

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI "F" BENCH :: MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
&  
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 5667/MUM/2024  
(Assessment Year : 2014-15)**

<b>ACIT, Circle-16(1), Mumbai.</b>	Vs.	<b>Viacom 18 Media Pvt. Ltd, 6<sup>th</sup></b> Floor, Sion Biz World, Subash Road A, Ville Parle East, S.O. Mumbai-400 057  <b>PAN: AAACM 9164 E</b>
(Appellant)		(Respondent)

**C.O.No. 07/MUM/2025  
(Arising out of ITA No. 5667/MUM/2024)  
(Assessment Year : 2014-15)**

<b>Viacom 18 Media Pvt. Ltd, 6<sup>th</sup></b> Floor, Sion Biz World, Subash Road A, Ville Parle East, S.O. Mumbai-400 057  <b>PAN: AAACM 9164 E</b>	Vs.	<b>ACIT, Circle-16(1), Mumbai.</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nimesh Vora, Ld. Adv  
Revenue by : Shri Virabhadra Mahajan, Ld.Sr.DR.

Date of Hearing : 18.07.2025  
Date of Pronouncement : 15.10.2025

**O R D E R**

**Per: Bench**

The present appeal and Cross Objection have been preferred by the Revenue and the Assessee respectively, against the order dated 27/08/2024 impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Commissioner of Income Tax (Appeals), Delhi (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2014-15.

2. Thus, the instant appeal and CO were heard together and are being disposed by this composite order. For brevity, first we will decide the CO filed by the Assessee, as the same is having involved legal issue.

**3. C.O.No. 07/MUM/2025**

In the instant case, M/s. Prism TV Pvt. Ltd. had declared its income at total loss of Rs. 107,54,68,375/- by filing its return of income for the assessment under consideration on dated 29/11/2014, which was initially processed u/sec. 143(1) of the Act. Thereafter, the return was selected for scrutiny and accordingly, notice u/sec. 143(2), dated 28/08/2015, was issued by the erstwhile Assessing Officer (AO), DCIT-14(1), Hyderabad by fixing the case for hearing on 21/09/2015, on which date certain details were filed by the Assessee.

4. Thereafter, before the then erstwhile AO i.e. DCIT-14(1), Hyderabad, the Assessee by filing a letter dated **24/10/2016** along with copy of order dated **12/08/2016** passed by the Hon'ble Bombay High Court qua amalgamation M/s. Prism TV Pvt. Ltd. and M/s. Viacom 18 Media Pvt. Ltd. and acknowledgement issued by the Registrar of companies, vide Annexures-1 & 2, intimated the erstwhile AO that the Hon'ble High Court of Judicature at Bombay vide order dated **12/08/2016** has approved the scheme of amalgamation and arrangement between M/s. Prism TV Pvt. Ltd. and M/s. Viacom 18 Media Pvt. Ltd. Further the respective shareholders and creditors of M/s. Prism TV Pvt. Ltd. have been merged with M/s. Viacom 18 Media Pvt. Ltd. w.e.f. 01/04/2015 and in pursuance to merger, the entire business undertaking

(including all assets and liabilities) of M/s. Prism TV Pvt. Ltd. stands transferred in the name of **M/s. Viacom 18 Media Pvt. Ltd.** (present Assessee) and **thus M/s. Prism TV Pvt. Ltd. is no longer in existence.**

**5. We observe** from the record that erstwhile AO situated at Hyderabad by taking cognizance of the fact *qua* merger of M/s. Prism TV Pvt. Ltd. with M/s. Viacom 18 Media Pvt. Ltd. in pursuance to the order dated 12/08/2016 by the Hon'ble Bombay High Court, transferred the entire assessment records of M/s. Prism TV Pvt. Ltd. to the present AO, i.e. ACIT, Circle-16(1), Mumbai on dated 30/11/2016, as it clearly appears from assessment order dated 30/12/2016 u/sec. 143(3) of the Act, passed by the present AO i.e. ACIT-16(1), Mumbai,

**6.** Thereafter, the present AO i.e. ACIT, Circle-16(1), Mumbai carried out the assessment proceedings and issued various statutory notices and called for various details from time to time.

**7.** The Assessee, in response to the notices issued by the present AO, attended the proceedings from time to time and filed its reply, details, clarification and explanation. The Assessee vide letter dated **23/12/2016** in the letterhead of M/s. Viacom 18 Media Pvt. Ltd. again intimated the present AO as under:

*“ At the outset, the Assessee submits that M/s. Prism TV Pvt. Ltd. has been merged with M/s. Viacom 18 Media Pvt. Ltd. w.e.f. **01/04/2015** vide Hon'ble Bombay High Court's order dated **12/08/2016**.*

**8.** Further, the Assessee in response to the statutory notices u/sec. 142(1), again replied vide letter dated 29/12/2016 in its same letterhead, depicting **M/s. Viacom 18 Media Pvt. Ltd.**

**9.** The present AO, though considered the reply and documents filed by the Assessee and discussed the issues in detail, as it clearly appears

from para 2 of the assessment order however continued with the assessment proceedings and at last, ultimately made the following additions: -

(i)	Rs. 11,84,67,839/-	on account of disallowance of depreciation on non-compete fee
(ii)	Rs. 2,35,72,64,644/-	on account of disallowance of cost of production of TV serials and programmes as revenue expenditure <b>(actual disallowance of Rs. 151,52,09,382/- made by the AO)</b>
(iii)	Rs. 5,54,38,887/-	on account of disallowance of excess depreciation claimed on 'Film Software Library'

**10.** The Assessee, being aggrieved with said disallowances challenged the same by filing first appeal before the Ld. Commissioner on merits as well as on legal ground challenging the validity of the assessment order by claiming more or less as under:

*"That vide order dated 12/08/2016 by the Hon'ble Bombay High Court, erstwhile Assessee namely M/s. Prism TV Pvt. Ltd. has merged with M/s. Viacom 18 Media Pvt. Ltd. w.e.f. 01/04/2015 and therefore M/s. Prism TV Pvt. Ltd. is not in existence and/or lost its existence and this fact was duly communicated and even otherwise was in the knowledge of the erstwhile and present Assessing Officer, but still the present AO passed the Assessment Order dated 30/12/2016 in the name of M/s. Prism TV Pvt. Ltd. which was not existed during the Assessment proceedings as on the date of passing the Assessment Order dated 30/12/2016 and therefore the same is invalid and without jurisdiction and bad in law being void as initio.*

**11.** The Assessee, before the Ld. Commissioner, in support of above contentions, also made the following submissions.

*"7. On receipt of the order of Bombay High Court dated 12 August 2016, the Appellant vide letter dated 24 October 2016 informed to the predecessor AO at Hyderabad (i.e. jurisdiction where Prism TV was originally assessed) that Prism TV has been merged with Viacom 18 with effect from 1 April 2015. A copy of the said letter is attached, please refer PB pg. no. 41 to 42. Prism TV's case was then transferred to the Asst. Commissioner of Income-tax – 16(1), Mumbai. A copy of the*

letter dated 5 December 2016 issued by the predecessor AO at Hyderabad informing Prism TV that its files have been transferred to Mumbai is attached, please refer PB pg. no. 43. Subsequently, notices dated 6 December 2016 and 15 December 2016 were issued to Prism TV by the learned AO in Mumbai under section 142(1) of the Act calling for certain details/ documents in connection with the assessment proceedings of Prism TV for AY 2014-15. A copy of said notices are attached, please refer PB pg. no. 44 to 47. While the said notices were issued to Prism TV, given that Prism TV had merged into the Appellant (i.e. Viacom18), the Appellant as a successor of Prism TV, submitted the details/ documents as called for Inter alia, it was also submitted to the learned AO in Mumbai that Prism TV has merged into Viacom 18 with effect from 1 April 2015. A copy of letters dated 23 December 2016 and 29 December 2016 filed with the learned AO in Mumbai are attached, please refer PB pg. no. 48 to 72.

8. From above, it is evident that the fact that Prism TV has been merged into Viacom 18 with effect from 1 April 2015 was disclosed to the learned AO at Hyderabad as well as at Mumbai. However impugned assessment order u/s 143(3) dated 30 December 2016 for AY 2014-15 has been passed by the learned AO at Mumbai in the name of Prism TV i.e. who was not in existence at the time of passing of order.

9. It is a trite law that assessment cannot be made on a non-existent company. However, the learned AO erred in framing the assessment without appreciating the facts of the case and the legal position, therefore, the action of the learned AO is unwarranted bad in law. Hence, the impugned assessment order dated 30 December 2016 passed u/s 143(3) of the Act merits to be quashed.

10. In this regard, the Appellant strongly relies on the decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. 416 ITR 613. In the said case, the assessee company, viz. M/s. Suzuki Power Train India Limited had filed return of income in question in its name. Later, it was amalgamated with another company, named M/s. Maruti Suzuki India Limited, and thereby lost its existence. However, notices u/s. 143(2), 142(1) was issued in name of "M/s. Suzuki Power Train India Limited". The Hon'ble Supreme Court also dealt with the Department's argument that assessment order passed u/s. 143(3) of the Act was valid as the names of both the amalgamated company and the amalgamating company were mentioned in the assessment order as - "Suzuki Power Train India Limited (amalgamated with Maruti Suzuki India Limited)".

In light of these facts, the Hon'ble Apex court had held that -

"19. While assessing the merits of the rival submissions, it is necessary at the outset to advert to certain significant facets of the present case:

- (i).....

*(vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.”*

*A copy of the decision is attached, please refer PB pg no. 73 to 89.*

*While holding so, the Hon’ble Court affirmed decision of Hon’ble Delhi high Court in case of Spice Infotainment Ltd. v. CIT (2012) 65 DTR (Del) 391 [SLP against the same was dismissed in Civil Appeal No. 285 of 2014]. The Hon’ble Delhi High Court held that upon a notice under Section 143 (2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect.*

*Further, the Hon’ble Delhi High Court had observed that –*

*“In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time-barred.”*

*The Hon’ble Apex Court further held that participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. Accordingly, the assessment made was upheld as null.*

*A copy of the decision is attached, please refer PB pg no. 90 to 101.*

*11. Later, Hon'ble Supreme Court has allowed Department's appeal in case of PCIT v. Mahagun Realtors P Ltd. [2022] 137 taxmann.com 91 (SC), wherein assessment order passed in name of non-existent entity was upheld by the Hon’ble Court. While doing so, it distinguished facts in case of Maruti Suzuki India (supra), as under:*

*a) In case of Mahagun Realtors, no intimation was given by the assessee to the AO regarding the amalgamation. In fact, the erstwhile entity continued to file return of income in its non- existent name even after the date of amalgamation. It kept on representing itself in its erstwhile name before the AO in the assessment proceedings and during the search and seizure operations.*

*b) Whereas, in case of Maruti Suzuki (supra), the AO issued jurisdictional notice and assessment order in name of non-existent*

*entity by noting into brackets that the entity has been amalgamated, despite the fact of amalgamation was informed to the assessing officer. A copy of the decision is attached, please refer PB pg no. 102 to 122.*

*12. Recently, in case of Hindustan Unilever Ltd (As Legal, Successor of Glaxo Smithkline Consumer Healthcare Ltd) v. DCIT [2023] ITA No. 1860/Mum/2022 (Mum)(ITAT), the AO was informed about the amalgamation and yet he passed orders in name of non-existent entity. Hon'ble ITAT distinguished the decision in case of Mahagun Realtors (supra) as in that case the Assessee never intimated the assessing officer about the amalgamation and continued its representation in name of non-existent entity. Hon'ble ITAT quashed the assessment orders passed in name of non-est entity by following decision in case of Maruti Suzuki (supra).*

*A copy of the decision is attached, please refer PB pg no.123 to 160.*

*13. Further reliance is placed on decision of Hon'ble Bombay High Court in case of New Age Buildtech (P.) Ltd. v. NFAC [2023] 151 taxmann.com 66, wherein factum of knowledge of amalgamation was not disputed by Department nor was there any denial of information with regard to the amalgamation. In that background Hon'ble High Court quashed the show-cause notices, assessment order, notice of demand, issued in name of amalgamating company which was not in existence at the relevant time. A copy of the decision is attached, please refer PB pg no. 161 to 163. 14. In view of the above submissions and judicial precedents, we humbly submit that issue under consideration is no longer res integra. Hence, we request your Honour to hold the impugned assessment order framed by the learned AO u/s 143(3) of the Act on a non-existent company, as invalid, without jurisdiction and bad in law.”*

**12.** The Ld. Commissioner also sought for comments of the AO, on which the AO has submitted **“that assessment order dated 30/12/2016 has been passed by assuming jurisdiction of the case”**.

**13.** Thereafter, the Ld. Commissioner, though deleted the aforesaid additions/disallowances made by the AO, by allowing relevant grounds of appeal on merit raised by the Assessee, however, by considering the submissions of the Assessee and the AO on legal issue/aspect and relying on the judgment of the Hon'ble Apex Court in the case of *PCIT vs. Mahagun Realtors P. Ltd. [2022] 137 taxmann.com 91 (SC)*, ultimately, rejected the legal ground raised by the Assessee qua validity of the assessment order, by observing and holding as under: -

*"13. I have gone through the assessment order, the detailed written submissions filed by the Appellant and the supporting documents and various judicial decisions relied on by the Appellant company and submitted in the form of Paper Book. The present issue relates to the legal question that the AO has passed the assessment order in the name of the amalgamating entity which has been merged with the Appellant (Viacom) as on the date of passing the assessment order (30.12.2016) and whether such assessment order is valid or not?"*

*The above legal position is settled by Hon'ble Supreme Court's decision in the case of PCIT v Mahagun Realtors P Ltd [2022] 137 taxmann.com 91 wherein the Hon'ble Supreme Court has observed that issuance of order by the income-tax department in the name of amalgamating entity cannot nullify it as the authority has the option of making a common order in the name of amalgamated entity which may contain different parts relating to the amalgamating entity. In other words, the Hon'ble Supreme Court analysed the concept of amalgamations / mergers as dealt with in the Income-tax Act, 1961 to conclude that, the corporate death of an entity on amalgamation per se cannot invalidate an assessment order. Respectfully, following the decision of the Hon'ble Supreme Court in the case of PCIT v Mahagun Realtors P Ltd (supra), I hold the assessment order to be valid and dismiss this ground of appeal of the Appellant.*

*13.1 Ground No 1 is accordingly dismissed."*

**14.** The Assessee, therefore, being aggrieved against the decision of the Ld. Commissioner for not annulling and declaring assessment order as invalid, has preferred this **CO**, which is under consideration.

**15.** The Assessee, reiterated its submissions as made before the Ld. Commissioner and also relied on the judgments passed by the Hon'ble Apex Court in the case of *PCIT vs. Maruti Suzuki India Ltd.* [2019] 416 ITR 613 (SC) and the Hon'ble Bombay High Court in the case of *New Age Buildtech (P.) Ltd. vs. National Faceless Assessment Centre* [2023] 151 taxmann.com 66 (Bom.) and the Hon'ble Coordinate Bench of Tribunal at Mumbai in the case of *Abbott India Ltd vs. ACIT* [2023] 202 ITD 287 (Mum. -ITAT).

**16.** On the contrary, learned Departmental Representative (DR) supported the impugned order by relying on the judgment of the Hon'ble Apex Court in the case of *Mahagun Realtors P. Ltd.* (supra) and claiming that the Hon'ble Apex Court has observed that issuance of the order by the Income Tax department in the name of amalgamating entity, cannot nullify, as the authority has the option of making a common order in the name of amalgamated entity which may contain different parts relating to the amalgamating entity. In other words, the Hon'ble Apex Court analyzed the concept of amalgamations/mergers, as dealt with in the Income-tax Act, 1961 to conclude that the corporate death of an entity on amalgamation, *per se* cannot invalidate assessment order passed, and therefore, in view of aforesaid decision, the assessment order is liable to be declared as valid in the eyes of law as approved by the Ld. Commissioner, by dismissing the cross objection challenging the assessment order by the Assessee.

**17.** We have heard the parties and perused the material available on record and given thoughtful consideration to the rival contentions of the parties and peculiar facts and circumstances of the case. In our considered view for better understanding and adjudication of the issue involved, it would be appropriate to peruse the relevant part of the judgment of the Hon'ble Apex Court in the case of ***Maruti Suzuki India Ltd.*** (supra), wherein the Hon'ble Apex Court dealt with as issue, where though the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, but still the jurisdictional notice was issued and assessment order was passed only in the name of amalgamating company and therefore the Hon'ble Apex Court by considering the relevant provisions of section 170 of the Act and judgments concerning the issue, such as, in the cases of ***Spice Entertainment Ltd. vs. CST [2012] 280 ELT 43 (Del.)*** and ***Sky Light Hospitality LLP vs. ACIT [2018] 405 ITR 296 (Del.)***, ultimately affirmed the decision of the Tribunal in such situation holding the Assessment Order as nullity, as affirmed by the Hon'ble High Court, by observing and holding as under:

**33** *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 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.*

*34 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.*

**18.** We observe that jurisdictional High Court as well, in the case of Bennett Coleman and Company Ltd. Vs Union of India & others {Writ Petition no. 2105 of 2022 decided on 27th JUNE, 2023 has also dealt with as identical issue, wherein factum of amalgamation of erstwhile or non-existent company i.e. TIML was very much within the knowledge of the Revenue and therefore the Hon'ble High Court ultimately held the impugned notice issued under section 148 of the Act, dated 31st March 2021 as unsustainable in law and accordingly set aside the same , by observing and holding as under:

*8. We have heard learned counsel for the parties. It is not denied that the notice issued under section 148 of the Act was issued in the name of a non-existent entity, i.e., Times Entertainment Media Ltd. which had ceased to exist pursuant to the Scheme of Amalgamation and arrangement having been approved vide order dated 3rd July 2015 with effect from 3rd July 2015 passed by this Court with effect from 1st April 2013. It is also not denied, as can also be seen from the material on record, that the factum of amalgamation of TIML was very much within the knowledge of the respondents. If that be so, then issuance of the impugned notice under section 148 in the name of a non-existent entity would render it void.*

*9. A similar view has been taken by us in the case of CLSA India Private Limited (Supra) following the ratio of the judgment of the Apex*

*Court in the case of Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax 3 as also in the case of Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd., which held as under:*

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*10. In view of the ratio of the judgments (Supra) which were followed by us in the case of CLSA India Private Limited (Supra), we hold that the impugned notice issued under section 148 of the Act, dated 31st March 2021 is unsustainable in law and is accordingly set aside.*

**19.** Further, the Hon'ble Bombay High Court in the case of *New Age Buildtech (P.) Ltd.* (supra) has also dealt with an identical issue as involved in the instant case, wherein the petitioner was amalgamated with the erstwhile ERP Infrastructure Projects Pvt. Ltd. pursuant to the order passed by the National Company Law Tribunal (NCLT) on 03/12/2021 w.e.f. 01/04/2021. The said fact was communicated by uploading the order of the NCLT on 28/07/2022, in response to the notice issued u/sec. 142(1) of the Act on the portal evinced by e-proceedings response acknowledgment. However, disregarding the repeated communications by the petitioner, evincing the amalgamation of the erstwhile ERP Infrastructure Project Pvt. Ltd. with the petitioner, the AO still show-caused the Assessee and ultimately passed the assessment order dated 28/09/2022 u/sec. 143 of the Act.

The Hon'ble High Court, thus by taking cognizance of the aforesaid facts, which were not in dispute and considering the judgments of the same Court in the case of *CLSA India (P.) Ltd. vs. DCIT* [2023] 149 taxmann.com 380 and the Hon'ble Apex Court in the case of *Maruti Suzuki India Ltd.* (supra) and *Spice Entertainment Ltd.* (supra), ultimately quashed the assessment order and consequently notices of demand and penalty by allowing writ petition of the Assessee, by observing and holding as under:

*“3. Briefly stated the material facts are that the Petitioner amalgamated with the erstwhile ERP Infrastructure Projects Private Limited pursuant to the order passed by the National Company Law Tribunal (NCLT) on 3rd December 2021 with effect from (w.e.f.) 1st April 2021. This fact was communicated by uploading the order of the NCLT on 28th July 2022 in response to the Notice issued u/s 142 (1) of the Act on the portal evinced by e-Proceedings Response Acknowledgment. Disregarding the repeated communications by the Petitioner evincing the amalgamation of the erstwhile ERP Infrastructure Projects Private Limited., with the Petitioner, show cause notices dated 26th August 2022, 19th September 2022, assessment order u/s 143 dated 28th September 2022 and consequential notice of demand dated 28th September 2022 u/s 156, 270A, & 271AAC(1) were issued by the Respondents to the non-existent company ERP Infrastructure Projects Private Limited.*

*4. The factum of knowledge of amalgamation is not disputed by the Respondents’ Counsel Mr. Sharma nor is there any denial of with regard to the amalgamation being received in the Affidavit in Reply dated 28th March 2023 filed by the Jurisdictional Assessment Officer.*

*5. Be that as it may, this Court in the case of CLSA India Private Limited vs DCIT-4(1)(1)1 (passed by the bench of whom one of us viz. Hon’ble Justice Dhiraj Singh Thakur was a member) has held that an active PAN of a non-existent company cannot create an exception in favour of the revenue to dilute in any manner the principles enunciated by the following judgments:*

*i. The judgment of the Apex Court in the case of Saraswati Industrial Syndicate Ltd. vs CIT 2 which held that when two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another; the amalgamating company loses its entity;*

*ii. The judgment of the Delhi High Court in the case of Spice Entertainment Ltd vs CST 3 which held that once the factum of amalgamation of a company had been brought to the notice of the A.O., despite which the proceedings are continued and an order of assessment passed in the name of 1 Order dated 10th February 2022 in Writ Petition No. 2462 of 2022 2 186 ITR 278 (SC) 3 2012 (280) ELT 43 (Del) 3/5 32.wp.5308.22.doc Sumedhnon-existent company, the order of assessment would not be merely a procedural defect but would render it void; and*

*iii. The judgment of the Apex Court in the case of PCIT, New Delhi vs Maruti Suzuki India Ltd.4 which held that if despite informing the assessing officer if the jurisdictional notice was issued in the name of erstwhile company, then the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation and the*

*participation in the proceedings by the assessee cannot operate as an estoppel against law.*

*6. In our view, considering the facts of the present case on the touchstone of the aforesaid well settled propositions of law therefore, the Order of assessment u/s 143(3) dated 28th September 2022 and consequential notices u/s 156, 270A, 271AAC(1) issued in the name of a non-existent entity are void.*

*7. The Writ Petition is allowed. The impugned assessment order u/s 143 dated 28th September 2022 and consequential notices, demand and penalty under sections 156, 270A, & 271AAC(1) all dated 28th September 2022 are set aside. The Respondents are at liberty to issue fresh notices in accordance with law”.*

**20.** We further observe that the Hon'ble Coordinate Bench of the Tribunal at Mumbai in the case of *Abbott India Ltd.* (supra) has also considered the identical issue, as well as the judgment of the Hon'ble Apex Court in the case of *Maruti Suzuki India Ltd.* and *Mahagun Realtors (P.) Ltd.* (supra) and by taking cognizance of the fact that factum of knowledge of amalgamation has not been disputed by the learned Departmental Representative, nor there was any denial of information with regard to amalgamation by the Jurisdictional Assessing Officer (JAO), ultimately, quashed the assessment order by observing and holding as under:-

*“18. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that factum of knowledge of amalgamation is not disputed by the learned departmental representative nor is there any denial of information with regard to the amalgamation by the Jurisdictional Assessment Officer, the learned dispute resolution panel. We find that recently the honourable Bombay High Court on identical facts and circumstances of the case in *New Age Buildtech (P.) Ltd. v. National Faceless Assessment Centre [2023] 151 taxmann.com 66 (Bom.) [26-04-2023]* has held as under:-*

*“5. Be that as it may, this Court in the case of *CLSA India (P.) Ltd. v. Dy. CIT [2023] 149 taxmann.com 380/Order dated 10th February 2022 in Writ Petition No. 2462 of 2022 (passed by the bench of whom one of us viz. Hon'ble Justice Dhiraj Singh Thakur was a member) has held that an active PAN of a non-existent company cannot create an exception in favour of the revenue to dilute in any manner the principles enunciated by the following judgments:**

- i. *The judgment of the Apex Court in the case of Saraswati Industrial Syndicate Ltd. v. CIT [1990] 53 Taxman 92/186 ITR 278 which held that when two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another; the amalgamating company loses its entity;*
- ii. *The judgment of the Delhi High Court in the case of Spice Entertainment Ltd. v. CST 2012 (280) ELT 43 (Delhi) which held that once the factum of amalgamation of a company had been brought to the notice of the A.O., despite which the proceedings are continued and an order of assessment passed in the name of non-existent company, the order of assessment would not be merely a procedural defect but would render it void; and*
- iii. *The judgment of the Apex Court in the case of Pr. CIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann. com 375/265 Taxman 515/416 ITR 613 which held that if despite informing the assessing officer if the jurisdictional notice was issued in the name of erstwhile company, then the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation and the participation in the proceedings by the assessee cannot operate as an estoppel against law.*

6. *In our view, considering the facts of the present case on the touchstone of the aforesaid well settled propositions of law therefore, the Order of assessment u/s 143(3) dated 28th September 2022 and consequential notices u/s 156, 270A, 271AAC(1) issued in the name of a non-existent entity are void."*

**19.** *Decision relied upon by the learned departmental representative on case of Mahagun Realtors (P.) Ltd. (supra) wherein it has been held that Where post amalgamation, no indication was given to AO during search conducted at premises of assessee- amalgamating company about amalgamation and return filed pursuant to notice issued under section 153A suppressed fact of amalgamation, since conduct of assessee reflected that it consistently held itself as assessee, assessment order passed in name of assessee-amalgamating company was valid. In the present case, at all stages the assessee informing the assessing officer and the learned dispute resolution panel about the fact of amalgamation and apparently assessee did not suppress the fact of amalgamation but made it loud and clear at every stage. Therefore, the ratio of that decision does not apply to the facts of the case before us.*

**20.** *In view of above facts and judicial precedents , where there is no denial that assessee has intimated to the learned assessing officer and the learned dispute resolution panel as well as the jurisdictional assessing officer about the fact of amalgamation, which is comprised in paper book filed for assessment year 2008 - 09 containing 57 pages*

*wherein various correspondences were cited before us supporting the same, we have no hesitation in holding that the assessment order passed in the name of nonexistent entity in the name of Solvay Pharma Ltd is void and liable to be quashed. Accordingly, we quash the assessment order passed for assessment year 2008 - 09.*

**21.** Coming to the judgment relied on by the Ld. Commissioner and the Id. DR in the case of **Mahagun Realtors (P.) Ltd.** (supra), we observe that the Hon'ble Apex Court in the said case has considered the peculiar fact that post amalgamation, no information was given during the course of search conducted at the premises of the Assessee and return filed pursuant to notice issued under section 153A, suppressing the fact of amalgamation and since the conduct of the Assessee (amalgamating company) reflected that it consistently posed itself as Assessee, therefore assessment order passed in name of Assessee, was held to be valid. For brevity, clarity and better understanding, concluding part of the judgments is reproduced herein below:

*41. In the light of the facts, what is overwhelmingly evident- is that **the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL.** Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the CIT, and a cross appeal was filed before ITAT. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings 33 specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The AO, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.). The mere choice of the AO in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i.e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order – and Section 394 (2). Furthermore, it would be anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order*

would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, **this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee.** The approach and order of the AO is, in this court’s opinion in consonance with the decision in Marshall & Sons (supra), which had held that: “an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Company.”

**22.** The Hon'ble Apex Court in the case of *Mahagun Realtors (P.) Ltd.* has also considered the judgments in the case of *Maruti Suzuki India Ltd.* (supra) and *Spice Entertainment Ltd.* (supra) and distinguished the said judgments by holding as under:

**“ 33.** *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 present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.*

**34.** *That in both the relied upon cases, Assessee had duly informed the authorities about the merger of companies and yet, the assessment order was passed in the name of amalgamated/non-existence company. However, in the present case for A.Y. 2006-07, there was no intimation by the Assessee regarding amalgamation of the company.....*  
.....  
.....  
.....

**35.** *Secondly, in the cases relied upon, the amalgamated companies had participated in the proceedings before the department and the courts held that participation by the amalgamated company will not be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL-which held out itself as MRPL.....*  
.....”.

**23.** Thus, the dictum laid down by the Hon'ble Apex Court in the case of Mahagun Realtors (P.) Ltd. (supra) is very much clear that where no intimation about the merger of the companies was given to the AO and or the AO had no knowledge about amalgamation, then the order passed in the name of amalgamated /non-existed company, would be valid.

**24.** Whereas, as per dictum laid down by the Hon'ble Apex Court in the case of Maruti Suzuki India Ltd. (supra) and Spice Entertainment Ltd., where intimation has been given by the Assessee about amalgamation of the company to the AO but still the AO passed the assessment order in the name of amalgamating or non-existing company, then the situation would be different and/or invalidates the assessment order.

**25.** From the aforesaid judgments, it has become clear that where the Assessee informed the AO *qua* amalgamation and/or the AO got the knowledge about the amalgamation prior to the passing of the Assessment order and/or the factum *qua* amalgamation is not in dispute, then the assessment order passed in the name of amalgamating or erstwhile entity who ceased to exist, would be nullity being void *intio*.

**26.** Coming to the present case, we observe that the Assessee after receiving the notice u/sec. 143(2) of the Act, at the first opportunity itself, vide intimation dated 05/12/2016 informed the then erstwhile AO *qua* amalgamation of M/s. Prism TV Pvt. Ltd. with M/s. Viacom 18 Media Pvt. Ltd. and claimed that M/s. Prism TV Pvt. Ltd. has ceased to exist. Even otherwise the erstwhile AO by taking cognizance of the said amalgamated fact, transferred the record to the AO having jurisdiction at Mumbai i.e. present AO and therefore in pursuance to transfer of record, the present AO received the record on dated 06/12/2016 and noted such factum of amalgamation of M/s. Prism TV Pvt. Ltd. with M/s. Viacom 18 Media Pvt. Ltd. in para no. 1 of assessment order itself. It is also a fact that the Assessee subsequently as well, by filling replies in response to the statutorily notices, again and again informed the AO about amalgamation and posed itself as amalgamated company through its conduct and letter

heads but the AO still continued with the assessment proceedings, in the name of erstwhile non-existing Company i.e. M/s. Prism TV Pvt. Ltd., and ultimately passed the assessment order in the name of dead person/amalgamating company/non-existent company i.e. M/s. Prism TV Pvt. Ltd..whis s unsustainable. The Decision of Ld. Commissioner and contention raised by the Ld. DR to the effect *“that issuance of order by the income-tax department in the name of amalgamating entity cannot nullify it as the authority has the option of making a common order in the name of amalgamated entity which may contain different parts relating to the amalgamating entity. In other words, the Hon’ble Supreme Court analysed the concept of amalgamations / mergers as dealt with in the Income-tax Act, 1961 to conclude that, the corporate death of an entity on amalgamation per se cannot invalidate an assessment order”*, has no substance and plausibility as the said observation at all, is not applicable to the present case, as it is a fact that the Assessee in Mahagun case , at the relevant time has not informed the Revenue qua amalgamation and represented itself as Assessee, whereas in the present case, the Assessee had duly informed the Revenue qua amalgamation and even otherwise in this case no common order in the name of amalgamated entity containing different parts relating to the amalgamating entity has been passed and therefore, the decision of Hon’ble Apex Court rendered in peculiar facts and circumstances, has no applicability to the instant case. And thus in our considered view the decision of the Ld. Commissioner in dismissing the legal ground raised by the Assessee, by picking and relying on certain observation of the Hon’ble Apex Court in Mahagun case (supra), is devoid of merit and therefore the impugned decision on legal aspect, is unsustainable.

**27.** Thus, on the aforesaid analyzations, we have no hesitation to hold that in the instant case, as admittedly, the Assessee duly intimated the fact *qua* amalgamation of M/s. Prism TV Pvt. Ltd.-amalgamating company with the amalgamated company i.e. M/s. Viacom 18 Media Pvt. Ltd., {*the present Assessee herein*} and it is a fact, as it appears from records that the erstwhile AO i.e. DCIT, Circle-16(2), Hyderabad after getting

knowledge by its own or through Assessee, about factum qua amalgamation approved by the Hon'ble High Court, vide letter on dated 30/11/201, transferred the assessment records to the present AO, who received the same on dated 06/12/2016, as acknowledged in para 1 of the assessment order dated 30/12/2016 u/sec. 143(3) itself.

And thereafter the present AO issued further statutory notices and continued with the assessment proceedings and ultimately passed the assessment order in the name of dead person or non-existed company or amalgamating company namely M/s. Prism TV Pvt. Ltd., and thus, the assessment order as claimed by the Assessee, is liable to be declared as invalid being void ab initio. Thus, the assessment order itself is quashed being invalid or void ab initio.

**28. Resultantly,** the CO filed by the Assessee stands allowed.

**28.** Coming to Revenue's appeal i.e. ITA No. 5667/MUM/2024, it is observed that there is a delay of 02 days in filing of instant appeal. Considering the reasons stated by the Revenue and as miniscule, the delay is condoned.

**28.1** Now, coming to the merits of appeal filed by the Revenue Department, challenging the decision of the Ld. Commissioner in deleting the disallowances/additions made by the AO, as we have already quashed the Assessment Order which was foundation of the additions/disallowances made, which is resulted into filing of first appeal before the Ld. Commissioner and passing of the impugned order dated 27/08/2024. Thus, we deem it appropriate not to delve into the merits of the case filed by the Revenue Department as adjudication on the same, would prove futile exercise which we are inclined to do. Thus, in view of the decision in **CO** quashing the assessment order *{the foundation of the additions/ disallowances}*, the appeal of the Revenue Department has also become infructuous and therefore the same is dismissed.

**29.** In the result, CO filed by the Assessee, is allowed, whereas Revenue's appeal is dismissed being infructuous.

**Order pronounced in the open court on 15.10.2025.**

**Sd/-  
(PADMAVATHY S)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

vr/-

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai.  
The DR, ITAT, Mumbai 'F' Bench

//True Copy//

By Order

Dy./Assistant Registrar  
ITAT, Mumbai.