

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.6814/Mum/2024 & 6815/Mum/2024  
(Assessment Year :2014-15 & 2015-16)**

Assistant Commissioner of Income Tax 16(1) Room No.439 Aaykar Bhawan M.K.Road Marine Lines Maharashtra-400020	Vs.	Culver Max Entertainment Private Limited 4 <sup>th</sup> Floor, Interface Building No.7, Off Malad Link road Malad West, Dely S.O. Mumbai
<b>PAN/GIR No.AABCS1728D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**CO Nos.36/Mum/2025 & 37/Mum/2025  
(Arising out of ITA No.6814/Mum/2024 &  
6815/Mum/2024)  
(Assessment Year :2014-15 & 2015-16)**

Assistant Commissioner of Income Tax 16(1) Room No.439 Aaykar Bhawan M.K.Road Marine Lines Maharashtra-400020	Vs.	Culver Max Entertainment Private Limited 4 <sup>th</sup> Floor, Interface Building No.7, Off Malad Link road Malad West, Dely S.O. Mumbai
<b>PAN/GIR No.AABCS1728D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Hiten Thakkar
Revenue by	Shri Krishna Kumar
<b>Date of Hearing</b>	<b>11/02/2025</b>
<b>Date of Pronouncement</b>	<b>18/02/2025</b>

**आदेश / O R D E R****PER BENCH:**

The aforesaid appeals have been filed by the Revenue and Cross Objection by the assessee of even date 28/10/2024 passed by CIT(A)-58, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 144C for the A.Y.2014-15 and A.Y.2015-16.

2. In both the years common grounds raised by the Revenue read as under:-

*1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that assessment made in the name of a non-existent entity is without jurisdiction, hence null and void ab initio and is liable to be quashed?"*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that the assessee does not have a business connection in India under section 9(1) of the Income Tax Act, 1961, without appreciating the fact that business operation was being carried out in a continuing manner through Multi Screen Media P. Ltd?*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee does not have a Permanent Establishment within the meaning of Article 5(4) of the India - USA DTAA, in the form of Multi Screen Media P. Ltd?"*

*4. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that Multi Screen Media P. Ltd. was an independent agent of the assessee in India u/s 9(1)(i) r.w. Article 5(5) of Indo-USA DTAA?"*

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that as no TP adjustments have been made in the orders of TPO, the transactions between the assessee and Multi Screen Media P. Ltd. were at arm's length and therefore, no further profits could be attributed to Multi Screen Media P. Ltd. (previously known as SET India P. Ltd.) without considering the fact that the arm's length price had not been determined or accepted for the functions undertaken by the dependent agent PE of the assessee in India for furthering of the economic interests and presence of the assessee in India.?"*

6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that Multi Screen Media P. Ltd. was not working wholly or almost wholly for the assessee or the assessee's group in India ignoring the fact that entire activities of the assessee is wholly carried out by MSM India in India, it is the dependent agent of the assessee and constitutes PE of the assessee under article 5(4) of the treaty. ?*

3. The only issue which has been argued by both the parties are that whether assessment order passed by ld. AO in the name of non-existing entity is to be held as 'null and void' or not? It has been admitted by both the parties that this issue now stands covered in favour of the assessee by the decision of the Tribunal for A.Y.2013-14 in ITA No.1454/Mum/2022 which has been affirmed by the Hon'ble High Court vide judgment and order dated 19/12/2024 in ITA No.8863 of 2024 wherein the Hon'ble Bombay High Court has upheld the order of the Tribunal for quashing the assessment on the ground that the assessment made in the case of non-existing entity i.e. M/s. SPE Networks India Inc. is *void ab initio* and hence, same has to be quashed.

4. The brief facts are that in F.Y.2015-16 in the scheme of amalgamation between assessee. Sony Pictures Network India

Pvt. Ltd. name changed to Culver Max Entertainment Private Limited and M/s. SPE Networks India Inc. (SPENI), before the Hon'ble Bombay High Court u/s.391 to 394 of the Companies Act, 1956 was filed on 01/07/2016. The Hon'ble Bombay high Court sanctioned the scheme of amalgamation with the appointed date on 01/04/2015. Thus, pursuant to the order of the amalgamation by the Hon'ble Bombay High Court, SPENI has ceased to exist. Upon the receipt the Hon'ble High Court order assessee has duly notified and intimated to the ld. AO vide letter dated 02/01/2017 requesting the ld. AO to drop the assessment proceedings initiated in the name of the non-existing entity and issued a fresh notice in the name of amalgamated entity. Despite such an intimation, ld. AO still pass the final assessment order in the name of amalgamating entity i.e. SPENI which was a non-existing entity from the date of the order. For the sake of ready reference, chronology of events reads as under:-

<b>Date</b>	<b>Event</b>	<b>Name indicated</b>
28 August 2015	Notice under Section 143(2) of the Act	SPE Networks-India Inc (SPENI)
09June2016	Notice under Section 142(1) of the Act	SPE Networks-India Inc (SPENI)
01July2016	HC order approving merger with SPNI(w.e.f.1April 2015)	

16 December 2016	Notice under Section 92CA(2)r.w.s 92D(3) Of the Act	SPE Networks India Inc (SPENI)
2January 2017	Letter intimating AO and TPO about the merger with SPNI	SPE Networks India Inc (SPENI)
25 October 2017	Transfer Pricing order	SPE Networks India Inc (SPENI)
07December 2017	Draft assessment order	SPE Networks India Inc (SPENI)
12February2018	Final assessment order	SPE Networks India Inc (Now merged with Sony Pictures Networks India Private Limited)
22March2018	Appeal filed before Hon'ble CIT(A)	Sony Pictures Network India Private Limited [SPNI] (SPNI as a successor to SPENI which has merged into SPNI with effect from appointed date of 1 April 2015)

5. Later on the name of Sony Pictures Network India Pvt. Ltd. was changed to Culver Max Entertainment Private Limited. However, the ld. AO still proceeded to pass the assessment order in the name of amalgamating entity SPNI.

6. Before the Id. CIT (A) assessee took this plea and pointed out that similar issue was there in the earlier year also for A.Y.2012-13 & 2013-14 and also relied upon the various other judgments of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd., reported in 107 taxmann.com 375 and other judgments. The Id. CIT(A) has quashed the assessment order after observing and holding as under:-

*“7.1.1 This ground relates to framing of assessment on a non-existent company. The assessment was framed in the name of SPE Networks India Inc. (SPENI). The Appellant submitted that this company got merged with Sony Pictures Networks India Pvt. Ltd. (SPNI). The High Court approved this merger on 1st July 2016 w.e.f. 1st April 2015. The Appellant intimated about these facts vide letter dated 2nd January 2017 to the Learned AO and TPO. The final assessment order ('Order') of A.O, is dated 12th February 2018.*

*7.1.2 From the above facts, it is clear that on the date of Order, SPENI got already merged with SPNI and ceased to exist. The Appellant contended that as the A.O. was aware about the merger of Appellant with SPNI and as SPENI ceased to exist on the date of Order, the A.O should have passed the order in the name of SPNI as successor of SPENI The Appellant contended that the order on a non-existent entity is void-ab-initio and requires to be quashed.*

*7.1.3 I have gone through the submission of Appellant and the case laws mentioned by the Appellant. The issue is squarely covered by Hon'ble Supreme Court judgement in the case of Maruti Suzuki India Ltd. (Supra), Spice Infotainment Ltd.. Delhi High Court judgement in the cases of Intel Technology India (P) Ltd. (supra) and Sony Mobile Communications Ind (P) Ltd (supra)*

*7.1.4 Also, the Appellant is squarely covered by its own case in AY 2012-13 by the Hon'ble jurisdictional ITA and for AY 2013-14, wherein on similar facts and circumstances the Hon'ble CIT(A) held that the order framed on a non-existent entity is invalid and void-ab-initio and is, therefore quashed. The said decision of the*

*Hon'ble CIT(A) was subsequently upheld by the jurisdictional ITAT in AY 2012-13 and AY 2013-14, wherein the jurisdictional ITAT held that assessment made in the name of a non-existent entity is without jurisdiction, hence null and void ab initio and is liable to be quashed.*

7. We have heard both the parties and also the decision of the Tribunal in the case of the assessee for earlier years. It is not in dispute that assessee had duly intimated the fact of amalgamation of erstwhile SPNI with Sony Pictures Network India Pvt. Ltd. later on name changed to Culver Max Entertainment Private Limited. Even the judgment of the Hon'ble Bombay High Court dated 01/07/2015 sanctioning the scheme of amalgamation with an appointed date of 01/04/2015 was also filed alongwith letter dated 02/01/2017 requesting the ld.AO to drop the assessment proceedings initiated in the name of non-existing entity and issue a fresh notice in the name of amalgamated entity. Once this fact was brought on record, ld. AO was bound to pass the order in the name of amalgamated entity which he has failed to do so. Under these facts, the assessment order passed in the case of non-existing entity cannot be sustained. For the sake of ready reference, the judgment of Hon'ble Bombay High Court in the earlier years is reproduced hereunder:-

*"This appeal filed under Section 260-A of the Income Tax Act, 1961 is directed against an order dated 13 March 2023 passed by the Income Tax Appellate Tribunal, Mumbai Bench, whereby the appeal filed by the appellant/Revenue assailing an order dated 31 March 2022 passed by the Commissioner of Income Tax (Appeals) [for short, "CIT (A)"] has been rejected. The principal*

ground as raised on behalf of the assessee before the CIT (A) was that the assessment order was made in the name of M/s. SPE Networks India Inc. ("SPENI") which had stood amalgamated with Sony Pictures Networks India Private Limited ("SPNI"). The respondent/assessee accordingly had informed the department by its letter which has been referred to in the impugned order, as addressed to the Assessing Officer opting not to file any objections in the name of SPENI before the Dispute Resolution Panel and also requesting to pass the final assessment order in the name of SPNI, as SPENI is no more in existence. However, despite such intimation, the Assessing Officer had proceeded to pass the final assessment order dated 20 February 2017 in the name of SPENI i.e. M/s. SPE Networks - India Inc. u/s. 143(3) read with Section 144(3). This order of assessment was assailed by the respondents/assessee before the CIT (A) and has succeeded before the CIT (A), on the ground that the impugned assessment order was passed against a non-existent entity. The assessee contended that the proceedings stood squarely covered by the decision of the Supreme Court in Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd.. The Tribunal has observed that as there was a clear intimation by the assessee vide its letter dated 02 January 2017 informing the Assessing Officer, as also the Transfer Pricing Officer about the amalgamation between SPENI and SPNI under Sections 391 to 394 of the Companies Act effective from 1 April 2015 and that the Assessing Officer could not have proceeded to pass the assessment order against a non-existent entity. The Tribunal has in fact observed that apart from the first communication dated 02 January 2017, there was a subsequent communication dated 27 January 2017. The Tribunal observed that such factual position as pointed out by the assessee was not assailed by the department.

3. In the aforesaid circumstances, in our view, the findings, as recorded by the Tribunal in paragraph 4 rejecting the Revenue's appeal following the decision of the Supreme Court in Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd. (supra), cannot be faulted and are in accordance with law. The said findings read thus:-

"4 Moreover, on similar issue in an appeal by assessee before coordinate bench vide ITA No. 2130/MUM/2017, dated

*19.09.2022 for A.Y. 2012-13, matter adjudicated in favour of assessee on the ground of jurisdictional defect. Respectfully following the decision of coordinate bench mentioned (supra) on similar facts in assessee's own case and law declared by the Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd. reported in 416 ITR 613(SC), we are of considered view that assessment made in the name of a non-existing entity is without jurisdiction, hence null and void ab initio. As such type of order suffers from "jurisdictional defect and not from "procedural defect", hence same can't be cured even by section 292B, even if, the assessee has participated in the assessment proceedings."*

*4 We may also observe that in a recent decision of this Court in Uber India Systems Private Limited vs. Assistant Commissioner of Income & Ors. [Writ Petition (L.) No. 23562 of 2024], in similar circumstances, this Court has allowed the writ petition filed by the assessee, wherein the proceedings were initiated against a non-existent entity following the decision of the Supreme Court in Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd. (supra) as also the decision in Teleperformance Global Services (P.) Ltd. vs. Assistant Commissioner of Income Tax, Central Circle 25(1), New Delhi' as rendered by this Court.*

8. Before us ld. DR referred to the judgment of the Hon'ble Supreme Court in the case of PCIT vs. Mahagun Realtors Pvt. Ltd., reported in SLP No.4063 of 2020. The said judgment of the Hon'ble Supreme Court will not be applicable because in that case no intimation was given to the ld. AO and return was filed by the assessee pursuant to the notice issued by the ld. AO suppressing the fact of amalgamation and at no point of time this fact was communicated to the income tax authority. The ratio laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki and Mahagun Realtors Pvt. Ltd., has been discussed in detail by the Co-ordinate Bench in the case of ACIT

vs.Candor Renewable Energy Pvt. Ltd., vide judgment and order dated 19/10/2022 in ITA No.2560 & 2561/Mum/2021 and 697 & 698/Mum/2022. Since in assessee's own case there is a judgment of the Hon'ble Jurisdictional High Court, therefore, on similar set of facts respectfully following the ratio of principle laid down by the Hon'ble Bombay High Court we uphold the order of the Id.CIT(A) and consequently the assessment order passed by the Id. AO for the A.Y.2014-15 and 2015-16 are hereby quashed as null and void having been passed in the case of non-existing entity.

9. In the result, appeal of the Revenue is dismissed.

10. In so far as cross objections raised by the assessee, it has been admitted that the same will become infructuous if the assessment order is quashed.

**11. In the result, appeal of the Revenue as well as cross objection raised by the assessee are dismissed.**

Order pronounced on 18<sup>th</sup> February, 2025.

**Sd/-  
(PADMAVATHY S)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 18/02/2025  
KARUNA, sr.ps

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**