27-30 of the paper book. We consider it appropriate to reproduce the relevant part of this letter dated 19.03.2018 as below:-

“3. Going through the above provisions, it is noted that all tax liabilities and all open appeals/ assessments will be enforced and continued against the Transferee Company i.e. Mentor Graphics (India) Private Limited. in the same manner as in case of Transferor Company i.e. Calypto Design Systems India Private Limited.

4. Pendency of rectification and refunds eligible to Calypto Design Systems India Private Limited and considering as per Scheme of amalgamation, the tax liability (if any) of Calypto Design Systems India Private Limited will be borne by Mentor Graphics (India) Private Limited, the interest of Revenue is protected.”

6. Also when the submissions were filed before the Transfer Pricing Officer, the assessee had made reference about the merger and the copy of this is available on record at pages 39 to 152 of the paper book and at page No.41, we find that there is specific mention of this merger. However, still, on 28.10.2019, the TPO passed the order in the name of Calypto Design Systems India Pvt. Ltd and made no reference of the merger. Thus, the final assessment order dated 30.03.2021 passed by NeAC in the name of non-existing entity is certainly not

sustainable. The Department and AO were quite aware of the merger. Still at every stage the fact of merger though in the knowledge of the Id. officers was not reflected in the final orders to ensure that liability is created in the hands of Mentor Graphics (India) Pvt. Ltd., only. We find no substance in the contention of the Id. DR that the assessee had preferred objections before the DRP in the name of erstwhile company or the Managing Director of the erstwhile company had filed objections that in any way can validate the passing of final assessment order in the name of non-existing entity. The law in this regard is now quite settled that if in spite of the AO being informed of any merger or amalgamation does not take note of the same and the orders are passed in the name of non-existing entity, the same are nonest and liable to be set aside. Reliance in this regard can be placed on the judgement of the Hon'ble Supreme Court in the case of **PCIT vs. Sterlite Technologies Limited vs. DCIT (2024) 158 taxmann.com 242 (SC)** and catena of other judgements which have been belied by the Id. counsel including the judgements in the case of **PCIT vs. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375 (SC)**.

7. In the light of the aforesaid, we sustain this ground. **Consequently, the appeal is allowed.** The impugned assessment order is quashed.

Order pronounced in the open court on 17.01.2025.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Dated: 17th January, 2025.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi