IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA No:- 6594/Del/2019
(Assessment Year- 2010-11)

M/s BEC Finance Pvt. Ltd., 13, Majid Moth DDA Commercial Complex, South Delhi, New Delhi-48.	Vs.	Income Tax Officer, Ward 4(3), New Delhi.
PAN No: AAACD-0030-A		
APPELLANT		**RESPONDENT**

Assessee by : Shri Shivam Malik, Adv.
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing **:** 27.12.2024
Date of Pronouncement **:** 27.03.2025

ORDER

PER SUDHIR PAREEK, JM

This aforetitled appeal preferred by the Assessee against the order dated 27.05.2019 passed by the Learned Commissioner of Income Tax (Appeal)-12, New Delhi (hereinafter referred to as 'Ld. CIT(A)'), for the Assessment Year ('AY') 2010-11.

1.1 The assessee has raised the following grounds of appeal for adjudication:

"1. That the assumption of jurisdiction u/s 147/148 of the Income-tax Act, 1961 (the Act) by the Assessing Officer by way of issuance of notice dated 31.03.2017 u/s 148 of the Act on a non-existent company, already amalgamated with another company on 20th December 2004, is invalid and bad in law and consequently the reassessment so framed in furtherance of such invalid notice is bad in law.

2. That the notice dated 31.03.2017 u/s 148 of the Act issued in the name of M/s BEC Finance Pvt. Ltd., already amalgamated with M/s BEC Impex International Pvt. Ltd. on 20th December 2004, is invalid and bad in law and consequently the reassessment framed in the name of non-existing entity, i.e. BEC Finance Pvt. Ltd., is arbitrary, unjust and not sustainable in law.

3. That without prejudice to Grounds No. 1 and 2 above, the CIT (Appeals) has erred on facts and under the law in passing the ex-parte order without affording to the assessee a reasonable opportunity of being heard and consequently the order as passed by CIT (Appeals) in an ex-parte manner without deciding the issue on merit, is arbitrary, unjust and bad in law.

4. That the addition of Rs.17,62,037/- being the alleged transaction with M/s Unistyle Impex Pvt. Ltd. and M/s Kapil Impex Pvt. Ltd. is arbitrary, unjust and made without proper enquiry and at any rate very excessive.

5. That the above grounds of appeal are independent and without prejudice to one another.

Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing."

2. the facts of the case may be summarized as that the statutory notice u/s 143(2) alongwith u/s 142(1) of the Act was issued to the assessee / appellant and in response of the same, the assessee furnished relevant requisite details which were examined by the Ld.

AO and further in response to notice u/s 148 of the Act, the assessee filed a copy of return filed on 14.10.2014 in the case of merger company M/s BEC Impex International Pvt. Ltd., declaring loss of Rs. 57,26,106/-. The Ld. AO not found reply of the assessee / appellant acceptable by observing that the assessee / appellant using two PAN numers one in the name of BEC Finance Pvt. Ltd. (AAACB0030A) and other Pan Number in the name of M/s BEC Impex International Pvt. Ltd. And since the assessee company was amalgamated. The receipts of amalgamated company of Rs. 17,62,037/- ought to have been clubbed with the receipts of new company M/s BEC Impex International Pvt. Ltd. Received during the year relevant to assessment year 2010-11, and as per Ld. AO, the assessee failed to disclose the receipt of Rs. 17,62,037/-. The M/s BEC Finance Pvt. Ltd., the same accordingly added to the income u/s 68 of the Act.

3. The assessee / appellant as well as the aforesaid order by way of appeal and the Ld. CIT(A), dismiss the appeal by stating that appellant has not furnished necessary details about the

amalgamation of the assessee company with M/s BEC Impex International Pvt. Ltd.

4. Heard rival submissions, and carefully scanned the material available on record.

5. In the course of hearing, the Ld. AR by reiterating the ground of appeal express grievance that the Ld. AO erroneously assumed jurisdiction u/s 147/148 of the Act, by way of issuance of notice dated 31.03.2017 on a non-existent company, which is already amalgamated with another company on 20.12.2004, and consequence the reassessment so framed in furtherance of such invalid notice is bad.

5. the Ld. AR further submitted that the assessee company was amalgamated with M/s BEC Impex Pvt. Ltd. On 20.12.2004, vide order of the Hon'ble Chhattisgarh High Court, order dated 31.12.2004 and as result of such amalgamation the assessee company ceased to exist. The relevant extract of the order of Hon'ble Chhattisgarh High Court as below:

"*THIS COURT DOTH HEREBY SANCTION THE SCHEME OF ARRANGEMENT ARRABGENEBT set forth in Schedule-I annexed hereto and DOTH HEREBY DECLARE the same to be binding on all the shareholders creditors of the Transferor and Transferee companies and all concerned and DOTH APPROVE the said scheme of arrangement to be effective from the appointed dated i.e. 20/12/2004.*

THIS COURT DOTH FURTHER ORDER

1. That all the property, rights and powers of the Transferor company specified in the First, Secund and Third parts of the schedule-II thereto be transferred without further act or deed respectively to the Transferee company and accordingly the same shall pursuant to section 394 (2) of the Companies Act, 1956 be transferred to and vest respectively the Transferee company for all the estate and interest of the Transferor company therein but subject nevertheless to all charges now affecting the same; and

2. That all the liabilities and duties of the Transferred company be transferred without further act of see respectively to the transferee company become the liabilities and duties of the Transferred company; and

3. That all proceedings now pending by or against the Transferor company be continued he or against the Transferee company; and

4. That the Transferor Company and Transferred company do without further application allot to such members of the Transferor company herein the shares in the Transferee Company to which they may be entitled under the said Arrangement, and

5. That the petitioner company do within 30 days after the date of this order cause a certified copy of this order be delivered to the Registrar of Companies for registration;

6. That any person interested shall be at liberty apply to the Court in the above matter for directions that may be necessary.

In view of the above order, Registry to do needful.

Copy of this order be supplied to counsel for Union of India."

Certified copy as per rules."

6. Per contra, the Ld. DR submitted that it is essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings and submitted that in the case in hand it is found that despite that said entity having gone through amalgamation vide Hon'ble High Court, the assessee has continued business activity as separate entity and this fact is quite evident from the facts of this assessment year i.e. 2010-11, where the assessee having PAN AAACB0030A has received contract payments amounting to Rs. 17,62,037/- from M/s Unistyle Impex Pvt. Ltd. And M/s Kapil Impex Pvt. Ltd. These receipts are on account of contracts and AIR information is under section 194C. So, it clear that the assessee has applied and responded to tenders and has executed some work contracts during the relevant previous year.

7. The Ld. AR submitted that on 12.12.2017, relevant facts already been communicated to ITO, ward 4(3), New Delhi, that BEC Finance Pvt. Ltd. has been merged with BEC Impex International Pvt. Ltd. Long back in the year 2004, vide Hon'ble High Court at

Bilaspur order dated 20.12.2004 and also communicated that thereafter existence of BEC Finance Pvt. Ltd. Was extinguished.

8. The Ld. AR relied upon the judgment of the Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375 dt. 25.07.2019, in which Hon'ble Supreme Court of India held that the Ld. AO was informed that of amalgamation 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 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.

9. Likewise, Hon'ble Jurisdictional Delhi High Court in the case of CIT vs. Sony Mobile Communication India Pvt. Ltd., (2023) 456 ITR 753 (Delhi), held some guiding principle which is reproduced as under:

> *"21. In so far as Mahagun Realtors is concerned, as observed hereinabove, the court, once again, noticed the judgment rendered in Spice Enfotainment. As regards Maruti Suzuki, the court in Mahagun Realtors made the following crucial observations (page 214 of 443 ITR):*

"In Bhagwan Dass Chopra v. United Bank of India (1988) 1 SCR 1088; AIR 1988 SC 215; [1987] Suppl. SCC 536 it was held that in every case of transfer, devolution, merger or scheme of amalgamation, in which rights and liabilities of one company are transferred or devolved upon another company, the successor-in-interest becomes entitled to the liabilities and assets of the transferor company subject to the terms and conditions of contract of transfer or merger, as it were. Later, in Singer India Ltd. v. Chander Mohan Chadha [2004] 122 Comp Cas 468 (SC); [2004] Supp (3) SCR 535 this court held as follows (page 477 of 122 Comp Cas):
'there can be no doubt that when two companies amalgamate and merge into one, the transferor company loses its identity as itceases to have its business. However, their respective rights and liabilities are determined under the scheme of amalgamation, but the corporate identity of transferor company ceases to exist with effect from the date the amalgamation is made effective....

In Maruti Suzuki (supra), the scheme of amalgamation was approved on January 29, 2013 with effect from April 1, 2012, the same was intimated to the Assessing Officer on April 2, 2013, and the notice under section 143(2) for the assessment year 2012-13 was issued to the amalgamating company on September 26, 2013. This court in the facts and circumstances observed the following (pages 635, 637, 638 of 416 ITR):

'In this case, the notice under section 143(2) under which jurisdiction was assumed by the Assessing Officer was issued to a non- existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in section 292B....

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 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 Entertainment on November 2, 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-12. In doing so, this court has relied on the decision in Spice Entertainment.

We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this court in relation to the respondent for the assessment year 2011-12 must, in our view be adopted in respect of the present appeal which relates to the assessment year 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in

the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.'

The court, undoubtedly noticed Saraswati Industrial Syndicate Ltd. v. CIT [1990] 186 ITR 278 (SC). Further, the judgment in Spice (supra) and other line of decisions, culminating in this court's order, approving those judgments, was also noticed. Yet, the legislative change, by way of introduction of section 2(1A), defining 'amalgamation' was not taken into account. Further, the tax treatment in the various provisions of the Act were not brought to the notice of this court, in the previous decisions.

There is no doubt that MRPL amalgamated with MIPL and ceased to exist thereafter; this is an established fact and not in contention. The respondent has relied upon Spice and Maruti Suzuki (supra) to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of the present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.

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Firstly, in both the relied upon cases, the assessee had duly informed the authorities about the merger of companies and yet the assessment order was passed in the name of the amalgamating/non-existent company However, in the present case, for the assessment year 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The return of income for the assessment year 2006-07 first filed by the respondent on June 30, 2006 was in the name of MRPL. MRPL amalgamated with MIPL on May 11, 2007, with effect from April 1, 2006. In the present case, the proceedings against MRPL started on August 27, 2008-when search and seizure was first conducted on the Mahagun group of companies. Notices under section 153A and section 143(2) were issued in the name MRPL and the representative from MRPL corresponded with the Department in the name of MRPL. On May 28, 2010, the assessee filed its return of income in the name of MRPL, and in the 'business

reorganization' column of the form mentioned 'not applicable' in amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated July 22, 2010, it was for the assessment year 2007-08 and not for the assessment year 2006-07. For the assessment years 2007-08 to 2008-09, separate proceedings under section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional Commissioner of Income-tax by order dated November 30, 2010 as the

amalgamation was disclosed. In addition, in the present case the assessment order dated August 11, 2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

Secondly, in the cases relied upon, the amalgamated-companies had participated in the proceedings before the Department and the courts held that the participation by the amalgamated-company willnot be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL-which held out itself as MRPL." (emphasis supplied)

22. As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:

(i) There was no intimation by the assessee regarding amalgamation of the concerned company.

(ii) The return of income was filed by the amalgamating company, and in the "business reorganisation" column, curiously, it had mentioned "not applicable".

(iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.

(iv) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated-company.

(v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company, i. e., the amalgamating company was in existence.

23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter."

10. The Ld. DR relied upon the judgment of Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax vs. Mahagun Realtors (P) Ltd., 2022 (Arising out of special leave petition (C) No. 4063 of 2020), in which Hon'ble Supreme Court held that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of section 481 of the Companies Act, 1956, but would depend on the terms of the amalgamation and facts of each case.

11. The Ld. AR submitted that the law regarding reopening assessment proceedings against a non-existent assessee has been settled by Hon'ble Supreme Court in its judgment in Principal Commissioner of Income Tax v. Maruti Suzuki India Limited, reported in 416 ITR 613 (SC), and in the instant case, all notices i.e, u/s 143(2) dated 18.10.2017, 142(1) and 148 notices dated 12.10.2017, were issued in the name of a non-existent assessee, thus leading to an invalid assumption of jurisdiction and consequently any order framed in furtherance thereto is invalid. Akin to Maruti Suzuki (supra) where the assessing officer was

informed before framing the assessment order, in the present case, the Ld. AO was informed and the same has also been mentioned in the assessment order.

12. Further, submitted by the Ld. AR that Hon'ble Supreme Court in Maruti Suzuki (supra), relying on the judgement of the jurisdictional Delhi High Court in Spice Entertainment Ltd. v. CST [(280 ELT 43 (Delhi)] held that upon intimation of amalgamation, notice issued in the name of the non-existent company is invalid and it is not a mere procedural defect.

13. Regarding applicability of the judgment of the Hon'ble Supreme Court in Principal Commissioner of Income-tax v. Mahagun Realtors 443 ITR 194 (SC), the Ld. AR vehemently argued that the said judgment fails to apply here due to a stark difference in the factual scenario. In the said judgment, the Ld. AO was not informed regarding the amalgamation, which is far from the case at hand, Further, the jurisdictional Delhi High Court in Commissioner of Income Tax v. Sony Mobile Communications India Pvt. Ltd., reported in 456 ITR 753 (Delhi) has laid down a five-pronged test to

determine whether a case falls under the ambit of Maruti Suzuki (supra) or Mahagun (supra). The test is:

> (i) Whether there was intimation by the assessee,
> (ii) In whose name was the return of income filed,
> (iii) Whether intimation was given for the relevant AY,
> (iv) Whether assessment order had name of the amalgamated company
> (v) Whether in proceedings it was represented that amalgamating company was in existence

14. The Ld. AR submitted that abovecited judicial precedent establish the law that the Ld. AO must be informed regarding the amalgamation during the said assessment year, which was duly done in the present case. It is humbly submitted, that vide letters dated 25.10.2017 and 12.12.2017 (filed on 14.06.2024) all aforesaid factors are in the assessee's favour, an intimation of amalgamation was duely communicated, even as evident in the assessment order, return of income was filed in the name of BEC Impex Pvt. Ltd. (amalgamated company), intimation for the relevant assessment year was provided, the assessment order did not have name of the amalgamated company and nowhere in the proceedings was it represented that the amalgamating company was in existence. Furthermore, as held in Mahagun (supra), mere

participation in proceedings by the amalgamated company will not act an estoppel.

15. Furthermore, the Ld. AO observed that the assessee's PAN was active during the period under consideration, and in this regard the Ld. AR submitted that this argument of the Revenue has been rejected by the Bombay High Court in CLSA India Pvt. Ltd. v. Deputy Commissioner of income Tax and Others reported in 452 ITR 55 (Bom). In the aforesaid case, the appellant therein had challenged the vires of the Section 148 notice issued in the name of the assessee therein which had amalgamated into the appellant company. The Section 148 notice was duly replied by the appellant intimating about the amalgamation. Despite the intimation, the revenue authorities proceeded to frame assessment order in the name of non-existent assessee, with an additional ground pertaining to the active nature of the assessee's PAN during the assessment year under consideration. The Hon'ble Court in declaring the Section 148 notice as illegal, in para 7, while vocalizing the principles of Maruti Suzuki (supra) categorically held as under:

7. The stand of the Revenue that the reassessment was justified in view of the fact that the permanent account number (PAN) in the name of the non-existent entity had remained active does not create an exception in favour of the Revenue to dilute in any manner the principles enunciated hereinabove."

16. On the basis of foregoing facts situation and perusal of the material available on record, reveals that notice u/s 148 of the Act, has been issued in the name of the non-existent company and it is established principle of law that assessment framed in the name of non-existent company based on an issuance of notice is of no consequence. As mentioned herein before, Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Pvt. Ltd. (supra) held that the amendment made in the name of Suzuki Power Train India Ltd. is in resulting since the entity has been amalgated with the Maruti Suzuki India Ltd. The Revenue relied upon the case of Mahagun Realtors (P) Ltd. does not apply in this case as amalgamation was complete and notice u/s 148 was issued and also that prior information regarding amalgamation was submitted before competent authority. Hence, assessment framed in the instant case in the name of non-existing camp, suffers from vice of jurisdictional effect and which cannot be cured u/ s 192 of the Act.

17. In the result, the addition in question deserves to be deleted and as appeal is allowable.

Consequently, the appeal of the assessee is allowed as indicated above.

Order pronounced in the Open Court on 27.03.2025

Sd/-	**Sd/-**
(S RIFAUR RAHMAN)	**(SUDHIR PAREEK)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27/03/2025.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI