IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A No.5959/Mum/2025	**-**	**A.Y. 2020-21**
I.T.A No.5960/Mum/2025	**-**	**A.Y. 2019-20**
I.T.A No.5961/Mum/2025	**-**	**A.Y. 2018-19**

Kalpataru Projects International Ltd. 101, Part-III, GIDC Estate Sector-28, Gandhinagar, Gujarat-382028 **PAN: AAACK8387R**	**vs**	**DCIT, central Circle-3(3), Mumbai** Room 404, Kautilya Bhawan, G Block BKC, Bandra East, Mumbai-400051
APPLICANT		**RESPONDENT**

I.T.A No.6113/Mum/2025	**-**	**A.Y. 2018-19**
I.T.A No.6114/Mum/2025	**-**	**A.Y. 2019-20**
I.T.A No.6159/Mum/2025	**-**	**A.Y. 2020-21**

DCIT, central Circle-3(3), Mumbai Room 406, 4th Floor, Kautilya Bhawan, BandraKurla Complex, Bandr (E), Mumbai-400051	**vs**	**Kalpataru Projects International Ltd.** 101, Part-III, GIDC Estate Sector-28, Gandhinagar, Gujarat-382028 **PAN: AAACK8387R**
APPLICANT		**RESPONDENT**

Assessee by	:	Shri Vijay Mehta
Revenue by	:	Shri Ritesh Misra, CIT DR

Date of hearing : 08/01/2026
Date of pronouncement : 13/01/2026

O R D E R

Per Bench:

A bunch of appeal was filed by both the assessee and cross appeal by revenue against the separate orders of the Learned Commissioner of Income-tax (Appeals)–51, Mumbai [hereinafter referred to as "Ld. CIT(A)"], orders passed under section 250 of the Income-tax Act, 1961 ("the Act"), date of orders 31.07.2025 related to assessment years 2018–19 to 2020–21. The impugned orders were emanated from the orders of the Ld. DCIT, Central Circle-3(3), Mumbai, all the orders were passed under section 147 of the Act date of order 30.03.2025.

2. Since all the appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the cross-appeals for the assessment year 2018-19 are treated as a lead case, and the decision rendered therein shall apply mutatis mutandis to other appeals before us.

3. The assessee has taken the following grounds related to **ITA No.5961/Mum/2025, AY 2018-19.**

"1 The Learned Commissioner of Income-tax Appeals 51, Mumbai (hereinafter referred as 'CIT(A)'] has erred in not holding that the assessment order passed by the A.O under section 147 of the Act is bad in law.

2 The CIT(A) has erred in not holding that the addition made by the A.O in respect of transactions of JMC Projects (India) Ltd. (which company got merged into Appellant with effect from 01 April 2022) is without jurisdiction and bad in law.

3 The CIT(A) has erred in confirming the disallowance of INR 3,82,32,499 being 12.50% of total alleged non-genuine purchase of INR 30,58,59,992 made by JMC Projects (India) Ltd.

4 The CIT(A) has erred in upholding the disallowance of employee contributions to ESIC made by JMC amounting to INR 84,95,010

5 The CIT(A) has erred in not granting the credit of foreign taxes paid by the Appellant under section 90/90A of the Act amounting to Rs. 19,91,64,698/-."

3.1. The revenue has taken the following grounds related **ITA No. 6113/Mum/2025 AY 2018-19**.

Grounds of appeal:

1. "Whether on the facts and circumstances of the case and in law, the The Ld. CIT(A) has erred in placing undue reliance on documents such as ledger accounts, self-generated invoices, work orders, and bank payments produced by the assessee without ensuring independent third-party verification of actual supply of goods/services. Such self-serving documents cannot establish genuineness in the face of contrary evidence unearthed during investigation."

2. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in restricting the disallowance of purchases from certain vendors from 100% to 12.5%, thereby granting relief of Rs. 23,09,14,296/-, despite clear and cogent evidence gathered during search and post-search proceedings establishing that the transactions were non-genuine."

3. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in disregarding the binding decision of the Hon'ble Bombay High Court in PCIT v. Drisha Impex (P.) Ltd. [2025] 173 taxmann.com 571, wherein the Hon'ble Court upheld and restored the addition made by the Assessing Officer. The assessee therein had preferred an SLP before the Hon'ble Supreme Court, which was dismissed, thereby affirming the judgment of the Hon'ble Bombay High Court and sustaining the addition made by the Assessing Officer."

4. The brief facts of the case are that the assessee is public limited company engaged in engineering, procurement and construction services across various infrastructure sectors including power transmission building and factories, water, railways and heavy civil infrastructure. The assessee filed the original return under section 139(1) on 30.11.2018 by declaring total income amount to Rs.4,54,32,14,660/- and computed book profit under section 115JB of the Act amount to Rs.4,69,85,90,847/-. The case was selected for scrutiny and order under section 143(3) was passed. A search and seizure action under section 132 of the Act was carried out in Kalpataru Group of Companies on 04.08.2023 in which the premises of the assessee was also covered. The notice under section 148 was issued on 31.03.2024 in response the assessee filed the return. After the details scrutiny the Ld. AO disallowance of 100% of expenses amounting to Rs.2,47,49,600/- under section 37(1) of the Act in respect of transaction of erstwhile M/s JMC Projects (India) Ltd. (JMC) which is merged with the assessee w.e.f. 01.04.2022. The Ld. AO during assessment proceeding had made the details factual discussion which is reproduced as below:

> *"3. It is also to be noted that M/s, JMC Projects India Limited (JMC) has merged into M/s. Kalpataru Projects International Limited (KPIL) (earlier known as M/s. Kalpataru Power Transmission Limited) which is effective from 01.04.2022. Thus, KPIL is the successor entity of JMC. In this regard, it is pertinent to mention that on perusal of the merger order dated 21.12.2022 passed by National Company Law Tribunal, Ahmedabad, it is seen that as per order all the assets, liabilities, rights, claims, duties and obligations etc. of JMC shall stand transferred to and vested in KPIL on a going concern basis, so as to become the assets, liabilities (including tax liabilities), rights, claims, duties and obligations etc. of KPIL. It is also mentioned that any legal proceeding pending by/against JMC shall continue on behalf of KPIL.*
>
> *3.1 In view of the above, it is evident that once an entity is merged, it ceases to exist, and all legal and tax liabilities and any other proceeding shift to the resulting/successor*

entity. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in Maruti Suzuki Case (2019) wherein it was held any notice issued to a non-existent entity is void ab initio (invalid from the beginning). Therefore, the proper approach is to issue notices in the name of the successor entity after merger/amalgamation. The same approach has been followed in the instant case.JMC was no longer in existence and KPIL was the successor entity as on the date of issuing notice u/s. 148 of the Act for the year under consideration. Accordingly, on the basis of findings of the search and post search proceedings regarding tax evasion by JMC and KPIL, notice u/s. 148 was issued in the name of KPIL being the resulting/successor entity.

4. A search & seizure action under section 132 of the Income Tax Act, 1961 (hereinafter referred to "the Act") was carried out in Kalpataru Group of companies on 04.08.2023 at the premise 101, Kalpataru Synergy, Opp Grand Hyatt, Santacruz East, Mumbai-400055. The assessee company i.e. M/s. Kalpataru Projects International Limited (earlier known as M/s. Kalpataru Power Transmission Limited) was also covered in same search.

5. Consequent to the search and seizure action, the case was centralized to this charge. The case of the assessee was reopened by issuing the notice u/s. 148 of the Act on 31.03.2024. The notice was duly served on the assessee. In response to thesame, the assessee filed its return of income on 28.06.2024 declaring total income of Rs.454,32,14,660/- and Book Profit u/s.115JB at Rs.469,85,90,847/-.Thereafter, notice u/s. 143(2) dated 25.07.2024 of the Act was issued and served."

The assessment under section 147 of the Act was framed. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), challenging the assessment both on legal grounds as well as on merits. The Ld. CIT(A) partly allowed the appeal on merits by restricting the addition to 12.5% of the alleged bogus purchases made by JMC; however, the legal grounds raised by the assessee were rejected. Being aggrieved by the said order, both the assessee as well as the revenue has filed appeals before us.

5. The Ld. AR argued and filed paper book which is containing pages 1 to 146 which is kept in record. The Ld. AR filed a written note related to his argument which is annexed in Legal Paper Book page 229 to 230. The said written note is reproduced as below:-

*"**Note on assessment of JMC Projects***

*1. Section 60 to 65 (Chapter V) of the Income-tax Act provides for clubbing of income of one assessee with income of another assessee. As against that, **Sections 159, 160, 161, 162, 163 etc. (including S. 170)** provides mechanism for assessment of income of the predecessor in the name of successor in a representative capacity. These provisions are different from the provisions of clubbing inasmuch as it merely provides for i) giving an opportunity of hearing to the successor and ii) recovery of tax liability from the successor. The income of the successor and tax liability thereon is not affected by virtue of these provisions.*

*2. In the present case, the assessment has been reopened **u/s. 147 of the Act pursuant to search action in the case of assessee**. Reopening of assessment of searched person do not require any prior opportunity of hearing or passing of the order before issue of notice u/s. 148 of the Act. However, since JMC Projects has not been searched, its assessment could not have been made subject-matter of reassessment.*

3. A SINGLE ASSESSMENT ORDER CAN NOT BE PASSED BY CLUBBING THE INCOME OF THE PREDECESSOR

Passing of the single order by merging income of successor with addition of predecessor is impermissible and illogical.

*i. If the income of the predecessor is clubbed with the successor, the **ceiling on exemption** (say S. 54 etc.) and **deduction** (such as Chapter VIA) would get combined. This cannot be the intention of the Legislature to carry out assessment (of a representative assessee) in such a manner.*

*ii. Similarly, the **threshold limit and the rate of tax** in the case of predecessor and successor could be different.*

*iii. The status of the predecessor could be different than that of a successor. **Trustees** are assessed as representative assessee of the trust's income. Such assessment is always independent of the personal income of the trustee.*
Further, irrespective of the status of the trustee, the status of the trust would be that of beneficiary. Accordingly, the status of the trustee and status of the beneficiary (and, therefore, that of a trust) cannot be the same always. Therefore, one common assessment is impossible.

*iv. The **residential status** of the predecessor could be different than that of a successor resulting in difference in rate of tax, treaty benefit etc.*
*v. The **brought forward losses and depreciation** of predecessor and successor could be different. In a given case, it may lead to unintended benefit to assessee. A successor may claim clubbing of losses of predecessor for a period prior to succession.*

*vi. The applicability of **MAT/AMT** provisions could be different with different MAT/AMT credit. In the present case, JMC Projects has brought forward MAT credit which has been ignored by the Assessing Officer as he was assessing the assessee who is successor.*

*vii. The **time limit** for reassessment, revision, rectification could be different.*

4. The law does not envisage a completed assessment to be revisited merely because of an amalgamation/merger/death etc.

*5. In the case **of Maruti Suzuki**, the notice was issued in the name of predecessor to tax the income of the predecessor. It was held that the notice could not be issued in the name of the predecessor. The notice ought to have been issued in the name of successor representing the predecessor. **In that case the assessment under consideration was only of income of the predecessor.** (The total income of the successor/computation of income of the successor was not disturbed). It was not a case where the assessment of successor was taken up in which the income of predecessor was to be clubbed. Even in a case where the correct notice i.e. in the name of successor entity as a representative has been issued, what can be taxed is only the income of predecessor. It was not a case of assessment of an income of the predecessor while carrying out the assessment of successor."*

6. The Ld. AR advanced his arguments by submitting that the statute itself does not permit the Ld. AO to make an addition of the income of the predecessor in the hands of the successor for a period prior to the amalgamation. It was submitted that the amalgamation took effect from 01.04.2022 and that the assessee is the successor of JMC. On a plain reading, the provisions of **section 170** of the Act read as under:—

"F.-Succession to business or profession

Succession to business otherwise than on death.

170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,-

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly."

7. The Ld. AR, in the course of arguments, submitted that the income pertaining to JMC (the predecessor entity) cannot be brought to tax in the hands of the successor in respect of the financial year preceding the amalgamation. It was contended that the successor-assessee had merely acted as an agent of JMC. During the impugned assessment year, JMC had duly filed its return of income and maintained separate books of account. It was further submitted that, subsequent to the amalgamation, the successor is nevertheless fully liable for the

discharge of the outstanding tax demand raised by the Revenue in this case. In support of this contention, the Ld. AR invited our attention to the provisions of **section 163** of the Act, which are reproduced hereunder:—

"C.-Representative assessees - Special cases

***Who may be regarded as agent**.*

163. (1) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India-

(a) who is employed by or on behalf of the non-resident; or

(b) who has any business connection with the non-resident; or

(c) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(d) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India :

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:-

(i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

[Explanation.-For the purposes of this sub-section, the expression "business connection" shall have the meaning assigned to it in Explanation 2 to clause (i) of sub-section (1) of sec-tion 9 of this Act.]

(2) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the [Assessing] Officer as to his liability to be treated as such."

8. In the course of arguments, he contended that the revenue has placed reliance on the judgment of the Hon'ble **Supreme Court** in the case of **PCIT vs. Maruti Suzuki India Ltd**., reported in **416 ITR 613 (SC)**, to justify the validity of the assessment, contending that the addition of the income of the predecessor in the

hands of the successor is legally sustainable. However, he respectfully distinguished the said judgment of the Hon'ble Apex Court and invited our attention to the following paragraphs thereof, which are reproduced hereunder:—

> *"6. On 28 November 2012, the assessee filed its return of income declaring an income of Rs. 212,51,51,156/-. The return of income was filed in the name of SPIL (no amalgamation having taken place on the relevant date).*
> *7. On 29 January 2013, a scheme for amalgamation of SPIL and MSIL was approved by the High Court with effect from 1 April 2012. The terms of the approved scheme provided that all liabilities and duties of the transferor company shall stand transferred to the transferee company without any further act or deed. On the scheme coming into effect, the transferor was to stand dissolved without winding up. The scheme stipulated that the order of amalgamation will not be construed as an order granting exemptions from the payment of stamp duty or taxes or any other charges, if payable, in accordance with law.*
> *8. On 2 April 2013, MSIL intimated the assessing officer of the amalgamation. The case was selected for scrutiny by the issuance of a notice under Section 143(2) on 26 September 2013, followed by a notice under Section 142(1) to the amalgamating company.*
> *9. On 22 January 2016, the Transfer Pricing Officer8 passed an order under Section 92CA (3) determining the Arm's Length Price of royalty at 3 per cent and making an adjustment of Rs. 78.97 crores in respect of royalty paid by the assessee for the relevant previous year.*
> *10. On 11 March 2016, a draft assessment order was passed in the name of Suzuki Powertrain India Limited" (amalgamated with Maruti Suzuki India Limited). The draft assessment order sought to increase the total income of the assessee by Rs. 78.97 crores in accordance with the order of the TPO in order to ensure that the international transactions with regard to the payment of royalty to the Associated Enterprises is at Arm's Length.*
> *11. MSIL participated in the assessment proceedings of the erstwhile amalgamating entity, SPIL, through its authorized representatives and officers. This is evident from the copies of the order sheets of the assessment proceedings before the assessing officer for AY 2012-13. Post amalgamation, on 30 September 2013, the Chartered Accountants addressed a communication to the Commissioner of Income Tax, Circle 9(1), pursuant to the notice under Section 143(2) for an adjournment of the assessment proceedings for*

AY 2012-13 until the assessment proceedings for AY 2010-11 and AY 2011-12 were completed. On 27 October 2014, the Deputy Commissioner of Income Tax Circle 9 (1) addressed a communication to the Principal Officer, SPIL seeking a response to a detailed questionnaire. Thereafter, on 4 September 2015, the Deputy Commissioner of Income Tax Circle 16(1) called for disclosure of information in the course of the assessment for AY 2012-13. The communication was addressed to:
"The Principal Officer
M/s Suzuki Power Train India Limited
(Now known as M/s Maruti Suzuki India Limited)."

9. The Ld. AR respectfully relied on the order of Coordinate Bench of ITAT Mumbai 'C' Bench in the case of **City Gold Education Research Ltd. vs. DCIT ITA No.1699, 1700 and 2266/Mum/2023** date of pronouncement **10.10.2023**. The relevant para no.10 is reproduced as below:

"10. We heard the parties and perused the materials on record. We notice from the panchanama submitted by the Ld.AR during the course of hearing that assessee is part of research conducted on 30/07/2019. The Assessing Officer while completing the assessment under section 153A read with section 143(3) made an addition by disallowing the amounts written off of assets / debts, under section 37(1) of the Act. On perusal of records we notice that the said write off is based on entries found in the statement of financials for the year ended 31/03/2016 of M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd. Pursuant to the search, the six assessment years for which the assessment under section 153A is to be done are assessment year 2014-15 to 2019-20. On further perusal of materials we notice that NCLT has issued the order approving the amalgamation of assessee with M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd with effective date from 01/04/2018. Accordingly, up to the 31/03/2018, these two entities had retained the status of individual entities and therefore up to assessment year 2018-19, these entities are to be assessed in their individual status or the assessee as a representative of these entities. Therefore for the year under consideration i.e. AY 2016-17 which is before the amalgamation, these two entities were not part of the assessee and thus there is merit in the argument of the Ld.AR that the claims made in the financials of the individual entities cannot be disallowed in the hands of the assessee prior to the date of amalgamation. It is also noticed that the Assessing Officer has issued separate notices of 153A/153C to these entities in their individual names which makes it clear that prior to amalgamation, these

entities have been treated as not part of the assessee. Therefore in our considered view, the disallowance of a claim made in the individual entity's financials cannot be addedas income in the hands of the assessee during the year which is prior to amalgamation. Further, we notice that the disallowance made is based on the amounts debited to the Profit and Loss account of these two companies and that the assessing officer has stated in the order under section 153A r.w.s.143(3) that the disallowance is done based on statement recorded from Shri. Sandeep N Gharat. Therefore the submission that the addition is made not based on any seized material but based on statement recorded has merits. Accordingly on this count also, we are of the view that the additions made by the Assessing Officer by way of disallowance under section 37(1) are not sustainable. In view of this, we delete the addition made by the Assessing Officer."

10. The Ld. AR respectfully relied on the order of Coordinate Bench of ITAT Delhi 'I' Bench in case of **Manish Tyagi vs. ITO ITA No.5548/Del/2015** date of pronouncement **25.03.2021**. The relevant is reproduced as below:

"14. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has contested ground No. 3 to 7 of the appeal which deals with the addition on account of sale of property of Shri Ashok Tyagi a non resident in the hands of the assessee as representative assessee u/s 160 of the Act. The claim of the Id AR is that the assessee cannot be treated as agent of nonresident Mr. Ashok Tyagi without passing a specific order u/s 163 of the Act. Other ground of proper opportunity of hearing and further even otherwise the Id AO was required to frame a separate assessment order in the name of the assessee in his representative capacity as a agent of Mr. Ashok Tyagi which has not been made by the learned assessing officer but has made the addition in the hands of the assessee as his own income. Thus not passing an order separately treating the assessee as the representative assessee of Mr.Asoka Tyagi but making the addition along with the other income of the assessee in the hence of the assessee is an invalid order. According to the provisions of Section 160 (1) (1) representative with respect to a non-resident means the agent of the non-resident including a person who is treated as an agent u/s 163 of the income tax act. According to Section 163 of the act in relation to a non-resident and agent includes any person who has any business connection with the non-resident or from or through womb the non-resident is in receipt of any income whether directly or indirectly. In the present case, the assessee has sold the property on behalf of a non-resident and has transferred the money to the non-resident through him. Therefore, according to the provisions of Section

163 of the act, the assessee is an agent of the non-resident Mr. Ashok Tyagi. It page number 9 and 10 of the order the assessee was given an opportunity to explain why he should not be treated as an agent of the assessee which has been answered by the assessee as evident by the letter dated 10/2/2014 of the assessee. This objection of the assessee was rejected holding that assessee is an agent of a non-resident and therefore he is a representative assessee of a non-resident. Further the provisions of Section 161 provides that every representative assessee as regards the income in respect of which he is a representative assessee shall be subject to the same duties, responsibilities and liabilities as if income is received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income but such assessment shall be deemed to be made upon him in his representative capacity only. It further provides that the tax subject to other provisions of the income tax act be levied upon and recovered from him in like manner and to the same extent as would be leviable upon and recoverable from the person represented by him. Therefore, the assessing officer should have passed a separate assessment order from the income of the assessee with respect to the income of the non-resident holding the assessee as a representative of a non-resident. In the present case, the assessing officer has passed an order in the name of the assessee without specifying that the above income is chargeable to tax in the hands of the assessee as a representative assessee of a non-resident l.e. not passing a separate order but adding the income of the non-resident in the hands of the assessee is not in accordance with the provisions of Section 161 of the act. The learned AO has also charged the tax in the hands of the assessee in the residential status of resident and not non-resident. On this score, the addition made by the learned assessing officer of the income of the non-resident Under the head capital gain of ₹5,655,874/- is required to be deleted. Thus, ground number 7 of the appeal of the assessee is allowed."

11. The Ld. AR further respectfully relied on the order of Hon'ble Madras High Court in case of **CIT vs. Indian Overseas Bank and Another** reported in **182 ITR 434 (Mad).** The relevant paragraph is reproduced as below:-

"2. xxxxxxxxxxxxxxxxxxxxxxxx

The ITO took the view that the entire undertaking of the Indian Overseas Bank Ltd. including all interests in or arising out of its properties immediately before the commencement of the Banking Companies Act, had vested in the corresponding new bank, Indian Overseas Bank, and the profit earned during the period 1-1-1969 to 18-7-

1969 accrued to the corresponding new bank, viz., Indian Overseas Bank, under section 5(1) and the tax liability in respect of the banking business done for the period prior to 19-7-1969 should also be met by the corresponding new bank, viz., the Indian Overseas Bank. From the details and the audited statements furnished by the Indian Overseas Bank, the ITO worked out the income for the periods 1-1-1969 to 18-7-1969 and 19-7-1969 to 31-12-1969 separately and consolidated the same and arrived at a total income of Rs. 68,81,650 on which the Indian Overseas Bank was assessed. On appeal by the Indian Overseas Bank before the AAC contending that the income for the period 1-1-1969 to 18-7-1969 ought not to have been included in the total income of the assessee, the AAC rejected the same on the ground that the profit earned for the period 1-1-1969 to 18-7-1969 has been transferred to, and received by the assessee and such profit earned in the normal course of business carried on in the accounting year, relevant to the assessment year 1970-71, will have to be included while computing the total income of the assessee and the profit cannot be taken as capital receipt in the hands of the assessee. Against this, the Indian Overseas Bank preferred an appeal before the Tribunal."

12. The Ld. DR supported the orders of the revenue authorities. The Ld. DR submitted that JMC had already amalgamated with the assessee and, therefore, the notice issued to the successor company is valid, as supported by the judgment of the Hon'ble **Supreme Court** in the case of **PCIT vs. Maruti Suzuki India Ltd.,** reported in **416 ITR 613 (SC)**.

He further invited our attention to paragraphs 5.3 to 5.6 of the impugned appellate order, which are reproduced hereunder:—

"5.3 It is on record that JMC was amalgamated with KPIL, pursuant to the approval granted by the Hon'ble National Company Law Tribunal (NCLT), Ahmedabad Bench vide order dated 21.12.2022. The appointed date of amalgamation, as per the scheme sanctioned under the Companies Act, was 01.04.2022. In terms of the NCLT

order, all assets, liabilities (including tax liabilities), rights, duties, claims and obligations of JMC were transferred to and vested in KPIL on a going concern basis. It is further provided in the scheme that any legal proceedings initiated by or against JMC shall henceforth be continued by or against KPIL. Accordingly, with effect from the appointed date, JMC ceased to exist as a separate legal entity, and KPIL became its successor for all legal and tax purposes. This legal position is undisputed. On this basis, the reassessment proceedings for A.Y. 2018-19 were initiated by issuance of a notice under section 148 of the Income-tax Act, 1961, in the name of KPIL, being the surviving entity.

5.4 The appellant has contended that the additions relate to transactions undertaken by JMC in the year under consideration, and therefore, the notice issued solely in the name of KPIL is invalid in light of the Supreme Court's decision in Maruti Suzuki India Ltd. v. CIT [(2020) 116 taxmann.com 375 (SC)]. However, in my considered view, the ratio of Maruti Suzuki does not render the present proceedings invalid. In Maruti Suzuki, the Supreme Court held that issuance of notice to a non-existent amalgamating company after its merger is void ab initio. However, it was further clarified that proceedings should instead be initiated in the name of the amalgamated company, i.e., the surviving legal entity. In the present case, the notice under section 148 was issued to KPIL only after the merger had taken legal effect. At that point in time, JMC was no longer in existence and had ceased to be a juristic person. Therefore, issuance of notice to JMC was legally impossible. The only legally viable course of action was to proceed against KPIL, the amalgamated entity, and that is what has been done. It is also a matter of procedural fact that notices in the name of JMC could not have been issued by the AO through the system, as the PAN of JMC would have been deactivated post the merger.

5.5 It is also pertinent to note that section 170 of the Act explicitly provides for assessment in cases of succession. Where a business is succeeded by another person, the successor may be assessed in respect of the income of the predecessor. The law recognizes that upon amalgamation, the successor steps into the shoes of the amalgamating entity and becomes responsible for its tax liabilities. In the present case, the AO has rightly invoked jurisdiction against KPIL, being the amalgamated company and the legal successor of JMC. The notice under section 148, as well as subsequent proceedings, have been validly issued and carried out in the name of KPIL. The additions relate to transactions of JMC, but those liabilities have, by operation of law, vested in KPIL. Accordingly, the proceedings do not suffer from any jurisdictional defect.

5.6 I also note that, in the present facts, the AO has specifically sought the details of transactions of JMC from the appellant based on material gathered during the search proceedings and the actions of the AO do not cause any prejudice to the Appellant. Moreover, it is pertinent to note that the Appellant, upon receiving notices, has responded to various queries raised by the AO in respect of JMC. This clearly shows that the Appellant has participated in the proceedings. The issue raised by the Appellant ellant is only a procedural aspect and there is is no no material irregularity that vitiates the assessment and the ground raised by the appellant is hereby dismissed."

13. We have carefully considered the rival submissions, perused the material placed on record, the written submissions filed by the Ld. AR, and the judicial precedents relied upon by both the parties. The core issue for adjudication before us is whether the income and disallowances pertaining to the predecessor entity, namely JMC Projects (India) Ltd., for a period prior to its amalgamation w.e.f. 01.04.2022, could legally be assessed and added in the hands of the successor company, i.e., the assessee, by way of a single assessment order framed under section 147 of the Act. On a conjoint reading of sections 170 to 163 and 161 of the Act, it is evident that the scheme of the Act draws a clear distinction between

(i) assessment of income of a predecessor and

(ii) recovery of tax liability from a successor or representative assessee.

The statutory provisions do not contemplate a situation where the income of the predecessor, relating to a period prior to succession, is clubbed with and assessed as the income of the successor in its own right. At best, the successor can be assessed only in a representative capacity, and even then, the assessment of such income is required to be distinct and identifiable.

In the present case, it is an admitted position that JMC had filed its return of income for the impugned assessment year and maintained separate books of

account. The amalgamation admittedly took effect from 01.04.2022, which is much subsequent to the assessment year under consideration. Therefore, for A.Y. 2018-19, JMC continued to exist as an independent taxable entity. In such circumstances, the income or disallowances relating to JMC could not have been merged or assessed together with the income of the assessee by way of a composite reassessment order. We find considerable force in the submissions of the Ld. AR that the reliance placed by the revenue on the judgment of the Hon'ble Supreme Court in **Maruti Suzuki India Ltd**. (supra) is misplaced. The said judgment deals with the invalidity of notices issued in the name of a non-existent entity and clarifies that proceedings must be initiated in the name of the successor entity representing the predecessor. It does not lay down that the income of the predecessor can be assessed as the income of the successor by clubbing both in a single assessment. The ratio of the said decision, therefore, does not support the action of the Assessing Officer in the present case.

The coordinate bench decisions relied upon by the Ld. AR, including **City Gold Education Research Ltd.** (supra) and **Manish Tyagi** (supra), clearly support the proposition that income of a predecessor for a period prior to amalgamation cannot be added in the hands of the successor, and that any such assessment, if permissible, must be made separately and strictly in accordance with the representative assessment provisions of the Act.

In view of the above discussion, we hold that the reassessment proceedings, insofar as they seek to assess and make additions relating to JMC for A.Y. 2018-19 in the hands of the assessee by way of a single assessment order, are not sustainable in law. Consequently, the legal ground raised by the assessee

succeeds. Once the assessment itself fails on jurisdictional grounds, the additions sustained by the Ld. CIT(A) on merits do not survive for adjudication.

Accordingly, the appeal filed by the assessee is allowed on legal grounds, and the appeal filed by the revenue stands dismissed.

So, the appeal of the assessee is allowed, and the appeal of the revenue is dismissed.

14. As the legal issue in Ground no-2 is decided in favor of the assessee the rest of the grounds 1,3 & 4 are only remains for academic purpose and kept open. Related to Ground no.5 of the appeal is not pressed.

15. In the result, the appeal of the assessee bearing **ITA No. 5959, 5960 and 5961/Mum/2025** are allowed and appeal of the revenue bearing **ITA No.6113, 6114 and 6159/Mum/2025** is dismissed.

Order pronounced in the open court on 13/01/ 2026

Sd/-	Sd/-
(PRABHASH SHANKAR)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 13/01/2026
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, MUMBAI

5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

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