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TAX FLASH NEWS

13 April 2022

Supreme Court’s decision on the validity of assessment order issued in the name of amalgamating company post amalgamation

Executive summary

Recently, the Supreme Court in the case of Mahagun Realtors (P) Ltd[1] (the taxpayer) dealt with the validity of an assessment order issued in the name of amalgamating company post amalgamation. The Supreme Court observed that the taxpayer did not intimate about the amalgamation prior to the issue of the assessment order. Further, the taxpayer itself undertook various compliances such as furnishing of tax returns, correspondences with the tax department, filing of appeal before appellate authorities, etc., in the name of the amalgamating company, which had ceased to exist. The Supreme Court, while distinguishing its earlier decision in the case of Maruti Suzuki India Ltd.[2], upheld the validity of the assessment order passed in the name of amalgamating company post amalgamation on the basis of specific facts of the case.

Facts of the case

The taxpayer (‘MRPL’/‘the amalgamating company’/the ‘transferor company’) is engaged in the development of real estate and had executed one residential project under the name ‘Mahagun Maestro’ located in Noida, Uttar Pradesh. The taxpayer amalgamated with MIPL by virtue of a High Court order (dated 10 September 2007). In terms of the order and provisions of the Companies Act, 1956, the amalgamation was with effect from 1 April 2006.

The Assessing Officer (AO) made several additions under various heads. In the assessment order, the AO showed the taxpayer as MRPL, represented by MIPL. The Commissioner of Income-tax (Appeals) [CIT(A)] has partly allowed the appeal of the taxpayer and set aside some amounts brought to tax by the AO.

The Tribunal dismissed the tax department’s appeal. The taxpayer also filed a cross objection that it was not in existence when the assessment order was made, as it had amalgamated with MIPL. Accordingly, the order passed by the AO was invalid and should be quashed. The Tribunal allowed the taxpayer's appeal.

The High Court while relying on a decision of the Supreme Court in the case of Maruti Suzuki India Ltd dismissed the tax department’s appeal. Aggrieved by the decision of the High Court, the tax department filed a further appeal before the Supreme Court.

Supreme Court decision

Section 170 indicates 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 after the date of succession.

Amalgamation is not like the winding-up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed, and it ceases to exist. However, 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 essential to look beyond the mere concept of the destruction of a 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 upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor

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[1] PCIT v. Mahagun Realtors (P) Ltd (SLP (C) No. 4063 of 2020) – Taxsutra.com
[2] PCCIT v. Maruti Suzuki India Ltd [2019] 416 ITR 613 (SC)

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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.

Reference was made to various decisions[3]. The Supreme Court observed that there are many instances under the Act, where 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 the withdrawal of a special benefit (such as an area exemption under Section 80-IA) 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 business including the rights, assets and liabilities of the transferor company, does not cease but continues as that of the transferor company.
- 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.
- The amalgamated company can also take the benefit of set-of losses of amalgamating company on fulfillment of certain conditions.

The combined effect of the High Court's order approving the scheme of amalgamation and several provisions pertaining to amalgamation contained in the 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.

The Supreme Court decisions in the cases of Spice Infotainment[4] and Maruti Suzuki have been distinguished on the facts as follows

- In those decisions, taxpayers had duly informed the lower authorities about the merger of companies and yet an assessment order was passed in the name of amalgamating company/non-existing company. In the present case, there was no intimation by the taxpayer regarding amalgamation with MIPL at any stage of the assessment proceedings.
- In those decisions, amalgamated companies had participated in the proceedings before Tax Authority. However, in the present case, participation in proceedings was in the name of the taxpayer itself.

The following peculiar facts of the present case are also relevant to support the validity of the assessment order:

- When the search and seizure of the Mahagun group took place, no indication was given about the amalgamation.
- The return of income for the tax year 2005-06 was furnished in the taxpayer's name and also contained PAN of the taxpayer.
- While the taxpayer did intimate the AO about amalgamation, it was for subsequent tax years and not for the tax year under consideration.
- The return of income filed by the taxpayer did not disclose the fact of amalgamation despite the presence of such specific reporting requirement in the return of income.
- During the assessment proceedings, there was full participation on behalf of all transferor companies.
- An assessment order was issued in the taxpayer's name represented by the amalgamated company. The taxpayer filed appeals also in a similar fashion before the CIT(A) and the Tribunal.
- It was for the first time before the Tribunal that the taxpayer raised an objection on the validity of assessment in view of amalgamation.
- An affidavit filed before the Supreme Court also shows that the affidavit was signed by the directors of the taxpayer.

The Supreme Court held that whether the corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on the bare application of corporate law provisions but would depend on the terms of amalgamation and the facts of each case. The assessment order passed by the AO in the name of amalgamating company as represented by the amalgamated company was valid. Accordingly, the order of the High Court was set aside.

[3] CIT v. Sir Hukumchand Mannalal & Co. [1970] 78 ITR 18 (SC), CIT v. Amarchand Shroff [1963] 48 ITR 59 (SC), CIT v. James Anderson [1964] 51 ITR 345 (SC), Saraswati Industrial Syndicate Ltd. v. CIT [1999] 103 Taxman 395 (SC)
[4] CIT v. Spice Infotainment (2020) 18 SCC 353

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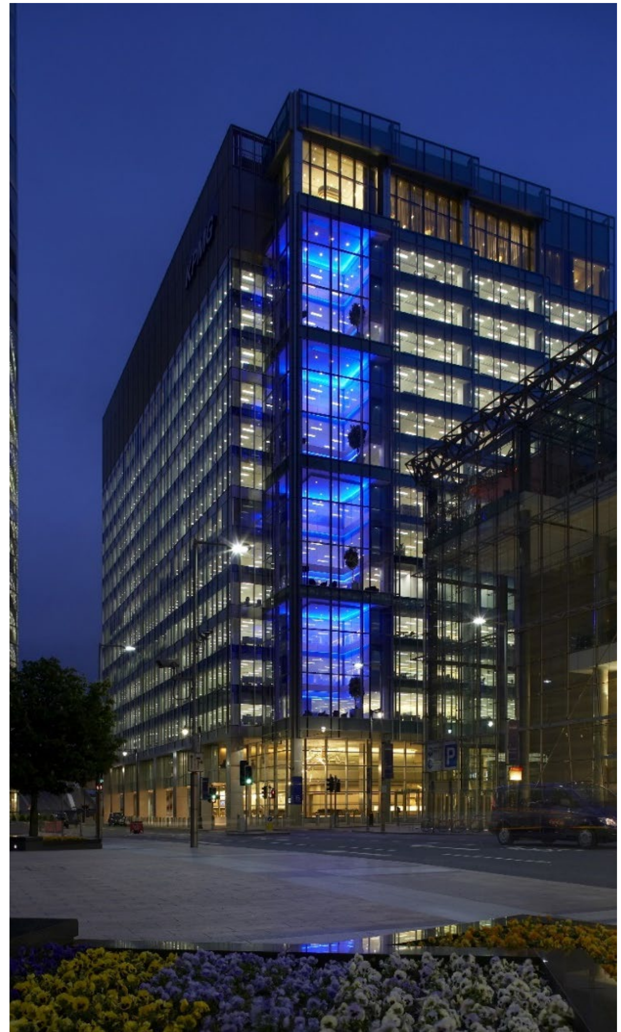
Our comments

The Supreme Court, based on the facts of this case, distinguished its earlier decisions in the cases of Spice Infotainment and Maruti Suzuki and upheld the validity of the assessment order passed in the name of amalgamating company post amalgamation.

The Finance Act, 2022 has introduced a new set of provisions with effect from 1 April 2022, which provides that where there is succession, assessment or reassessment or other proceedings made or initiated on the predecessor during the course of pendency of such succession, it shall be deemed to have been made or initiated on the successor and all the provisions of this Act shall apply accordingly. Further provisions have been introduced to enable the entities going through a business reorganisation for filing modified returns for the period between the date of effectivity of the order and the date of issuance of a final order of the competent authority. It would be interesting to analyse the Supreme Court's decision along with the newly introduced provisions.



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KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru
Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh
SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai
KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram
Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad
Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur
Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi
Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata
Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
2nd Floor, Block T2 (B Wing),
Lodha Excellus, Apollo Mills Compound, N M Joshi Marg,
Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune
9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara
Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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