IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'I': NEW DELHI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

AND

SHRI M. BALAGANESH, ACCONTANT MEMBER

ITA No.5793/Del/2024
Assessment Year 2021-22

Graziano Transmission India Pvt. Ltd. (as a source of Fairfield Atlas Limited), 511, 5th Floor, DLF Tower, B Jasola New Delhi -110025 PAN No.AAACG4258M	**Vs.**	**ACIT (OSD) Delhi**
Appellant		Respondent

Appellant	Sh. Nikhil Tiwari, AR
Respondent	Dr. Vedanshu Tripathi, CIT DR

Date of Hearing	**17.02.2026**
Date of Pronouncement	**10.04.2026**

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against the final assessment order dated 30.10.2024 passed u/s.143(3) r.w.s. 144C(13) of the Act pursuant to the directions of the DRP dated 28.09.2024 u/s.144C (5) of the Act for the A.Y.2021-22.

2. In the grounds of appeal though the assessee had raised several grounds on legal issues and also grounds on merits, the ld. Counsel for the assessee while arguing the appeal mainly

addressed the issue of validity of draft assessment order as well as final assessment order having been passed in the name of erstwhile entity which was no longer in existence and grounds of appeal of the assessee read as under :-

> *"3. Erred in passing the Transfer Pricing assessment order, draft assessment order and final assessment order in the name of erstwhile entity (i.e. Fairfield Atlast Limited, PAN AAACA4439Q) which is no longer in existence, in spite of the fact that the same has been merged with the Graziano Transmission India Private Limited with effect from 1 April, 2022 and duly intimated to officer during respective proceedings, accordingly, the same is a nullity in eyes of law and hence liable to be quashed."*

3. Referring to above ground No.3 of grounds of appeal Ld. Counsel for the assessee, at the outset, submitted that the assessee (erstwhile known as Fairfield Atlas Limited in short "FAL") filed its return of income on 14.03.2022 declaring income of Rs.37,33,53,252/- for the A.Y. 2021-22. The case of the assessee was selected for scrutiny as per scrutiny selection norms under CASS and a notice under section 143 (2) of the Act was issued on 28.06.2022 by the AO in Pune Jurisdiction in the name of Fairfield Atlas Limited (FAL). The relevant notice is at pages 2092 to 2094. The Ld. Counsel submitted that based on a reference made u/s.92CA(1) of the Act transfer pricing assessment proceedings were initiated by the TPO in the name of Fairfield Atlas Limited (FAL).

4. The Ld. Counsel further submitted that on 24.05.2023 an application was filed before the NCLT for merger of

Brevini India Private Limited (BIPL) and Fairfield Atlas Limited (FAL) with Graziano Transmission India Private Limited (GTIPL), the assessee in the present appeal pursuant to the application filed with NCLT an order was passed on 30.05.2023 which is placed at pages 321 to 328 of the paper book wherein NCLT sanctioned the scheme of amalgamation of BIPL and FAL with GTIPL. Under the approved scheme, the amalgamation took effect from 01.04.2022 and upon such amalgamation, FAL stood dissolved by operation of law. GTIPL accordingly became the successor entity for all purposes, including all income tax proceedings.

5. The Ld. Counsel for the assessee submitted that the assessee conveyed this fact of merger to the ld. AO in Kolhapur Jurisdiction vide letter dated 10.08.2023 which is placed at pages 283 to 330 of the paper book. Referring to the said letter the Ld. Counsel for the assessee submitted that the assessee furnished complete set of merger documents including PAN of old entity and PAN of new entity and requested transfer of jurisdiction of both corporate tax and TP proceedings from Pune to Delhi. The Ld. Counsel further submitted that as the TP assessment proceedings were initiated by the TPO in Pune jurisdiction vide notices dated 06.10.2022 and 07.02.2023 which are place at pages 274 to 277 of the factual paper book, u/s.92CA(2) of the Act which were addressed to FAL, the assessee filed detailed submissions on 12.07.2022 and 03.03.2023. The Ld. Counsel submitted that upon receipt

of NCLT order the assessee intimated Ld. TPO in Pune jurisdiction about the amalgamation through letter dated 16.08.2023 which is placed at pages 331 to 334 of the paper book enclosing scheme of merger, order of NCLT and intimation letter to registrar of both entities etc.

6. The Ld. Counsel for the assessee further submitted that consequently the tax jurisdiction of the assessee was transferred from Pune to Delhi and subsequently another notice u/s.92CA(2) of the Act dated 04.09.2023 was received by the assessee from TPO in Delhi jurisdiction. However, similar to earlier notices this notice was issued incorrectly in the name of FAL with the PAN number of FAL and not in the name of the new entity namely GTIPL.

7. The Ld. Counsel submitted that the assessee informed the TPO in Delhi jurisdiction vide submissions dated 05.09.2023 which were placed at pages 336 of the paper book that FAL was amalgamated with GTIPL enclosing scheme of merger, order of NCLT and intimation letter to registrar of companies alongiwth all the annexures enclosing PAN numbers of both the entities GTIPL and FAL. The Ld. Counsel further submitted a show caused notice dated 12.10.2023 which is placed at page 376 to 384 of the paper book was too issued in the name of FAL by the TPO in Delhi and even against this show cause notice the assessee filed its detailed submissions which were placed at pages 388 to 375 of the paper book, dated 20.10.2023 in the name of GTIPL (successor of a FAL) and also mentioned

both PAN numbers separately for clarity. Ld. Counsel submitted that despite all the intimations given by the assessee to the TPO the TPO passed an order u/s.92CA(3) of the Act manually on 30.10.2023 which is placed at pages 64 to 98 of the appeal set, in the name of FAL mentioning its PAN number which is non-existent entity.

8. The Ld. Counsel for the assessee, therefore, submitted that it is evident from the above narrated facts, post the order passed by NCLT on 30.05.2023 the assessee duly informed the TPOs in both Pune and Delhi jurisdictions regarding the merger of FAL into GTIPL. Further post the NCLT order the assessee has repeatedly and consistently filed all submissions before the TPOs in both Pune and Delhi jurisdictions in the name of GTIPL being successor of FAL, therefore, the Ld. Counsel for the assessee submitted that the transfer pricing order passed in the name of non-existent entity is bad in law and liable to quashed since the transfer pricing order is bad in law, the subsequent assessment order is bad in law leading to invalid final assessment order.

9. The Ld. Counsel for the assessee further submitted that not only the transfer pricing order was passed in the name of non-existent entity, a draft assessment order passed u/s.144C (1) of the Act dated 27.03.2023 and also the Final assessment order which was passed on 30.10.2024 u/s.143(3) r.w.s. 144C(13) of the Act pursuant to the directions of the DRP were in the name of FAL and

with PAN number of FAL which is AAACA4439Q. The demand notice issued u/s.156 alongwith assessment order dated 30.10.2024 was also in the name of FAL mentioning PAN of FAL.

10. The Ld. Counsel for the assessee therefore, submitted that in view of the decision of the Hon'ble Supreme Court of Maruti Suzuki India Ltd. (416 ITR 613) and the jurisdictional Delhi High Court in the case of Sony Mobile Communication Pvt Ltd. (456 ITR 753) and the decision of the Hon'ble Bombay High Court in the case of Paras Defence and Space Technologies Ltd. vs. DCIT WP No.4934 of 2022 dated 27.01.2026, the order passed by the Transfer Pricing Officer, the draft assessment order and final assessment order passed by the AO in the name of FAL which is a non-existent entity are bad in law and void ab initio.

11. On the other hand the Ld. DR strongly placing reliance on the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Mahagun Realtors Pvt. Ltd. (443 ITR 194) contended that since the TP proceedings were initiated in ITBA systems and prior to the date of amalgamation and when the assessee company M/s. FAL was in existence, therefore, the TPO was to complete the proceedings which was created the FAL in ITBA systems. The Ld. DR further submitted that the final assessment order mentions the names of FAL as well as Graziano Transmission India P. Ltd. (the successor FAL) to FAL.

12. The Ld. DR also placed reliance on the decision of Skylite LLP Vs. ACIT (90 taxmann.com 413) and submitted that in the present case no prejudice has been caused to the assessee, all the notices were properly served upon it and assessee cooperated throughout the proceedings and made submissions which are on record. The Ld. DR also made the following written submissions :-

> *"2. On the Ground of Appeal argued by the AR of the Assessee on which the c was taken as heard:*
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> *2.1 During the course of hearing on 17.02.2026. AR of the assessee only pressed one of the grounds of appeal which was ground no. 3 taken by the assessee before the Hon'ble ITAT:*
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> *3. Erred in passing the Transfer Pricing assessment order, draft assessment order and final assessment order in the name of erstwhile entity (i.e. Fairfield Atlas Limited PAN: AAACA44390) which is no longer in existence. in spite of the fact that the same has been merged with the Graziano Trasmissioni India Private Limited with effect from 1 April 2022 and duly intimated to officer during respective proceedings, accordingly, the same is a nullity in eyes of law and hence liable to be quashed.*
>
> *2.2 It is pertinent to mention that the issue of jurisdiction was also raised before Hon'ble DRP. Ground no. 11 taken by the assessee before the Hon'ble DRP was as follows:*
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> *Ground number 11. The Ld. TPO and consequently the Ld. AO have erred on facts and in circumstances of the case and in law by not acknowledging the fact that since Fairfield Atlas Limited had merged with the Graziano Transmission India Private Limited w.e.f. 1 April 2022, the Assessment framed on the erstwhile entity (i.e. Fairfield Atlas Limited, PAN: AAACA44390), which was no longer in existence is a nullity in eyes of law and hence liable to be quashed.*
>
> *The Assessee prays that since the Ld. TPO and consequently the Ld. AO have framed the assessment*

on the erstwhile entity (i.e. Fairfield Atlas Limited, PAN: AAACA4439Q), the assessment proceedings should be quashed.

2.3 On the above ground, Hon'ble DRP in its order dated 28.09.2024 had observed as under:

4.5.1 In ground numbers 11 and 12, the Draft Assessment Order has been challenged on technical grounds stating that the AO/TPO has passed the order in the name of non-existent entities and that the AO/TPO has not followed the Instructions mentioned in circular no. 19/2019. Accordingly. It is argued that the draft order passed is void ab initio and deserves to be quashed. The Panel has considered the submissions. In terms of section 144C(8) r.w.s 144C(5) of the Act. the Panel can only confirm, enhance or delete the variations proposed under section 144C(1) of the Act. It has no power to annul, quash or set aside or declare a draft order as void. The Panel however, directs AO/TPO to take the above contentions of the assessee into consideration and address the same by passing speaking order on the above technical grounds of objection raised by the assessee. Ground number 11 and 12 are accordingly, disposed of.

2.4 Thus, the Panel directed the AO/TPO to take contentions of the assessee into consideration and address the same by passing speaking order on the above grounds.

2.5 Following the directions of the Hon'ble Panel, the AO in the final assessment order has noted as under:

Regarding passing of Order in the name of Fair field Atlas Limited: It seen from the records that the assessee M/s Fair Field Atlas Limited was amalgamated with M/s Graziano Transmissioni India Private Limited vide order dated 30-05-2023 passed by NCLT. The TP proceedings initiated in ITBA Systems much prior to this date when the assessee company M/s Fair Field Atlas Limited was in existence. Therefore, TPO was to complete the proceedings which was created in the name of Fair Field Atlas Limited in ITBA Systems. However, in the body of this give effect order name of both amalgamated and amalgamating companies are mentioned and order is passed in the name of M/s Graziano Transmissioni India Private Limited (Successor of Fairfield Atlas Limited).

2.6 The above order makes it clear that the contention raised by the assessee are not just wrong but are also mischievous as he has misled the Hon'ble Court on the issue of jurisdiction. Since the TP proceedings were initiated in ITBA Systems much prior to the date of amalgamation and when the assessee company M/s Fair Field Atlas Limited was in existence, therefore, TPO was to complete the proceedings which was created in the name of Fair Field Atlas Limited in ITBA Systems,

2.7 Furthermore, following directions of Hon'ble DRP, the final assessment order mentions both the names Fair Field Atlas Limited as well as Graziano Trasmissioni India Private Limited successor of Fair Field Atlas Limited. It needs to be brought on record that assessee himself in various correspondences and appeals has been using the given name only. Even in the present appeal In Form No. 36 assessee has mentioned its name as Graziano Trasmissioni India Private Limited (as a successor of Fair Field Atlas Limited. It has also mentioned PAN of both the companies in the column of PAN. Even before the Hon'ble DRP, the assessee had in Form 35A mentioned name of the both the companies and PAN No. of both the companies was also quoted.

2.8 The issue of amalgamation has been dealt with in detail in the case of Principal Commissioner of Income-tax v. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann.com 91 (SC) by Hon'ble Supreme Court of India. In the above case. Hon'ble Court had observed that

> *18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e.. the transferee company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law*

and procedure where upon amalgamation, the cause of action or the complaint does not per se cease depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

(emphasis supplied).

2.9 In the case of Mahagun the Revenue had argued:

7. The revenue, represented by the Additional Solicitor General, Mr. N. Venkataraman, urged that the name of both the amalgamating and amalgamated companies were mentioned in the assessment order. According to him such mistakes. defects or omissions are curable under section 2928 when the assessment is in substance and effect, in conformity with or according to the intent and purpose of the Act.

8. It was contended that the amalgamating or transferor company was duly represented by the amalgamated company and no prejudice was caused to any of the parties by the assessment order. It is further urged by the revenue that in Maruti Suzuki, this court rejected the revenue's appeal on the ground that the final assessment order referred only to the name of the amalgamating company and there was no mention of the resulting company, whereas in this case, In both the draft and the final assessment orders, the names of both the amalgamating and amalgamated company were mentioned, (emphasis supplied).

2.10 The Hon'ble Court had settled the issue in favour of the Revenue. The matter of amalgamation was laid to rest by Hon'ble Supreme Court in favour of Revenue; The analysis and conclusions reached by the Hon'ble Court are mentioned as under:

16. The relevant provision of the Act is section 170. It inter alia, provides that where a person carries on any business or profession and is succeeded (to such business) by some other person (i.e.. the

successor), the predecessor shall be assessed to the extent of income accruing in the previous year in which the succession took place, and the successor shall be assessed in respect of income of the previous year in respect of the income of the previous year after the date of succession.

17. The amalgamation of two or more entities with an existing company or with a company created anew was provided for, statutorily, under the old Companies Act. 1956. Section 394 empowered the court to approve schemes proposing amalgamation, and oversee the various steps and procedures that had to be undertaken for that purpose, including the apportionment of and devolution of assets and liabilities, etc. section 394(2) provided as follows:

"(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of. the transferee company, and in the case of any property. If the order so directs. freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect."

Section 394(4)(a) defined "property" for the purpose of devolution of assets and

liabilities:

394....(4) In this section-

(a) property includes property, rights and powers of every description and" liabilities" includes duties of every description: and.."

18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed: it ceases to exist. Yet, in every other sense of the term, the corporate venture continues enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, le.. the transferee company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an

end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

19. This court, in CIT v. Hukamchand Mohanlal 1972 (1) SCR 786 noticed that section 159 of the Act related to a legal representative's tax liability. It casts liability upon a legal representative in the event of death of her or his predecessor, to pay tax, in effect saying that where a person dies his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died. The corresponding provision in the old Income Tax Act (of 1922) was section 248. The court in CIT v. Amarchand N. Shroff 1963 Supp (1) SCR 699 held that the provision did not authorise levy of tax on receipts by the legal representative of a deceased person in the year of assessment succeeding the year of account, being the previous year in which such person died. The assessee ordinarily had to be a living person and could not be a dead person. By section 24B the legal personality of the deceased assessee was extended for the duration of the entire previous year in the course of which he died. The income received by him before his death and that received by his legal representative after his death (but in that previous year) became assessable to income tax in the relevant assessment year. Any income received in the year subsequent to the previous year or the accounting year could not be called income received by the deceased person. This reasoning was adopted later, in the judgment reported as CIT v. James Anderson [1964] 6 SCR 590 where, in the context of dividend income accruing to the estate of a deceased, this court held that as Parliament did not make:

> *'any provision generally for assessment of income receivable by the estate of the deceased person, the expression "any tax*

which would have been payable by him under this Act if he had not died" cannot be deemed to have supplied the machinery for taxation of income received by a legal representative to the estate after the expiry of the year in the course of which such person died."

20. In Saraswati Syndicate (supra), the facts were that after amalgamation. the transferee company claimed exemption from tax, of a sum which had been allowed as a trading liability- on accrual basis, in the hands of the transferee company which had ceased to exist. The revenue disallowed that claim: that view was upheld. The court stated that:

"In amalgamation two or more companies are fused into one by merger or taking over by another. Reconstruction or 'amalgamation' has no precise le meaning. The amalgamation is a blending of two or more existing undertake into one undertaking, the share-holders of each blending company become substantially the share-holders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England. 4th Edition Vol. 7 Para 1539. Two companies may join to form a new company. but there may be absorption or blending of one by the other, both amount to amalgamation. 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.

In M/s General Radio and Appliances Co Ltd v M.A.. Khader (dead) by Lrs..

[1986] 2 S.C.C. 656, the effect of amalgamation of two companies was considered. M/s. General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s. General Radio and Appliances Co. Ltd. was amalgamated with M/s. National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under sections 391 and 394 of Companies Act. 1956. Under the amalgamation scheme, the transferee company, namely. M/s. National Ekco Radio and Engineering Company had acquired all the interest, rights including leasehold and tenancy rights of the transferor company and the same vested in the transferee company. Pursuant to the amalgamation scheme the transferee company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor company. The transferee company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including lease- hold and tenancy rights held by the transferor company blended with the transferee company, therefore the transferee company was legal tenant and there was no question of any sub-letting. The Rent Controller and the High Court both decreed the landlord's suit. This Court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. In the Instant case the

Tribunal rightly held that the appellant company was a separate entity and a different assessee, therefore, the allowance made to Indian Sugar Company, which was a different assessee, could not be held to be the Income of the amalgamated company for purposes of section 41(1) of the Act. The High Court was in error in holding that even after amalgamation of two companies, the transferor company did not become non-existent instead it continued its entity in a blended form with the appellant company. The High Court's view that on amalgamation 'there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."

21. Saraswati Syndicate (supra) noticeably was decided in relation to assessment issues when amalgamation was not separately defined under the Income Tax Act. By an amendment of 1967, this term was for the first time defined in the form of section 2(1A). That provision reads as follows:

"(1A) "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the

amalgamated company) In such a manner that-

(0 all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation:

(1) all the liabilities of the amalgamating company of companies immediately before the amalgamation, become the liabilities of the amalgamated company by virtue of the amalgamation:

shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company;"

22. The effect of amalgamation in the context of income tax, was again considered in another earlier decision. i.e.. Marshall Sons & Co. (India) Ltd. v. ITO [1997] 11 SCL 6. There, the court held that:

"14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz., January 1, 1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be date of amalgamation/date of transfer. But

where the Court does not prescribed any specific date but merely sanctions the scheme presented to it - as has happened in this case - it should follow that the rate of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the court may take some time:

Indeed, they are bound to take some time because several steps provided by sections 391 to 394 and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamation units. Le., the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the present scheme. Clause 6(b) does expressly provide that with effect from the transfer date, the Transferor Company (Subsidiary Company) shall be deemed to have carried on the business for and on behalf of the Transferee Company (Holding Company) with all attendant consequences. It is equally relevant to notice that the Courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income Tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the Transferor Company (Subsidiary Company) should be deemed to have been carried on for and on behalf of the Transferee Company. This is the necessary and the logical consequence of the court sanctioning the scheme of amalgamation as presented to

it. The order of the Court sanctioning the scheme, the filing of the certified copies of the orders of the court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be January 1, 1982. This is also the ratio of the decision of the Privy Council in Raghubar Dayal v. The Bank of Upper India Ltd. A.I.R. 1919 P.C. 9. relied on.

15. Counsel for the Revenue contended that if the aforesaid view is adopted then several complications will ensue in case the Court refuses to sanction the scheme of amalgamation. We do not see any basis for this apprehension. Firstly, 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. Secondly, and probably the more advisable course from the point of view of the Revenue would be to make one assessment on the Transferee Company taking into account the income of both. of Transferor or Transferee Companies and also to make separate protective assessments on both the Transferor and Transferee Companies separately. There may be a certain practical difficulty in adopting this course Inasmuch as separate balance-sheets may not be available for the Transferor and Transferee Companies. But that may not be an insuperable problem inasmuch as assessment can always be made. on the available material, even without a balance-sheet. In certain cases, best-judgment assessment may also be resorted to. Be that as it may, we need not pursue this Iine of enquiry because it does not arise for consideration in these cases directly."

(emphasis supplied)

23. Many High Courts in recent years, had mostly relied upon Saraswati Syndicate which was a case where the transferor entity had claimed a certain relief

on the basis of the agreed method of accounting. The corresponding obligation to recognise the demands was sought to be disallowed in the subsequent year, in the case of the then transferee company. The decision of the Delhi High Court. in Spice (supra), after discussing the decision in Saraswati Syndicate, went on to explain why assessing an amalgamating company, without framing the order in the name of the transferee company is fatal:

> *10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. v. D.L. Mainwaring (T/A Inshore). 1986 BCLC 342 (CA) that "once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".*
>
> *11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns. It became Incumbent upon the Income tax authorities to substitute the successor in place of the sald dead person. When notice under section 143(2) war sent. the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of Ws Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.*

12. Once it is found that assessment is framed in the name of non-existing entity. it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of section 2928 of the Act.

24. A series of decisions had followed the Delhi High Court's decision in Spice. All these were the subject of special leave petitions, which were disposed of by the following order in CIT v. Spice Enfotainment Ltd. [2020] 18 SCC 353.

"Delay condoned. Heard the learned Senior Counsel appearing for the parties. We do not find any reason to interfere with the impugned judgment(s) (Spice Entertainment Ltd. v. Commr. of Service Tax. (2011 SCC OnLine Del): CIT v. Dimension Apparels (P) Ltd.. [2015) 370 ITR 288: CIT v. Chanakaya Exports (P) Ltd., 2014 SCC OnLine Del 7678; CIT v. Chanakaya Exports (P) Ltd.. [ITA No. 721 of 2014. order dated 24-11-2014 (Del)): CIT v. Radha Appearals (P) Ltd.. 2015 SCC OnLine Del 14568; CIT v. Intel Technology (India) (P) Ltd., 2015 SCC OnLine Kar 9493: CIT v. Chanakaya Exports (P) Ltd., 2015 SCC OnLine Del 14567: CIT v. Mayank Traders (P) Ltd., 2015 SCC OnLine Del 14633; CIT v. P.D. Associates (P) Ltd., 2015 SCC OnLine Del 14632: CIT v. Foryu Overseas (P) Ltd., 2015 SCC OnLine Del 14566: CIT v. Sapient Consulting Ltd., 2016 SCC OnLine Del 6615: passed by the High Court. In view of this, we find no merit in the appeals and special leave petitions. Accordingly, the appeals and special leave petitions are dismissed."

25. This court, without elaborate discussion, approved the reasoning in various judgments which held that upon the cessation of the transferor company, assessment of the transferor (or amalgamated company) was impermissible.

26. In Dalmia Power Ltd. v. Asstt. CIT [2019] 112 taxmann.com 252/ 120201 269 Taxman 352/420 ITR 339 the amalgamated

(transferee) company filed a revised return, beyond the time prescribed. The original return had been filed by the transferor company. This was not allowed by the revenue. The assessee moved the High Court. This court endorsed the view of the single judge. holding that the revenue had not objected to the amalgamation schemes duly and that sections 139(5) and 119(2)(b) of the Act and Circular No. 9/2015 issued by the CBDT were inapplicable to a case where a revised ROI was filed pursuant to a Scheme of Arrangement and Amalgamation, approved and sanctioned by the National Company Law Tribunal.

27. In another recent decision, McDowell & Company Ltd. v. CIT [2017] 80 taxmann.com 101/247 Taxman 101/393 ITR 570 this court had occasion to consider the effect of amalgamation of two companies, and the rights and liabilities in relation to claim for depreciation, under the Act. The assessee had taken over a sick company-HPL by amalgamation: HPL ceased to have any identity after amalgamation. The relative rights, however, were determined in terms of the scheme of amalgamation. The benefit of interest accrued after the company ceased to exist was availed of by the assessee (the successor) company. The assessee was allowed to set off the amalgamated losses of the company amalgamated with it. i.e.. HPL This benefit accrued to the assessee under section 72A of the Act. The court held that when the assessee was allowed the benefit of the accumulated loss, while computing those losses, the income which accrued to it had to be adjusted and only thereafter net loss could have been allowed to be set off by the assessee company. The AO had made those calculations. The assessee was given the benefit of the accumulated loss of the amalgamated company. Its effect was that though those losses were suffered by the amalgamated company they were deemed to be treated as losses of the assessee by virtue of section 72A. This court negative the plea that even while taking advantage of the

accumulated loss, in calculating them at the hands of amalgamated company i.e.. HPL, the income accrued under section 41(1) of the Act at the hands of HPL could not be accounted for. It was held that it had to be adjusted to see what was the actual accumulated losses, the benefit of which had to be extended to the assessee. This court considered section 41(1) along with section 72A of the Act.

28. This court notices that there are not less than 100 instances under the Income Tax Act. wherein the event of amalgamation, the method of treatment of a particular subject matter is expressly indicated in the provisions of the Act. In some instances, amalgamation results in withdrawal of a special benefit (such as an area exemption under section 801A) - because it is entity or unit specific. In the case of carry forward of losses and profits, a nuanced approach has been indicated. All these provisions support the idea that the enterprise or the undertaking, and the business of the amalgamated company continues. The beneficial treatment, in the form of set-off. deductions (in proportion to the period the transferee was in existence, vis-a-vis the transfer to the transferee company); carry forward of loss, depreciation, all bear out that under the Act. (a) the business-including the rights, assets and liabilities of the transferor company do not cease, but continue as that of the transferor company: (b) by deeming fiction-through several provisions of the Act. the treatment of various issues, is such that the transferee is deemed to carry on the enterprise as that of the transferor.

29. In Bhagwan Dass Chopra v. United Bank of India 1988 (1) SCR 1088 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] Supp (3) SCR 535 this court held as follows:

> *"8...there can be no doubt that when two companies amalgamate and merge into one, the transferor company loses its identity as it ceases 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."*

30. The combined effect, therefore, of section 394(2) of the Companies Act, 1956 section 2(IA) and various other provisions of the Income Tax Act. is that despite amalgamation, the business, enterprise and undertaking of the transferee or amalgamated company which ceases to exist, after amalgamation. is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues.

31. In Maruti Suzuki (supra), the scheme of amalgamation was approved on 29-1-2013 w.e.f. 1-4-2012, the same was intimated to the AO on 2-4-2013, and the notice under section 143(2) for AY 2012-13 was issued to amalgamating company on 26-9-2013. This court in facts and circumstances observed the following:

> *"35. 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.

39. 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 2017. The decision in Spice Entertainment has been followed in case of the respondent while dismissing the Special Leave Petition for AY 2 2012. In doing so, this Court has relied on the decision in Spice Entertainment.

40. 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 AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 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.

32. The court, undoubtedly noticed Saraswati Syndicate. 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.

2.11 The conclusion drawn by the Hon'ble Supreme Court is extremely important in the present case. The Hon'ble Court had observed:

42. Before concluding, this Court notes and holds 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 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case,

2.12 In the present case, no prejudice has been caused to the assessee, All notices were properly served upon him. Further, he has cooperated throughout the proceedings and made submissions which are on record,

2.13 Even in the case of Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax, Circle 28(1), New Delhi [2018] 90 taxmann.com 413 (Delhi) Hon'ble High Court of Delhi has observed that re-assessment notice issued in name of erstwhile private limited company despite company ceasing to exist as it had been converted into LLP would not invalidate re-assessment proceedings as same was not a Jurisdictional error, but an irregularity and procedural/technical lapse which could be cured under section 2928.

2.14 The Hon'ble Delhi High Court in its detailed order hat observed:

17. In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice

under Section 147/148 of the Act ar it was addressed to the erstwhile company and not to the limited liability partnership. There war no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd.. a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused. (Emphasis Supplied).

21. Our attention was drawn to Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) which records that the Assessing Officer entrusted with the task of calculating and realising tax should familiarise themselves with the relevant provisions and become well versed with the law on the subject. This is a salutary advise. Indeed there have been lapses and faults resulting in the present litigation. Notice under Section 147/148 of the Act was issued at the end of the limitation period. Noticeably. Assessment Order for the assessment year 2013-2014 was passed on 31.03.2016, one year earlier. Second lapse is also apparent. Despite correctly noting the background. notice under Section 147/148 of the Act was not addressed in the correct name and even the PAN Number mentioned was incorrect. Nevertheless, human errors and mistakes cannot and should not nullify proceedings which are otherwise valid and no prejudice had been caused. This is the effect and mandate of Section 2928 of the Act. (Emphasis Supplied).

2.15 The order of the Hon'ble High Court was also confirmed by the Hon'ble Supreme Court of India in Sky Light Hospitality LLP v. Assistant Commissioner of the Act after following the procedure as set out in Section 148A of the Act and in terms of the decisions of the Supreme Court in Ashish Agarwal (supra). The said notice is in the name of the petitioner and, therefore, cannot be faulted on account of the Impugned notice having been issued in the name of a non-existent company.

11. The reassessment proceedings in respect of AY 2014-15 are now being continued pursuant to the notice dated 29.07.2022 Issued under Section 148 of the Act and not the impugned notice, which is to be construed as a notice under Section 148A(b) of the Act.

12. In view of the above, the contention that the proceedings are vitiated on account of the fact that the Impugned notice was issued in the name of a non-existent company (Nokia Siemens Networks India Private Limited), is unmerited.

2.20 In view of the above facts and case laws, it is absolutely clear that neither any prejudice has been caused to assessee nor there is any illegality in the order. The case of the assessee is squarely covered by the case of Mahagun Realtors 137 Taxmann 91 (SC) in favour of Revenue. It is requested to reject ground number 3 filed by the assessee."

13. In reply the Ld. Counsel for the assessee further submitted that the decision of Hon'ble Supreme Court relied on by the Ld. DR in the case of Mahagun Realtors (P.) Ltd. (443 ITR 194) is distinguishable on facts for the reason that the assessee never informed about the amalgamation and merger in that case and the appeal was filed in the

name of erstwhile company and, therefore, this decision has no application to the facts of the present assessee's cases.

14. The Ld. Counsel further submitted that the Hon'ble Delhi High Court of Sony Mobile Communications India Pvt. Ltd. (456 ITR 753) clearly mentioned how the facts Mahagun Realtors P. Ltd. are distinguishable.

15. The Ld. Counsel for the assessee in rebuttal also furnished the following submissions :-

> ***Ground No.3 : Validity of transfer pricing order, draft assessment order and final assessment order passed in the name of a non-existent entity, namely Fairfield Atlas Limited (FAL)***
>
> *Facts relating to merger:*
>
> *7. On 24 May 2023, an application was filed before the Hon'ble National Company Law Tribunal ('Hon'ble NCLT') for merger of Brevini India Private Limited (BIPL) and Fairfield Atlas Limited ('FAL) with Graziano Transmissioni India Private Limited (GTIPL) (Assessee in the present appeal). In this regard, detailed amalgamation scheme was submitted before Hon'ble NCLT.*
>
> *8. Pursuant to above, Hon'ble NCLT, vide its order ('NCLT order') dated 30 May 2023 (Refer pages 321 to 328 of the factual paper-book) sanctioned the scheme of amalgamation of BIPL and FAL ('Predecessor/non-existent entity') (PAN AAACA4439Q) with GTIPL (PAN AAACG4258M). Under the approved scheme, the amalgamation took effect from 1 April 2022 and, upon such amalgamation, FAL stood dissolved by operation of law. GTIPL accordingly became the successor entity for all purposes, including all income-tax proceedings. Relevant extracts of the NCLT order are reproduced below for easy reference (Refer Pg. No. 321 and 327 of the factual paper-book).*

9. The NCLT order and amalgamation scheme were thereafter filed with the Registrar of Companies ("RoC") on 24 June 2023 to render the scheme effective (Refer pages 329 to 330 of the factual paper-book). Relevant extract is reproduced below for easy reference.

Intimation of merger facts to Ld. AO in Kolhapur jurisdiction:

10. Following the NCLT order, the Appellant conveyed the fact of above-mentioned merger to the learned AO in Kolhapur jurisdiction (tax jurisdiction of FAL) vide letter dated 10 August 2023 (Refer pages 283 to 330 of the factual paper-book). In this letter-filed under the correct name i.e. GTIPL (successor of FAL) the Appellant notified the amalgamation, mentioned the PAN of old entity as well as PAN of new entity in the letter, enclosed a complete set of merger documents as under, and requested transfer of jurisdiction for both corporate tax and TP proceedings from Pune to Delhi (the tax jurisdiction of GTIPL):

i. Copy of scheme of merger (Refer pages 289 to 320 of the factual paper-book)

ii. Copy of order of NCLT approving the scheme (Refer pages 321 to 328 of the factual paper-book)

iii. Copy of intimation letter to registrar of companies with respect of filing of Form INC-28 (Refer pages 329 to 330 of the factual paper-book)

Intimation of merger facts to Ld. TPO in Pune jurisdiction:

11. The Appellant would once again like to reiterate that a TP assessment proceedings were initiated by the learned TPO in Pune jurisdiction vide notices dated 6 October 2022 and 7 February 2023 (Refer pages 274 to 277 of the factual paper-book) issued under section 92CA(2) of the Act, addressed to Fairfield Atlas Limited. In response to these notices, Appellant filed detailed submissions on 12 July 2022 and 3 March 2023 (Refer pages 269 to 273 of the factual paper-book), respectively.

12. Upon receipt of the NCLT order, the Appellant intimated the learned TPO in Pune jurisdiction, about the

amalgamation through its submission dated 16 August 2023 (Refer pages 331 to 334 of the factual paper-book), filed in the name of GTIPL (successor of FAL), enclosing scheme of merger, order of NCLT and intimation letter to registrar of companies along with all the annexures as mentioned in the para 10 above. Further PANs of both the entities (GTIPL and FAL) were mentioned in the letter separately for clarity.

Intimation of merger facts to Ld. TPO in Delhi jurisdiction:

13. Consequently, the tax jurisdiction of the Appellant was transferred from Pune to Delhi and another notice under section 92CA(2) dated 4 September 2023 (Refer page 337 of the paper-book) was received from the learned TPO in Delhi jurisdiction. However, similar to earlier notices, this notice was, too, issued incorrectly in the name and PAN of FAL

14. In response to the above notice, the Appellant informed the learned TPO in Delhi jurisdiction, of the amalgamation through its submission dated 5 September 2023 (Refer page 336 of the factual paper-book), filed in the name of GTIPL (successor of FAL) enclosing scheme of merger, order of NCLT and intimation letter to registrar of companies along with all the annexures as mentioned in the para 10 above. Further PANs of both the entities (GTIPL and FAL) were mentioned in the letter separately for clarity.

15. Further, show cause notice dated 12 October 2023 (Refer pages 376 to 384 of the factual paper-book) was, too, issued incorrectly in the name and PAN of FAL, by the learned TPO in Delhi.

16. In response to this notice, the Appellant filed its detailed submission (Refer page 338 to 375 of the factual paper-book) dated 20 October 2023 in the name of GTIPL (successor of FAL) and also mentioned both the PANs separately for clarity.

17. Despite this, learned TPO issued the order under section 92CA(3) manually on 30 October 2023 (Refer pages 64 to 98 of the appeal set) in the name and PAN of FAL Le. non-existent entity.

18. It is evident from the above that, following the order passed by the Hon'ble NCLT on 30 May 2023, the Appellant duly informed the learned TPOs in both Pune and Delhi

jurisdictions regarding the merger of FAL into GTIPL Further, following the NCLT order, the Appellant has repeatedly and consistently filed all submissions before both the learned TPOs in Pune and Delhi jurisdictions, in the name of GTIPL, being the successor of FAL

19. The detailed sequence of events (enclosed vide pages 2439 to 2440) clearly demonstrates that the Appellant repeatedly disclosed the fact of merger and furnished all relevant supporting documents on multiple occasions. Despite this, the learned TPO in the Delhi jurisdiction proceeded to issue the impugned transfer pricing order in the name and PAN of the non-existent predecessor entity.

20. Thus, the transfer pricing order passed in the name of non-existent entity is bad in law and liable to be quashed. Since the Transfer Pricing order is bad in law, the subsequent assessment order is bad in law leading to invalid final assessment order.

21. In this regards, the Appellant would like to place reliance on the decision of the Hon'ble Delhi Tribunal in case of Vedanta Limited vs. ACIT (2021) 85 ITR(T) 565 (Delhi ITAT) (Delhi - Trib.) (Refer page nos. 2311 to 2318 of the legal paperbook) wherein it is held that the assessment framed on the basis of a transfer pricing order which is passed in the name of a non-existent entity. is bad in law and entire assessment is liable to be quashed.

22. Further, it is pertinent to note that during the hearing conducted on 17 February 2026 before the Hon'ble ITAT, the learned Departmental Representative ('learned DR') argued that system-driven constraints within the Income-tax Department prevents the Income-tax authorities from issuing the order in the correct name. It is further submitted that, in the written submission dated 27 February 2026, the Ld. Departmental Representative has incorrectly remarked that the contentions raised by the Appellant are 'wrong and mischievous and has wrongly alleged that the Appellant has sought to mislead this Hon'ble Court. The Appellant most respectfully submits that such allegations are unfounded, misconceived, and contrary to the record. In this regard, the Appellant respectfully wishes to highlight that the arguments raised before your Honours is on the strength of the judgement of Hon'ble Supreme Court in case of Maruti Suzuki India Ltd. [(2019) 416 ITR 613 (SC)] (Refer page nos. 2133 to 2147 of the legal paperbook) and the judgement of Hon'ble Delhi High Court in case of Sony Mobile Communications Ind Pvt Ltd ((2023) 456 ITR 753 (Delhi HC))

(Refer page nos. 2213 to 2220 of the legal paperbook) (which has reconciled the findings of Hon'ble Supreme Court in case of Maruti Suzuzi India Ltd and Mahagun Realtors (P.) Ltd (2022) 443 ITR 194 (SC)). Further, it is respectfully submitted that the impugned TP order dated 30 October 2023 was passed manually. Therefore, there was no system-driven limitation compelling the learned TPO to issue the order in the name and PAN of a non-existent entity, i.e., FAL after the facts of merger has been appropriately intimated to the TPO several times. Further, it is submitted that had there been a genuine technical glitch or any system-driven constraints which prevented the Income-tax Department from issuing the order in the correct name, the Department ought to have reported the same somewhere in the notices or orders of assessment. The same view is supported by the decision of Hon'ble Bombay High Court in case of Paras Defence and Space Technologies Ltd. [Writ Petition No.4934 OF 2022 dated 27 January 2026 (Bombay HC)] (Refer pages 2230 to 2251 of the legal paper-book). Relevant extract of the decision is reproduced below for ease of reference:

> *"13. We have heard both the parties at length and have also perused the records produced before us and also the affidavit in reply filed by the Respondents. It is an undisputed fact that the Petitioner had made Respondent No. 1 aware about the amalgamation of Concept Shapers And Electronics Private Limited with the Petitioner during the course of the assessment proceedings for AY 2018-19 as well as during the assessment proceedings for the relevant Assessment Year 2020-21. Despite the aforesaid, Respondent No. 1 issued the Notice under Section 142(1) In the name of Concept, proceeded to issue the Show Cause Notice in the name of Concept; and ultimately even passed the order of assessment, issued notice of demand under Section 156 and issued penalty Show Cause Notices; all in the name of Concept. Had there been a genuine technical glitch in the selection of the name in the computer system, then Respondent No.1 ought to have reported the same somewhere in the impugned notices/ the Show Cause Notice or atleast in the impugned order of assessment. However, neither any corrigendum was issued nor any averment was made in this respect in the body of the notices or in the assessment order. Merely stating that the mistake was on account of a technical glitch or that the PAN was correctly*

quoted, does not absolve Respondent No. 1 from the mandate to issue notice and pass the order of assessment in the correct name

14 We are not inclined to hold that issuing notices and passing of the Assessment Order in the name of a non-existent entity is a procedural error which can be cured by taking recourse to the provisions of Section 2928. This is a case where Respondent No. 1 has conducted assessment for the period (i.e. Assessment Year 2020-21) which falls post the date of amalgamation. In such a case it is certainly expected from Respondent No.1 to be mindful as to which entity is he assessing. Issuing notice and passing of the Assessment Order in the name of Concept, for an Assessment year which falls subsequent to its cessation, certainly cannot be pardoned as a curable defect."

23. In view of above, the Appellant submits that the assessment framed on the basis of a TP order passed in the name of a non-existent entity i.e. FAL, is bad in law and hence, it is liable to be quashed.

Intimation of merger facts to Ld. AO in Delhi Jurisdiction:

24. Post the passing of the TP order, the Assessment Unit issued a notice dated 31 October 2023 under section 142(1) of the Act (Refer pages 2099 to 2101 of the legal paper-book) in the name and PAN of non-existent entity i.e. FAL

25. In response, the Appellant conveyed the fact of above-mentioned merger (along with relevant merger documents) to the Assessment Unit vide submission dated 8 November 2023 filed in the name of GTIPL (successor of FAL) enclosing scheme of merger, order of NCLT and intimation letter to registrar of companies along with all the annexures as mentioned in the para 10 above and also mentioned both the PANs separately for clarity (Refer pages 2102 to 2105 of the legal paper-book)

26. Further, show cause notice (enclosed vide pages 2441 to 2442) dated 26 December 2023 was, too, issued incorrectly in the name and PAN of FAL, by the learned AO in Delhi.

27. In response to this notice, the Appellant filed its submission (enclosed vide pages 2443 to 2444) dated 27 December 2023 in the name of GTIPL (successor of FAL) and also mentioned both the PANs separately for clarity.

28. Despite the above, learned AO in Delhi jurisdiction passed the draft assessment order (Refer pages 61 to 63 of the appeal set) dated 27 December 2023 in the name and PAN of FAL.

29. It is evident from the above that, following the order passed by the Hon'ble NCLT on 30 May 2023, the Appellant duly informed the learned AOs in both Kolhapur and Delhi jurisdictions, as well as to the Assessment Unit, regarding the merger of FAL into GTIPL. Further, following the NCLT order, the Appellant has repeatedly and consistently filed all submissions before all the learned AOs (including Assessment unit), in the name of GTIPL, being the successor of FAL

Participated before the Ld. AO/TPO as GTIPL (as a successor of Fairfield Atias Limited)

30. The sequence of events (enclosed vide pages 2439 to 2440) clearly demonstrates that the Appellant repeatedly disclosed the fact of merger and furnished all relevant supporting documents on multiple occasions. It is clear from sequence of events that assessee represented before Ld AO/ TPO as GTIPL (as a successor of Fairfield Atlas Limited) and entire proceedings were conducted in the name of successor entity. Despite this, the learned AO in the Delhi jurisdiction proceeded to issue the impugned draft assessment order in the name and PAN of the non-existent predecessor entity.

31. The Ld. DR, in the submission dated 27 February 2026, has placed reliance on the judgment of the Hon'ble Supreme Court in Mahagun Realtors (P.) Ltd. (2022) 443 ITR 194 (SC). However, the reliance so placed is wholly misplaced, as the facts before the Hon'ble Supreme Court in Mahagun Realtors (supra) are clearly distinguishable from the facts of the present case. In Mahagun Realtors (supra), no intimation regarding the amalgamation was furnished before the Ld. AO, and the assessee continued to participate in the assessment proceedings in the name of the non-existent entity and even filed the appeal in the name of such non-existent entity. Contrarily, in the present case, as is evident from the records and this submission, the Appellant has participated in all proceedings under its new name i.e.

GTIPL (as a successor of FAL), has duly intimated the Ld. AO/TPO of the amalgamation from time to time, and has also filed its DRP objections and the present appeal before Your Honours in the name of the merged entity. Accordingly, it is respectfully submitted that the factual matrix in Mahagun Realtors (supra) is entirely distinct, and therefore the said decision has no applicability to the present case.

32. In this regards, reliance is placed on the decision of Hon'ble Delhi Court in Sony Mobile Communications India Pvt Ltd (2023) 456 ITR 753 (Delhi HC) (Refer page nos. 2213 to 2210 of the legal paperbook) wherein the Hon'ble court in its order has clearly mentioned how the facts of Mahagun Realtors (supra) are distinguishable. The relevant extract of the decision is reproduced below for ease of reference:

> *"21. Insofar as Mahagun Realtors (P) Ltd. (supra) is concerned, as observed hereinabove, the Court, once again, noticed the judgment rendered in Spice Enfotainment Ltd. (supra). As regards Maruti Suzuki India Ltd. (supra), the Court in Mahagun Realtors (P.) Ltd. (supra) made the following crucial observations:*
>
> *22. As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the Court distinguished the judgment rendered in Maruti Suzuki India Ltd. (supra), 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*
>
> *Reorganization 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 (P.) Ltd. (supra) do not obtain in this matter.

24. As noticed above, even after the AO was informed on 6-12-2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued to obtain, even after the DRP had made course correction.

25. Thus, for the foregoing reasons, we are unable to persuade ourselves with the contention advanced on behalf of the appellant/revenue, that this is a mistake which can be corrected, by taking recourse to the powers available with the revenue under section 292B of the Act.

26. Therefore, we are of the opinion, that the question of law, as framed, deserves to be answered against the appellant/revenue, and in favour of the respondent/assessee."

33. In this regards, Appellant would like to place reliance on following decisions where the Hon'ble courts and Tribunals have distinguished the facts of Mahagun Realtors (supra) on exactly same set of facts as in case of the Appellant:

- *HCP Petrochem (P.) Ltd. [ITA No. 763 of 2018 dated 12 February 2025 (Delhi HC)] Refer page nos. 2153 to 2159 of the legal paperbook.*

- *M/S Samvardhana Motherson Innovative Solutions Ltd. [W.P.(C) 5156/2022 dated 6 February 2025 (Delhi HC)) Refer page nos. 2160 to 2183 of the legal paperbook)*

- *International Hospital Ltd. [(2025) 472 ITR 400 (Delhi HC)] Refer page nos. 2191 to 2212 of the legal paperbook.*

- *BTL INDUSTRIES LTD. [ITA No. 7430/Del/2019 dated 20 August 2025 (Delhi ITAT)] Refer page nos. 2261 to 2289 of the legal paperbook.*

- *Erstwhile United Bank of India now Punjab National Bank [ITA No. 2711/DEL/2025 dated 26 March 2025 (Delhi ITAT)] (Refer page nos. 2293 to 2299 of the legal paperbook)*

- *M/s. India Medtronic Private Limited [ITA No. 1339/Mum/2021 dated 25 August 2023 (Mumbai ITAT)) (Refer page nos 2348 to 2382 of the legal paperbook)*

- *Aptar Pharma India (P.) Ltd. [ITA No. 632/MUM/2022 dated 16 August 2023 (Mumbai ITAT)] (Refer page nos 2383 to 2387 of the legal paperbook)*

- *Siemens Power Engineering (P) Ltd. (2023) 199 ITD 470 (Mumbai (TAT)) (Refer page nos 2388 to 2395 of the legal paperbook)*

Judicial precedents on the issue where draft assessment order is framed in the name of non-existent entity

34 In this regards the Appellant would like to place reliance on the following judicial precedents wherein it is held that if the draft order is framed in the name of a non-existent entity, it is bad in law and liable to be quashed, thereby leading to subsequent proceedings and final assessment order being invalid and liable to be quashed

- *Hon'ble Delhi Tribunal in BOEING India Private Limited vs. ACIT ITA No. 9765/DEL/2019 dated 17 August 2020 (Delhi - Trib.) (Refer page nos. 2319 to 2325 of the legal paperbook)*

- *Hon'ble Mumbai Tribunal in the case of India Medtronic Private Limited (ITA No. 7262/MUM/2018 dated 27 January 2023 (Mumbai - Trib.) (Refer page nos. 2332 to 2347)*

- *Further, Hon'ble Mumbai Tribunal in the case of Aptar Pharma India Private Limited [ITA No. 632/MUM/2022 dated 16 August 2023 (Mumbai*

-Trib.) (Refer page nos. 2383 to 2387 of the legal paperbook)

- *Hon'ble Mumbai Tribunal in the case of Siemens Limited (2023) 199 ITD 470 (Mumbal -Trib.) (Refer page nos. 2388 to 2395 of the legal paperbook)*

- *Hon'ble Mumbai Tribunal in the case of FedEx Express Transportation and Supply Chain Services (India) Private Limited (ITA No. 857/MUM/2016 dated 11 July 2019) (Mumbai - Trib.) (Refer page nos. 2396 to 2411 of the legal paperbook)*

35. In view of above, the Appellant submits that the draft order framed in the name of the non-existent entity i.e. FAL, is bad in law and hence, it is liable to be quashed.

36. In response to the above-mentioned draft assessment order, the Appellant filed its objections (Refer pages 45 to 60 of the appeal memo) before Hon'ble Dispute Resolution Panel ("Hon'ble DRP') on 24 January 2024 in the name of GTIPL (successor of FAL).

37. Separately, On 11 June 2024, the Appellant filed a letter (Refer pages 2112 to 2132 of the legal paper-book) before the learned AO in Delhi jurisdiction reiterating the fact of above-mentioned merger and requesting the grant of tax credits pertaining to FAL and BIPL to GTIPL. This submission was filed in the name GTIPL (successor of FAL) and both the PANs were mentioned separately for clarity.

38. Consequent to the objections filed against the draft assessment order, Hon'ble DRP called for the hearing and heard the matter at length. However, Hon'ble DRP did not provide any relief with respect to TP adjustments made in the TP order and passed its directions (Refer pages 20 to 44 of the appeal set) manually on 29 September 2024 in the name of correct entity i.e. GTIPL (successor of FAL).

39. However, despite the above, the learned AO in Delhi jurisdiction passed the final assessment order dated 30 October 2024 in the name and PAN of FAL I.e. the non-existent entity (Refer pages 8 to 19 of the appeal memo).

40. We have provided below the tabulation of name and address mentioned in the TP order, draft order, DRP application in form 35A, DRP directions and Final Assessment order for your Honours ease of reference:

Particulars	Name of the entity mentioned	Address mentioned
TP order dated 30 October 2023	Fairfield Atlas Limited	Survey No. 157, Devarwadi Village, Shinoli, KH BO
		Devarwadi, Kolhapur, Maharashtra
Draft order dated 27 December 2023	Fairfield Atlas Limited	* M/s. Graziano Transmission India Private Limited (as a successor of Fairfield Atlas Limited) ,510-511, 5th Floor DLF Tower, B Jasola, New Delhi 110025, Delhi,India
Form 35A dated 24 January 2024	Graziano Transmissioni India Private Limited (Successor of Fairfield Atlas Limited)	511, 5th Floor DLF Tower, B Jasola, New Delhi 110025, Delhi, India
DRP Directions dated 28 September 2024	Graziano Transmissioni India Private Limited (Successor of Fairfield Atlas Limited)	511, 5th Floor DLF Tower, B Jasola, New Delhi 110025, Delhi, India
Final Assessment Order dated 30 October 2024	Fairfield Atlas Limited	Graziano Transmissioni India Private Limited successor of Fairfield Atlas Limited, Survey No. 157, Devarwadi Village, Off. Belgaum Vengurla Road, Tal. Chandgad, Kolhapur 416507, Maharashtra, India

**Note : It is respectfully submitted that in the Final Assessment has been mentioned in the address line. An identical issue came before the Hon'ble Supreme Court in PCIT v. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC) (refer pages 2133 to 2147 of the legal paper book), wherein the assessment was framed in the name of a non-existent entity, despite the name of the amalgamated company being mentioned in address. The Hon'ble Court held such proceedings to be invalid. Applying the ratio laid down in Maruti Suzuki India Ltd. to the present case, it clearly follows that the assessment proceedings initiated and completed in the name of a non-existent entity are void ab initio and liable to be quashed in entirety.*

41. It is evident from above that, following the order passed by NCLT dated 30 May 2023, the Appellant repeatedly and

consistently submitted all of its submissions in the name of GTIPL (successor of FAL) before various income-tax authorities. Despite the above and despite the Appellant repeatedly and consistently informing every concerned income-tax authority-across Pune, Kolhapur, Delhi, TPO jurisdiction, the Faceless Assessment Unit, the Jurisdictional AO, and the Hon'ble DRP of the fact of amalgamation immediately after the NCLT order, the authorities nevertheless issued all three impugned orders in the name of the non-existent predecessor entity. The sequence of events (enclosed vide pages 2439 to 2440) clearly demonstrates that the Appellant disclosed the fact of merger on multiple occasions, each time furnishing all relevant merger documents in support.

42. Most importantly, the Hon'ble DRP issued its directions dated 28 September 2024 in the correct name, i.e., "Graziano Trasmissioni India Private Limited (successor of Fairfield Atlas Limited)". demonstrating that the Revenue was fully aware of the merger and had formally accepted the successor entity as the Assessee.

43. However, despite this unequivocal and repeated disclosure across all relevant authorities, both the learned TPO and the learned AO proceeded to issue the Transfer Pricing order under section 92CA(3) on 30 October 2023, the draft assessment order under section 144C(1) on 27 December 2023, and the final assessment order under section 143(3) r.w.s. 144C(13) on 30 October 2024, all in the name of Fairfield Atlas Limited, a non-existent entity.

44. In view of the above facts, the name of a non-existent entity is bad in law and hence, the same is liable to be quashed. In this regard, Appellant wishes to place reliance on following judicial precedents.

45. In this regards, the Appellant would like to place reliance on the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. [2019] 416 ITR 613 (Refer page nos. 2133 to 2147 of the legal paperbook) wherein the Hon'ble Tribunal held unequivocally that once the Assessing Officer is informed of the amalgamation, any notice or order issued in the name of supreme the amalgamating company is a nullity, participation by the assessee notwithstanding. This principle was applied after

noting that had ceased to exist. Relevant extract is reproduced below for your Honour's easy reference :

> *"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 Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainment 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 Enfotainment (supra)*
>
> *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. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 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.*
>
> *35. For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs."*

46. Further, the Hon'ble Delhi High Court in the case of HCP Petrochem (P.) Ltd (ITA No. 763 of 2018 dated 12 February 2025) (Delhi HC) (Refer page nos. 2153 to 2159 of the legal paperbook) dismissed Revenue's appeal by stating that

assessment order issued in name of non-existent company is a flaw which cannot be salvaged by taking recourse to section 2928 of the Act.

47. Similar view has been adopted by various courts / tribunals in the following cases :

- *Hon'ble Delhi High Court in the case of International Hospital Limited vs. DCIT (2025) 472 ITR 400] (Delhi HC) (Refer page nos. 2191 to 2122 of the legal paperbook);*
- *Hon'ble Bombay High Court in the case of Paras Defence and Space Technologies Ltd vs DCIT (Writ Petition No. 4934 OF 2022 dated 27 January 2026 (Bombay HC)) (Refer page nos. 2230 to 2251 of the legal paperbook of the legal paperbook);*
- *Hon'ble Delhi Tribunal in the case of SoftwareONE India Pvt. Ltd (as successor of Comparex India Pvt. Ltd) (ITA No. 4287/Del/2024 dated 13 August 2025 (Delhi ITAT)) (Refer page nos. 2290 to 2292 of the legal paperbook);*

- *Hon'ble Hon'ble Delhi Tribunal in the case of R. S. Securities and Labour Services Pvt. Ltd (ITA No. 3308 & 3309/Del/2024 dated 11 February 2025 (Delhi (TAT)) (Refer page nos. 2300 to 2302 of the legal paperbook);*

- *Hon'ble Delhi Tribunal in the case of BTL Industries Ltd (merged with and now known as M/s BTL Holding Co. Ltd.) (ITA No. 7430/Del/2019 dated 20 August 2025 (Delhi ITAT)) (Refer page nos. 2261 to 2289 of the legal paperbook);*

- *Hon'ble Mumbai Tribunal in the case of Zee Entertainment Enterprises Ltd. [Successor entity of M/s. ETC Network Ltd.), (ITA No.6788/MUM/2016 and CO No. 74/MUM/2018 dated 15 May 2019 (Mumbai ITAT) (Refer page nos. 2412 to 2428 of the legal paperbook)*

Prayer

48. The Appellant respectfully submits that given this comprehensive factual record and the uniform judicial position, the jurisdictional defect in the impugned TP

order, draft assessment order, and final assessment order is incurable.

49. The aforesaid orders were issued to an entity that had legally ceased to exist, despite multiple written intimations and despite the tax administration's own authority (i.e. Hon'ble DRP) recognizing the successor entity. For these reasons, it is respectfully submitted that all three impugned orders (i) the Transfer Pricing order under section 92CA(3), (ii) the draft assessment order under section 144C(1), and (iii) the final assessment order under section 143(3) r.w.s. 144C(13)-are void ab initio and liable to be quashed in limine since they are passed in the name of non-existent entity."

16. Heard rival submission, perused the orders of the authorities below and the submissions made by both the sides. In this case undoubtedly the transfer pricing order u/s.92CA(3) of the Act dated 30.10.2023, draft assessment order passed by the AO dated 27.12.2023 u/s.144C(1) of the Act and also the final assessment order dated 30.10.2024 passed u/s.143(3) r.w.s. 144C(13) of the Act for the A.Y.2021-22 were in the name of FAL mentioning PAN number of FAL which is AAACA4439Q, inspite of the assessee intimating the AO/ TPO in the jurisdiction of Kolhapur, Pune and also in Delhi that pursuant to the order of NCLT dated 30.05.2023 and sanctioning the scheme of amalgamation FAL was dissolved by operation of law and merged into GTIPL which became the successor company from 01.04.2022. It is evident on record that the assessee on several occasions intimated the fact of amalgamation of FAL into GTIPL, alongwith scheme of amalgamation, copy of the order of the NCLT intimation letter to the registrar of

companies, PAN number of FAL, PAN number of GTIPL. However, none of the authorities while passing the transfer pricing order u/s.92CA(3) draft assessment order dated 27.12.2023 and the final assessment order dated 30.10.2024 passed u/s.143(3) r.w.s. 144C(13) of the Act was passed in the name of successor company GTIPL but was passed in the name of FAL mentioning its PAN which was a non listing company Therefore, in our considered view since all these orders were passed in the name of non-existent company inspite of informing the authorities by the assessee the same are bad in law and void ab initio in view of the ratio of the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra). The ratio of the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra) clearly applies to the facts of the assessee's case in hand. The decision relied on by the Ld. DR are distinguishable on facts and have no application of the assessee. Thus, respectfully following the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki P. Ltd, we hold that the draft assessment order as well as final assessment order passed in the case of non-existent entity namely FAL for the A.Y.2021-22 is bad in law and void ab inito and consequently the same is hereby quashed. Ground No.3 of grounds of appeal of the assessee is allowed.

17. Since we have quashed the Final assessment order on legal ground No.3 of grounds of appeal, all other grounds on merits need not be adjudicated at this stage since they

become only academic in nature and hence they are left open.

18. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 10.04.2026.

Sd/-	**Sd/-**
[M. BALAGANESH]	**[C.N. PRASAD]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 10.04.2026

*Neha, Sr.PS

Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi