* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: September 11, 2024**
Judgment pronounced on September 26, 2024

\+ ITA 116/2023

INTERNATIONAL HOSPITAL LIMITED .....Appellant
Through: Mr. Simran Mehta, Advocate.

versus

DCIT CIRCLE 12 (2) .....Respondent
Through: Mr. Gaurav Gupta, SSC along with Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs.

\+ W.P.(C) 13807/2022

RELIGARE ENTERPRISES LIMITED (AS SUCCESSOR-IN-INTEREST OF RELIGARE SECURITIES LTD) .....Petitioner
Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal Ms. Manisha Sharma and Ms. Somya Jain, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents
Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

\+ W.P.(C) 11498/2019

BABA LEASE & INVESTMENT PVT LTD .....Petitioner
Through: Mr. Prakash Sinha, Adv.

versus

INCOME TAX OFFICER, WARD NO. 15(1), DELHI .....Respondent
Through: Mr. Siddhartha Sinha, SSC along

with Ms. Dacchita Shahi and Ms. Anjuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Minz, Advs.

\+ W.P.(C) 1894/2020

M/S BABA LEASE & INVESTMENT PVT LTD .....Petitioner

Through: Mr. Prakash Sinha, Adv.

versus

INCOME TAX OFFICER WARD NO 16(1), DELHI .....Respondent

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat and Mr. V.K. Saksena, JSCs.

\+ W.P.(C) 10882/2021

GARTNER INDIA RESEARCH AND ADVISORY SERVICES PRIVATE LIMITED .....Petitioner

Through: Mr. Vishal Kalra, Ms. Singdha Gautam, Mr. S.S. Tomar and Mr. Ankit Sahni, Advs.

versus

THE ASSESSING OFFICER NATIONAL FACELESS ASSESSMENT CENTRE DELHI & ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, Jr SCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Ms. Muskan Goel, Mr. Bhanukaran Singh, Ms. Surabhi Jain and Mr. Himanshu Gaur, Advocates.

\+ W.P.(C) 13862/2021

BSBK ENGINEERS PRIVATE LIMITED (RESULTING COMPANY OF VOGUE LEASING AND FINANCE PVT. LTD.) .....Petitioner

Through: Mr. Amol Sinha, Mr. Kshitij

Garg and Mr. Sourav Verma, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIR-13 DELHI .....Respondent

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

\+ W.P.(C) 13883/2021

BSBK ENGINEERS PRIVATE LIMITED (RESULTING COMPANY OF MADHULIKA FINANCE COMPANY LTD.) .....Petitioner

Through: Mr. Amol Sinha, Mr. Kshitij Garg and Mr. Sourav Verma, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIR-13 DELHI .....Respondent

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

\+ W.P.(C) 13930/2021

RELIGARE ENTERPRISES LTD. (AS SUCCESSOR-IN-INTEREST OF RGAM INVESTMENT ADVISERS PRIVATE LIMITED) .....Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal Ms. Manisha Sharma and Ms. Somya Jain, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari,

Adv.

\+ W.P.(C) 14005/2021

RELIGARE ENTERPRISES LTD. (AS SUCCESSOR-IN-INTEREST OF RELIGARE CAPITAL MARKETS (INDIA) PVT. LTD.) .....Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal Ms. Manisha Sharma and Ms. Somya Jain, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

\+ W.P.(C) 14061/2021

RELIGARE ENTERPRISES LTD. (AS SUCCESSOR-IN-INTEREST OF RELIGARE ARTS INVESTMENT MANAGEMENT LIMITED) .....Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal Ms. Manisha Sharma and Ms. Somya Jain, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

\+ W.P.(C) 14062/2021

RELIGARE ENTERPRISES LTD (AS SUCCESSOR-IN-INTEREST OF RGAM CAPITAL INDIA LTD.) .....Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D.

Agrawal Ms. Manisha Sharma and Ms. Somya Jain, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

\+ W.P.(C) 14296/2021

BSBK ENGINEERS PRIVATE LIMITED (RESULTING COMPANY OF PARISHUDH FINANCE COMPANY PVT. LTD.) .....Petitioner

Through: Mr. Amol Sinha, Mr. Kshitij Garg and Mr. Sourav Verma, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIR-13 DELHI .....Respondent

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

\+ W.P.(C) 14306/2021

RANGOLI RESORTS PVT LTD (AS SUCCESSOR IN INTEREST OF POLYFLEX MARKETING PVT LTD) .....Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal, Ms. Manisha Sharma, Mr. Saksham Singhal and Mr. Samarth Chaudhari, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Ruchir Bhatia, SSC along with Mr. Anant Mann, JSC, Mr. Abhishek Anand and Mr. Pranjal Singh, Advs.

\+ W.P.(C) 14798/2021

MADHU VINIYOG PRIVATE LIMITED (MARIGOLD NIRMAN PVT. LTD. MERGED WITH PETITIONER)
.....Petitioner

Through: Mr. Rohit Bansal, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 16(1), DELHI & ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, Jr SCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Ms. Muskan Goel, Mr. Bhanukaran Singh, Ms. Surabhi Jain and Mr. Himanshu Gaur, Advocates.

\+ W.P.(C) 4035/2022

QUALCOMM INDIA PVT. LTD. AFTER MERGER OF CSR TECHNOLOGY INDIA- PRIVATE LIMITED. .....Petitioner

Through: Ms. Ananya Kapoor, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19-1 & ORS. .....Respondents

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

\+ W.P.(C) 4038/2022

QUALCOMM INDIA PVT. LTD. -AFTER MERGER OF IKANOS COMMUNICATIONS INDIA PVT. LTD.
.....Petitioner

Through: Ms. Ananya Kapoor, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19 (1), DELHI AND ORS. .....Respondents

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

\+ W.P.(C) 4103/2022

QUALCOMM INDIA PVT. LTD. -AFTER MERGER OF CSR INDIA PRIVATE LIMITED. .....Petitioner

Through: Ms. Ananya Kapoor, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19-1 & ORS. .....Respondents

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

\+ W.P.(C) 5021/2022

NOKIA SOLUTIONS AND NETWORKS INDIA PVT LTD (SUCCESSOR OF NOKIA SIEMENS NETWORK INDIA PRIVATE LIMITED) .....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, Jr SCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Ms. Muskan Goel, Mr. Bhanukaran Singh, Ms. Surabhi

Jain and Mr. Himanshu Gaur, Advocates.

\+ W.P.(C) 5022/2022

M/S NOKIA SOLUTIONS AND NETWORKS INDIA PVT LTD (SUCCESSOR OF NOKIA SIEMENS NETWORKS INDIA PRIVATE LIMITED) .....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16 (1) AND ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, Jr SCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Ms. Muskan Goel, Mr. Bhanukaran Singh, Ms. Surabhi Jain and Mr. Himanshu Gaur, Advocates.

\+ W.P.(C) 5118/2022

M/S NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED (SUCCESSOR OF NOKIA SIEMENS NETWORKS INDIA PRIVATE LIMITED) .....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16(1) AND ANR .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, Jr SCs, Ms. Nupur Sharma, Mr. Gaurav

Singh, Ms. Muskan Goel, Mr. Bhanukaran Singh, Ms. Surabhi Jain and Mr. Himanshu Gaur, Advocates.

\+ W.P.(C) 5134/2022

PAYTM MOBILE SOLUTIONS PRIVATE LIMITED (NOW MERGED INTO ONE 97 COMMUNICATIONS LIMITED)
.....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19(1), DELHI AND ORS. .....Respondents

Through: Mr. Indruj Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSCs

\+ W.P.(C) 5161/2022

PAYTM MOBILE SOLUTIONS PRIVATE LIMITED (N0W MERGED INTO ONE 97 COMMUNICATIONS LIMITED)
.....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19(1), DELHI AND OTHERS .....Respondents

Through: Mr. Indruj Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSC

\+ W.P.(C) 5165/2022

PAYTM MOBILE SOLUTIONS PRIVATE LIMITED (NOW MERDED INTO ONE 97 COMMUNICATIONS LTD.)

.....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19(1), DELHI AND ORS. .....Respondents

Through: Mr. Indruj Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSC

\+ W.P.(C) 5166/2022

PAYTM MOBILE SOLUTIONS PRIVATE LIMITED (NOW MERGED INTO ONE 97 COMMUNICATIONS LTD.)

.....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19(1), DELHI AND ORS. .....Respondents

Through: Mr. Indruj Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSC

\+ W.P.(C) 5171/2022

PAYTM MOBILE SOLUTIONS PRIVATE LIMITED (NOW MERGED INTO ONE 97 COMMUNICATIONS LIMITED)

.....Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal and Mr. Priyam Bhatnagar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents

Through: Mr. Indruj Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSC

\+ W.P.(C) 5475/2022

SHAKUNTLAM SOFTECH PRIVATE LIMITED (NOW AMALGAMATED WITH SHAKUNTLAM SECURITIES PRIVATE LIMITED) .....Petitioner

Through: Mr. Ruchesh Sinha and Ms. Monalisa Maity, Advs.

versus

INCOME TAX OFFICER WARD 23(1) DELHI & ANR. .....Respondents

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

\+ W.P.(C) 7151/2022

MERCER CONSULTING (INDIA) PRIVATE LIMITED .....Petitioner

Through: Mr. Manuj Sabharwal and Mr. Drona Negi, Advocates

versus

DEPUTY COMMISSIONER OF INCOME-TAX & ORS. .....Respondents

Through: Mr. Siddhartha Sinha, SSC along with Ms. Dacchita Shahi and Ms. Anjuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Minz, Advs.

\+ W.P.(C) 7217/2022

MERCER CONSULTING (INDIA) PRIVATE LIMITED .....Petitioner

Through: Mr. Manuj Sabharwal and Mr. Drona Negi, Advocates

versus

DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE 16(1), DELHI & ORS. .....Respondents

Through: Mr. Siddhartha Sinha, SSC along with Ms. Dacchita Shahi and Ms. Anjuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Minz, Advs.

\+ W.P.(C) 13991/2022

EKUM DESIGN PRIVATE LIMITED .....Petitioner

Through: Mr. Vikas Jain, Mr. Aviral Saxena, Ms. Shrawani, Mr. Piyush Thavi and Mr. Hardik Jayal, Advs.;

versus

INCOME TAX OFFICER AND ORS. .....Respondents

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

\+ W.P.(C) 14034/2022

SIDDHESHWARI TRADEX PRIVATE LIMITED .....Petitioner

Through: Ms. Shreya Jain and Adv. Mr. Gaurav Tanwar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

\+ W.P.(C) 17290/2022

RANJITGARH FINANCE CO. PRIVATE LIMITED (TRANSFEREE COMPANY OF AASTHA PROFESSIONAL CONSULTANTS PRIVATE LIMITED) THROUGH ITS DIRECTOR SH. MANAN NARANG .....Petitioner

Through: Mr. Mukesh Sukhija, Mr. Milind Gautam, Mr. Priyeranjan Ambashtha and Ms. Archana Biala, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1) .....Respondent

Through: Mr. Aseem Chawla, SSC with Ms. Priya Sarkar, JSC & Ms. Pratishtha Chaudhary, Adv.

\+ W.P.(C) 17329/2022 & CM APPL. 57045/2023 (Direction)

RANJITGARH FINANCE CO. PRIVATE LIMITED (TRANSFEREE COMPANY OF OMANSH PROPERTIES PRIVATE LIMITED) THROUGH ITS DIRECTOR SH. MANAN NARANG .....Petitioner

Through: Mr. Mukesh Sukhija, Mr. Milind Gautam, Mr. Priyeranjan Ambashtha and Ms. Archana Biala, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1) .....Respondent

Through: Mr. Aseem Chawla, SSC with Ms. Priya Sarkar, JSC & Ms. Pratishtha Chaudhary, Adv.

\+ W.P.(C) 3885/2023

NCUBATE INDIA SERVICES PRIVATE LIMITED .....Petitioner

Through: Mr. Sumit K. Batra, Mr. Manish Khurana, Ms. Priyanka Jindal & Mr. Nikhin Alex, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16 (1), DELHI & ANR. .....Respondents

Through: Mr. Gaurav Gupta, SSC along with Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs.

\+ W.P.(C) 4558/2023

SUNCITY HI-TECH INFRASTRUCTURE PRIVATE LIMITED - AFTER MERGER OF M/S SUPER BUILT REAL ESTATES AND LAND DEVELOPERS PVT. LTD .....Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit Lalchandani and Ms. Ananya Kapoor, Advs.

versus

INCOME TAX OFFICER, WARD 24-1, DELHI & ANR. .....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC along with Mr. Shivansh B. Pandya, Mr. Viplav Acharya, JSCs and Mr. Utkarsh Tiwari, Adv.

\+ W.P.(C) 5868/2023 & CM APPL. 23019/2023 (Interim Stay)

ELITE WEALTH LIMITED .....Petitioner

Through: Mr. Amol Sinha, Mr. Kshitij Garg and Mr. Sourav Verma, Advs.

versus

INCOME TAX OFFICER, WARD8(1),
DELHI & ANR. .....Respondents

Through: Mr. Debesh Panda, SSC with Mr. Vikramaditya Singh, Ms. Zehra Khan, JSCs and Mr. Ishan Puri, Adv.

\+ W.P.(C) 7775/2023 & CM APPL. 30016/2023 (Stay)

LECOANET HEMANT INDIA PVT. LTD. (SUCCESSOR / TRANSFEREE COMPANY OF IP SUPPORT SERVICES (INDIA) PVT. LTD.) .....Petitioner

Through: Mr. Piyush Kaushik and Mr. Tanveer Zaki, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-4
N.DELHI & ANR. .....Respondents

Through: Mr. Gaurav Gupta, SSC along with Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs.

\+ W.P.(C) 7487/2024 & CM APPL. 31188/2024 (Interim Stay)

LECOANET HEMANT INDIA PVT. LTD. .....Petitioner

Through: Mr. Piyush Kaushik and Mr. Tanveer Zaki, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME
TAX-4 & ANR. .....Respondents

Through: Mr. Gaurav Gupta, SSC along with Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. This batch of writ petitions and a connected Income Tax Appeal impugn orders of assessment as well as reassessment action initiated by the respondents on the ground of the amalgamated entity having never been placed on notice. The petitioners would contend that despite the respondents having been duly apprised of the factum of amalgamation, no notices were served upon the amalgamated entity and orders of assessment as well as notices of reassessment were maintained in the name of the amalgamating entity. This, according to the writ petitioners, would amount to a fatal defect rendering the final orders and notices as framed being null and void. It was their submission that the impugned action of the respondents would not sustain in light of the decision rendered by the Supreme Court in **Principal Commissioner of Income Tax, New Delhi vs Maruti Suzuki (India) Limited**[1].

2. The respondents, on the other hand, would urge us to hold that a failure to place the amalgamated entity on notice is curable and one which would fall within the ambit of Section 292B of the **Income Tax Act, 1961**[2]. Additionally, the respondents rest their case on a subsequent decision of the Supreme Court in **Principal Commissioner of Income Tax (Central)-2 vs. Mahagun Realtors (P) Ltd.**[3]. It is the aforesaid rival contentions which fall for our consideration in this batch.

3. For facilitating disposal of the present matters, the petitioners had

[1] (2020) 18 SCC 331
[2] Act
[3] 2022 SCC OnLine SC 407

circulated a detailed chart pertaining to each individual writ petitioner encapsulating relevant details pertaining the Scheme of Arrangement as sanctioned by the **National Company Law Tribunal**[4] or the concerned High Court, the dates when the factum of merger may have been intimated to the respondents as well as details pertaining to orders of assessment as made or notices issued under Section 148. That chart which was presented for our consideration is appended to the judgment as **"Appendix "A"**.

4. From the facts which have been set forth in the lead writ petition being W.P.(C) 13807/2022, we find that **Religare Securities Ltd**[5]. was a company incorporated under the **Companies Act, 1956**[6] and was regularly assessed to tax under the provisions of the Act. It is also stated to be a company which was duly listed on the National Stock Exchange as well as the Bombay Stock Exchange and engaged in providing security, brokering and depository services to its retail clients. For **Assessment Year**[7] 2015-16, RSL is stated to have filed its return of income on 31 March 2017. An assessment order under Section 143(3) thereafter came to be framed on 10 December 2018. Although that assessment formed subject matter of cross appeals preferred by respective sides before the **Income Tax Appellate Tribunal**[8], the dispute forming part of assessee's appeal ultimately came to be settled under the **Direct Tax Vivad se Vishwas Act, 2020**[9]**.** The appeal of the Revenue, however, continues to remain pending before the Tribunal.

[4] NCLT
[5] RSL
[6] 1956 Act
[7] AY
[8] Tribunal
[9] The 2020 Act

5. Eleven entities of the Religare Group including RSL are stated to have filed a petition before the NCLT for approval of a composite Scheme of Arrangement. It is the case of the writ petitioner that the **Assessing Officer**[10] of RSL had submitted its No Objection to the proposed Scheme before the NCLT on 28 September 2017. That Scheme ultimately came to be approved by the NCLT on 08 December 2017, pursuant to which the brokering business of RSL was demerged and vested in Religare Broking Ltd. as a going concern while the remaining balances and undertaking of RSL stood amalgamated with the petitioner, Religare Enterprises Ltd. The appointed date under the aforesaid Scheme was prescribed to be 01 April 2016.

6. It is the case of the writ petitioner that the factum of merger was duly intimated to the Assessing Officer on 29 December 2017. The petitioner is also stated to have submitted merged financial statements along with a revised Return of Income on 29 March 2019.

7. On 15 April 2021, a notice under Section 148 came to be issued in the name of RSL. The aforesaid notice was assailed by the writ petitioner by way of W.P.(C) 7132/2021 before this Court and which ultimately came to be allowed along with a batch of writ petitions which formed subject matter of **Mon Mohan Kohli v. Assistant Commissioner of Income-tax and Another**[11].

8. In terms of the judgment rendered by the Court on that batch, the reassessment notice of 15 April 2021 came to be quashed. The decision in *Mon Mohan Kohli* as well as judgments rendered on similar lines by different High Courts ultimately travelled up to the Supreme Court and

[10] AO
[11] 2021 SCC OnLine Del 5250

where the controversy with respect to the reassessment regime which would be applicable in respect of notices issued post 01 April 2021 ultimately came to be clarified in terms of the judgment rendered in **Union of India and Ors. vs. Ashish Agarwal**[12]**.** Shorn of unnecessary details, suffice it to note that the decisions of different High Courts came to be modified with liberty being accorded to the Revenue to treat the notices originally issued under Section 148 as being referable to Section 148A(b) as introduced by virtue of Finance Act, 2021 and for proceedings to be taken forward in accordance with law.

9. Acting in purported compliance of that decision, the respondents on 25 May 2022 issued a communication in the name of RSL and provided a copy of the information on the basis of which the notice of 15 April 2021 had been initially issued. It is further alleged by the writ petitioner that without granting any right of personal hearing, a final order referable to Section 148A(d) came to be passed on 28 July 2022 followed by a consequential notice under Section 148. It was the aforesaid action which ultimately led to the institution of the present writ petition. It becomes pertinent to note that it was only the Section 148A(d) order and the consequential notice under Section 148 issued pursuant to the aforesaid determination which for the first time came to be framed in the name of the resultant entity, Religare Enterprises Limited. Both the original Section 148 notice as well as the subsequent notice under Section 148A(b) were in the name of RSL.

10. It becomes pertinent to note that although Instruction No. 1/2022 dated 11 May 2022 issued by the **Central Board of Direct Taxes**[13]

[12] (2023) 1 SCC 617
[13] CBDT

also formed subject matter of challenge in some of the writ petitions forming part of this batch, no arguments were addressed on that score. We thus confine our determination to the principal question of whether the impugned proceedings would sustain when viewed in the context of the same having been drawn in the name of entities which had ceased to exist.

11. The writ petitioners essentially contend that in terms of a Scheme of Arrangement which may ultimately come to be approved by the jurisdictional High Court or the NCLT, the amalgamating entity comes to be dissolved by operation of law. It was contended that the dissolution of the amalgamating corporate entity occurs by virtue of the NCLT or the High Court sanctioning the compromise or arrangement and this by virtue of the provisions made in Sections 230 to 232 of the **Companies Act, 2013**[14] and which contemplates a deemed dissolution of the transferor company without the process of winding up being resorted to. According to learned counsels who advanced submissions on the writ petitions, the dissolution of the transferor company would lead to the Court coming to the irresistible conclusion that it would have ceased to exist in the eyes of law and thus any notice issued in its name being a nullity.

12. According to the writ petitioners neither Section 159 nor Section 170 of the Act would save or validate a notice that may be issued in the name of a transferor company which did not exist on the relevant date. It was submitted that the Act itself contemplates a charge of tax being imposed on an entity which is in existence on the date of issuance of notice. The principal submission was that once that legal personality

[14] 2013 Act

which otherwise existed had ceased to remain in existence on the date of issuance of notice, any proceedings drawn in its name or orders passed would be wholly unsustainable in law and liable to be quashed.

13. According to the writ petitioners, the challenge on grounds noticed above is no longer res integra and stands conclusively answered by the Supreme Court in *Maruti Suzuki*. It becomes pertinent to note that the judgment of the Supreme Court in *Maruti Suzuki* had come to be rendered on an appeal which arose from a judgment of this Court and which while upholding the decision rendered by the Tribunal had held that an assessment made in the name of **Suzuki Powertrain India Ltd.**[15], and which had evidently under an approved Scheme amalgamated with **Maruti Suzuki India Ltd.**[16], was a nullity. On facts it emerged that MSIL had duly intimated the AO of the amalgamation prior to the case being selected for scrutiny assessment. Notwithstanding that information being available, the AO appears to have framed a draft assessment order in the name of SPIL.

14. It was in the aforesaid backdrop that the Supreme Court firstly took note of an earlier decision of this Court in **Spice Entertainment Ltd. vs. Commissioner of Service Tax**[17], where it had been held that an assessment made in the name of a transferor company would be *void ab initio* and could not possibly be viewed as a procedural defect curable or rectifiable under Section 292B of the Act. This becomes evident from the following conclusions which came to be rendered:

> "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

[15] SPIL
[16] MSIL
[17] 2011 SCC OnLine Del 3210

> returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said 'dead person'. When notice under Section 143(2) was 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 M/s 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."

15. The Special Leave Petition which was taken against the judgment in *Spice Entertainment* came to be dismissed by the Supreme Court in **Commissioner of Income Tax, New Delhi vs. Spice Enfotainment Ltd.**[18] in the following terms:

> "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 3210 : (2012) 280 ELT 43] , [*CIT* v. *Dimension Apparels (P) Ltd.*, 2014 SCC OnLine Del 7588 : (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."

16. The aspect of an assessment coming to be framed in the name of a company which stood dissolved consequent to amalgamation appears to have arisen for consideration of this Court yet again in **Sky Light**

[18] (2020) 18 SCC 353

Hospitality LLP vs. Assistant Commissioner of Income Tax[19]. The *Sky Light Hospitality* Court held that a defect in recording the name of a non-existent company would constitute a procedural error which could be cured under Section 292B of the Act. The appeal taken against that decision to the Supreme Court came to be dismissed in **Skylight Hospitality LLP vs. Assistant Commissioner of Income Tax**[20] in the following terms:-

> "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed. Pending applications stand disposed of."

17. In *Maruti Suzuki* it appears to have been urged by and on behalf of the Revenue that the decision in *Spice Entertainment* would not hold good in light of the decision which our High Court had pronounced in *Sky Light Hospitality* and which had come to be affirmed by the Supreme Court. Dealing with the aforesaid contention, the Supreme Court in *Maruti Suzuki* observed as follows:

> "**28.** The submission, however, which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] which was affirmed on 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] by a two-Judge Bench of this Court consisting of Hon'ble Mr Justice A.K. Sikri and Hon'ble Mr Justice Ashok Bhushan. In assessing the merits of the above submission, it is necessary to extract the order dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] of this Court : (*Skylight Hospitality case*[*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] , SCC p. 147, para 1)
>
> > "*1*. In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed.

[19] 2018 SCC OnLine Del 7155
[20] (2018) 13 SCC 147

Pending applications stand disposed of."

Now, it is evident from the above extract that it was in the *peculiar facts* of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292-B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155: (2018) 405 ITR 296]. Skylight Hospitality, an LLP, had taken over on 13-5-2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd. upon conversion under the Limited Liability Partnership Act, 2008 (the LLP Act, 2008). It instituted writ proceedings for challenging a notice under Sections 147/148 of the 1961 Act dated 30-3-2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the Income Tax Department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292-B for the following reasons : (*Skylight Hospitality case* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296], SCC OnLine Del para 18)

> "*18.* … There was 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 11-4-2017. 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 Skylight 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."

29. The decision in *Spice Entertainment* [*Spice Entertainment Ltd.* v. *Commr. of Service Tax*, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] was distinguished with the following observations : (*Skylight Hospitality case* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] , SCC OnLine Del para 19)

> "*19.* Petitioner relies on *Spice Infotainment* v. *CIT* [This judgment has also been referred to as *Spice Infotainment Ltd.* v. *CIT*, (2012) 247 CTR (Del) 500] . Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Sections 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the assessing officer was informed about amalgamation but the assessment order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of assessment order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Sections 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal."

30. From a reading of the order of this Court dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] in the special leave petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292-B. The decision in *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] has been distinguished by the Delhi, Gujarat and Madras High Courts in:

(*i*) *Rajender Kumar Sehgal* [*Rajender Kumar Sehgal* v. *CIT*, 2018 SCC OnLine Del 12890];

(*ii*) *Chandreshbhai Jayantibhai Patel* [*Chandreshbhai Jayantibhai Patel* v. *CIT*, 2018 SCC OnLine Guj 4812]; and

(*iii*) *Alamelu Veerappan* [*Alamelu Veerappan* v. *CIT*, 2018 SCC OnLine Mad 13593] .

> **31.** There is no conflict between the decisions of this Court in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] (dated 2-11-2017) and in *Skylight Hospitality LLP* v. *CIT* [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] (dated 6-4-2018)."

18. Arguments flowing on lines similar to those which were addressed before us in this batch appear to have been urged before the Supreme Court in *Maruti Suzuki* with it being argued that a notice in the name of a company which stood dissolved would be a curable mistake and that in any case, Section 170 of the Act would save those notices. This becomes apparent from a reading of paragraphs 32 and 33 of the report which are extracted hereinbelow:

> "**32.** Mr Zoheb Hossain, learned counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292-B. A close reading of the order of this Court dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] , however indicates that what weighed in the dismissal of the special leave petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the special leave petition this Court observed that it was the peculiar facts of the case which led the Court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292-B. Thus, there is no conflict between the decisions in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on the one hand and *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] on the other hand. It is of relevance to refer to Section 292-B of the Income Tax Act which reads as follows:
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> > "**292-B.** ***Return of income, etc., not to be invalid on certain grounds***.—No return of income, assessment, notice,

summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

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 292-B.

33. In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

"**170.** ***Succession to business otherwise than on death***.—

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

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

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

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

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the assessing officer shall record a finding to that effect and

the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in Section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession."

19. The Supreme Court in *Maruti Suzuki* ultimately held:

"**36.** 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 coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on 2-11-2017. The decision in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] 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* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353].

37. 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 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 2012-2013. 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."

20. As is evident from the above, *Maruti Suzuki* came to affirm the view which was expressed by this Court in *Spice Entertainment*. The Court in *Spice Entertainment* had identified the principal question to be whether the provisions of Section 292B could be invoked to salvage a situation where an assessment comes to be framed in the name of the transferor company. The Court was called upon to examine whether such an order of assessment would be a nullity or one which could be viewed as suffering from a procedural defect which could be validated by invoking Section 292B. Dealing with this aspect, the Court in *Spice Entertainment* had observed as follows:-

> "**8.** A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. This position is even accepted by the Tribunal in para-14 of its order extracted above. Having regard this consequence provided in law, in number of cases, the Supreme Court held that assessment upon a dissolved company is impermissible as there is no provision in Income-Tax to make an assessment thereupon. In the case of *Saraswati Industrial Syndicate Ltd.* v. *CIT*, 186 ITR 278 the legal position is explained in the following terms:
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> > "The question is whether on the amalgamation of the Indian Sugar Company with the appellant Company, the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under Section 391 read with Section 394 of the Companies Act. The Saraswati Industrial Syndicate, the trans free Company was a subsidiary of the Indian Sugar Company, namely, the transferor Company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee Company the Saraswati

> Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that Company incurred or it could incur, any liaiblity, before the dissolution or not thereafter.
>
> Generally, where only one Company is involved in change and the rights of the share holders and creditors are varied, it amounts to reconstruction or reorganisation or scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or amalgamation has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings 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 more 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 Halsburys Laws of England 4thEdition 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."

9. The Court referred to its earlier judgment in *General Radio and Appliances Co. Ltd.* v. *M.A. Khader* (1986) 60 Comp Case 1013. In view of the aforesaid clinching position in law, it is difficult to digest the circuitous route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect.

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 said 'dead person'. When notice under Section 143(2) was 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 M/s 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 292B of the Act. Section 292B of the Act reads as under: -

> "292B. No return of income assessment, notice, summons or other proceedings furnished or made or issue or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act."

13. The Punjab & Haryana High Court stated the effect of this provision in *CIT* v. *Norton Motors*, 275 ITR 595 in the following manner: -

> "A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or

> other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B."

14. The issue again cropped up before the Court in *CIT* v. *Harjinder Kaur* (2009) 222 CTR 254 (P&H). That was a case where return in question filed by the assessee was neither signed by the assessee nor verified in terms of the mandate of Section 140 of the Act. The Court was of the opinion that such a return cannot be treated as return even a return filed by the assessee and this inherent defect could not be cured inspite of the deeming effect of Section 292B of the Act. Therefore, the return was absolutely invalid and assessment could not be made on a invalid return. In the process, the Court observed as under: -

> "Having given our thoughtful consideration to the submission advanced by the learned Counsel for the appellant, we are of the view that the provisions of Section 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same "in substance and effect is in conformity with or according to the intent and purpose of this Act". Insofar as the return under reference is concerned, in terms of Section 140 of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned Counsel for the appellant on the basis of Section 292B of the 1961 Act. The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of Section 292B of the 1961 Act."

15. Likewise, in the case of *Sri Nath Suresh Chand Ram Naresh* v. *CIT* (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under Section 148 of the Income Tax Act is a condition precedent to the validity of any assessment order to be passed under section 147 of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under Section 292B of the Act. The Court observed that this provisions condones the invalidity which arises merely by mistake,

> defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, Section 292B of the Act had no application.
>
> **16.** When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a 'dead person'.
>
> **17**. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals."

21. A few years after *Spice Entertainment*, a similar question arose yet again in *Sky Light Hospitality*. Our Court on that occasion came to the conclusion that the mistake in that particular case was a technical error which could be attended to and saved by virtue of Section 292B of the Act. However, and as the Supreme Court itself had an occasion to note in *Maruti Suzuki*, the Court while coming to hold that Section 292B would apply, had pertinently observed that the material on record was indicative of the Revenue having always intended the notice to be addressed to the successor entity. It becomes pertinent to note that the Court in *Sky Light Hospitality* had alluded to "*substantial and affirmative material and evidence on record"* which indicated that the issuance of the notice in the name of the dissolved entity was a mistake. In arriving at that conclusion, it had not only borne in consideration the material which existed on the record as also the tax evasion report which had duly taken note of the conversion of the Private Limited Company into an LLP. It is thus apparent that Sky Light Hospitality came to be rendered in its own peculiar facts. It was in the aforesaid

factual backdrop that the Supreme Court in *Maruti Suzuki* ultimately came to hold that there was no apparent conflict between *Spice Entertainment* and *Sky Light Hospitality* with the latter turning upon its individual facts.

22. However, the sheet anchor of the submission of the respondents was, as noticed in the prefatory parts of this decision, the judgment in *Mahagun Realtors.* However, and as was noticed by a Division Bench of our Court in **Commissioner of Income Tax vs Sony Mobile Communications India Pvt. Ltd.**[21]**,** and which decision we shall advert to a little later, that decision of the Supreme Court itself turned upon the facts of that particular case.

23. In *Mahagun Realtors*, while expounding upon the effect of merger of two corporate entities consequent to a Scheme of Arrangement being sanctioned, the Supreme Court pertinently observed:-

> "**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."

[21] 2023 SCC OnLine Del 1231

24. It also noticed the principles which had been spelt out with respect to a Scheme of Arrangement and its impact on a transferor company as was elaborated in **Marshall Sons and Co. (India) Ltd. vs. Income Tax Officer**[22] as would be evident from paragraph 22 of the report:-

> "**22.** The effect of amalgamation in the context of Income-tax, was again considered in another earlier decision, i.e., Marshall Sons and Co. (India) Ltd. v. ITO. 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 the date of amalgamation/date of transfer. But where the court does not prescribe 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 394A 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, i.e., 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

[22] (1997) 2 SCC 302

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. Bank of Upper India Ltd. AIR 1919 PC 9, relied on.

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 line 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:

……..”

25. The Supreme Court proceeded to record its conclusions in this respect in the following terms:-

“**30.** The combined effect, therefore, of section 394(2) of the Companies Act, 1956, section 2(1A) and various other provisions of the Income-tax Act, is that despite amalgamation, the business, enterprise and undertaking of the transferor or amalgamating 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.”

26. However, and on facts, it found as follows:-

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

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

corresponded with the Department in the name of MRPL. On May 28, 2010, the assessee filed its return of income in the name of MRPL, and in the "business reorganization" column of the form mentioned "not applicable" in amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated July 22, 2010, it was for the assessment year 2007-08 and not for the assessment year 2006-07. For the assessment years 2007-08 to 2008-09, separate proceedings under section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional Commissioner of Income-tax by order dated November 30, 2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated August 11, 2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

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

27. After copiously taking note of the disclosures which were made in the course of assessment, it found that the following salient facts emerged in the case of *Mahagun Realtors*:-

"**40.** The facts of the present case are distinctive, as evident from the following sequence:

"1. The original return of MRPL was filed under section 139(1) on June 30, 2006.

2. The order of amalgamation is dated May 11, 2007 - but made effective from April 1, 2006. It contains a condition - clause 2 - whereby MRPL's liabilities devolved on MIPL.

3. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised returns was March 31, 2008, after the amalgamation order.

4. A search and seizure proceeding was conducted in respect of the Mahagun group, including the MRPL and other companies:

(i) When search and seizure of the Mahagun group took place, no indication was given about the amalgamation.

(ii) A statement made on March 20, 2007 by Mr. Amit Jain,

MRPL's managing director, during statutory survey proceedings under section 133A, unearthed discrepancies in the books of account, in relation to amounts of money in MRPL's account. The specific amount admitted was Rs. 5.072 crores, in the course of the statement recorded.

(iii) The warrant was in the name of MRPL. The directors of MRPL and MIPL made a combined statement under section 132 of the Act, on August 27, 2008.
(iv) A total of Rs. 30 crores cash, which was seized - was surrendered in relation to MRPL and other transferor companies, as well as MIPL, on August 27, 2008 in the course of the admission, when a statement was recorded under section 132(4) of the Act, by Mr. Amit Jain.

5. Upon being issued with a notice to file returns, a return was filed in the name of MRPL on May 28, 2010. Before that, on two dates, i.e., July 22/27, 2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for the assessment year 2007- 08 (for which separate proceedings had been initiated under section 153A) and not for the assessment year 2006-07.

6. The return specifically suppressed - and did not disclose the amalgamation (with MIPL) - as the response to query 27(b) was 'N.A.'.

7. The return - apart from specifically being furnished in the name of MRPL, also contained its permanent account number.

8. During the assessment proceedings, there was full participation- on behalf of all transferor companies, and MIPL. A special audit was directed (which is possible only after issuing notice under section 142). Objections to the special audit were filed in respect of portions relatable to MRPL.

9. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending March 31, 2006, in the cross-objection before the Income-tax Appellate Tribunal, for the first time (in the appeal preferred by the Revenue), an additional ground was urged that the assessment order was a nullity because MRPL was not in existence.

10. Assessment order was issued - undoubtedly in relation to MRPL (shown as the assessee, but represented by the transferee company MIPL).

11. Appeals were filed to the Commissioner of Income-tax

> (and a cross-objection, to the Income-tax Appellate Tribunal) - by MRPL 'represented by MIPL'.
>
> 12. At no point in time - the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities, taken over by MIPL.
>
> 13. The counter-affidavit filed before this court - (dated November 7, 2020) has been affirmed by Shri Amit Jain S/o Shri P. K. Jain, who- is described in the affidavit as 'Director of M/s. Mahagun Realtors (P.) Ltd., R/o...'."”

28. It was on the aforesaid set of facts that it ultimately came to hold as under:

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

search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the Assessing Officer is, in this court's opinion in consonance with the decision in Marshall and Sons (supra), which had held that:

> *"an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee company."*

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.

43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained ; it is set aside. Since the appeal of the Revenue against the order of the Commissioner of Income-tax was not heard on the merits, the matter is restored to the file of the Income-tax Appellate Tribunal, which shall proceed to hear the parties on the merits of the appeal - as well as the cross-objections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs."

29. As is apparent from the aforesaid extracts, what appears to have weighed upon the Supreme Court in *Mahagun Realtors* was a deliberate attempt on the part of the successor assessee to misrepresent and perhaps an evident failure to make a candid and full disclosure of material facts. The Court in *Mahagun Realtors* noticed that even though the factum of amalgamation was known to the assessee, it failed to make appropriate disclosures either at the time of search or in the statements which came to be recorded in connection therewith. Even the Return of Income which came to be filed had suppressed the factum of amalgamation. It also bore in consideration that the Return itself was submitted in the name of the amalgamating entity. It was that very entity in whose name further appeals came to be instituted. It was in the aforesaid backdrop that the Supreme Court was constrained to

observe that the conduct of the assessee was evidence of it having held itself out to be the entity which had ceased to exist in the eyes of law coupled with an abject failure on its part to have made a complete disclosure.

30. These distinguishing features which imbue *Mahagun Realtors* were succinctly noticed in *Sony Mobile Communications* with the Court observing as under: -

> "**22.** As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case :
>
> (i) There was no intimation by the assessee regarding amalgamation of the concerned company.
>
> (ii) The return of income was filed by the amalgamating company, and in the "business reorganisation" column, curiously, it had mentioned "not applicable".
>
> (iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.
>
> (iv) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated-company.
>
> (v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company, i.e., the amalgamating company was in existence.
>
> **23.** Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.
>
> **24.** As noticed above, even after the Assessing Officer was informed on December 6, 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 Dispute Resolution Panel 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."

31. We thus find ourselves unable to read *Mahagun Realtors* as a decision which may have either diluted or struck a discordant chord with the principles which came to be enunciated in *Maruti Suzuki*. We also bear in mind the indisputable position of both judgments having been rendered by co-equal Benches of the Supreme Court. *Mahagun Realtors* is ultimately liable to be appreciated bearing in mind the peculiar facts of that case including the conduct of the assessee therein. It was those facets which appear to have weighed upon the Supreme Court to hold against the assessee.

32. In view of the aforesaid, the position in law appears to be well-settled that a notice or proceedings drawn against a dissolved company or one which no longer exists in law would invalidate proceedings beyond repair. *Maruti Suzuki* conclusively answers this aspect and leaves us in no doubt that the initiation or continuance of proceedings after a company has merged pursuant to a Scheme of Arrangement and ultimately comes to be dissolved, would not sustain.

33. We note that in this batch of writ petitions and in light of the disclosures which have been made, the assessees clearly appear to have apprised their respective AOs of the factum of amalgamation and merger at the first available instance. If the respondents chose to ignore or acknowledge those fundamental changes, they would have to bear the consequences which would follow. Once the Scheme came to be approved, the transferor companies came to be dissolved by operation of law. They, thus, ceased to exist in the eyes of law. Proceedings thus drawn in their name would be a nullity and cannot be validated by resort to Section 292B of the Act.

34. The submission of the respondents based on Sections 159 and 170 of the Act is equally misconceived. It becomes relevant to note that Section 159 places the liability of a deceased assessee on its legal representatives. It thus creates a right of recourse for the Revenue to pursue and recover outstanding demands. We fail to appreciate how that provision could have any bearing on the question that stood posited. The proceedings impugned herein are not in relation to any right of recovery that may have been asserted or proposed. The challenge is to orders of assessment and initiation of reassessment made or commenced against a non-existent entity.

35. Similarly, Section 170 deals with contingencies where a person succeeds to or takes over an existing business. It thus provides that the successor would be assessed in respect of income which arises or accrues after the date of succession. The income earned prior to the date of succession is liable to be taxed in the hands of the predecessor. While the respondents sought to draw sustenance from the phrase *"when the predecessor cannot be found…."* as appearing in sub-section (2) thereof, we find ourselves unable to read that expression as being akin to a dissolution of a corporate entity or its merger with another. The expression "cannot be found" cannot be construed as having been intended to cover situations where an entity ceases to exist in law by virtue of an amalgamation or merger. Regard must also be had to the heading of Section 170 and which speaks of succession to a business "otherwise than on death". It is thus concerned with a specific contingency pertaining to succession to a business and how the predecessor and successor are liable to be taxed. It has no concern with the question of whether a notice or order in the name of a non-existent

entity could be treated as valid in law.

ITA 116/2023 [International Hospital Ltd. Vs. DCIT Circle 12(2)]

36. The aforenoted appeal which stood tagged with the batch poses the following question of law for our consideration: -

> "Whether the Income Tax Appellate Tribunal has misdirected itself in law and on facts in sustaining the order of the Commissioner of Income Tax (Appeals) dated 30.05.2019 and the order dated 29.01.2019 passed by the Assessing Officer (AO) under Section 154 of the Income Tax Act, 1961?"

37. **Escorts Heart and Super Specialty Institute Ltd**[23] is stated to have filed its Return of Income for AY 2013-14 on 30 September 2013. Pursuant to a Scheme of Arrangement which came to be sanctioned by the Punjab and Haryana High Court on 13 December 2013 it merged with **International Hospital Limited**[24] , the appellant herein. The appointed date under the Scheme was stipulated to be 01 January 2013. A notice under Section 143(2) came to be issued in the name of EHSSIL on 05 September 2014. During the course of the assessment which ensued, the Revenue is stated to have been duly apprised the respondents of the sanction of the Scheme and EHSSIL having merged with IHL. The appellants have also placed on our record a letter dated 16 February 2016 in terms of which details relating to the Scheme were duly provided to the AO.

38. The record further bears out that the AO had duly acknowledged the factum of merger and had specifically alluded to the order of the High Court. However, the ultimate assessment order dated 28 March 2016 came to be drawn in the name of EHSSIL. In the appeal which

[23] EHSSIL
[24] IHL

was preferred by IHL before the **Commissioner of Income Tax (Appeals)**[25], a specific ground with respect to invalidity of that order on the ground of the same having been made in the name of EHSSIL was taken. It was during the pendency of that appeal that the AO invoked Section 154 asserting that the assessment order had inadvertently come to be framed in the name of EHSSIL. It is the validity of this order which was questioned before the Tribunal. The Tribunal has upheld the action of the AO leading to the filing of the present appeal.

39. We find ourselves unable to be concur with the view as taken by the Tribunal for the following reasons. Undisputedly, the factum of merger was duly brought to the notice of the AO. In fact, the said authority has duly taken note of the order of the High Court and in terms of which the Scheme had come to be approved. However, inexplicably, it proceeded to frame an order in the name of EHSSIL. We note that the Return in this case was submitted by EHSSIL prior to the Scheme being sanctioned. It was perhaps in that backdrop that the notice under Section 143(2) came to be issued in its name, albeit after the Scheme had come into force. The assessment proceedings were thus ongoing at the time when the Scheme came to be sanctioned.

40. However, and admittedly, the factum of merger had been duly brought to the attention of the AO. The merger was taken into consideration at more than one place in the order of assessment that came to be framed. Despite the above, the AO proceeded to draw the order in the name of an entity which had ceased to exist. We also bear in consideration the indubitable fact that the rectification order came to be passed three years after the framing of the original order of

[25] CIT(A)

assessment, and that too, during the pendency of the appeal of the assessee and where a specific ground of challenge was raised in this regard. This was therefore not a case of discovery of an inadvertent error or mistake immediately after the passing of an order.

41. We also bear in consideration *Maruti Suzuki* having clearly held that such a mistake would not fall within the ken of Section 292B of the Act. An exercise of rectification as undertaken in the present case, if accorded a judicial imprimatur, would in effect amount to recognising a power to amend, modify or correct in an attempt to overcome a fundamental and jurisdictional error contrary to the principles enunciated in *Maruti Suzuki*.

42. We also cannot lose sight of the fact that this was not a case where the assessee had attempted to mislead or suppress material facts and which may have warranted the case of the assessee being placed in the genre which was considered in *Mahagun Realtors*. The mere submission of replies on the letter head of EHSSIL also fails to convince us to hold in favour of the Revenue. In any event, none of the authorities below have held that the appellant was guilty of suppression. We would thus be inclined to allow the instant appeal and answer the question as posed in favour of the appellant and against the Revenue.

W.P.(C) 5021/2022, W.P.(C) 5022/2022, and W.P.(C) 5118/2022 [M/s Nokia Solutions and Networks India Private Limited (Successor of Nokia Siemens Networks India Private Limited) vs. Deputy Commissioner of Income Tax, Circle 16(1) and Anr.]

43. These writ petitions assail the notices issued under Section 142(1) on the ground that although they have been drawn in the name of the resultant entity which came into existence consequent to a

Scheme being approved, they bear the PAN of the erstwhile entity and which had since then ceased to exist. We find ourselves unable to place that mistake in the category of a "fundamental flaw" or "incurable illegality" as explained in *Maruti Suzuki*. Although, reliance is placed on a decision rendered inter partes in **Pr. Commissioner of Income Tax-6 vs. Nokia Solutions & Network India Pvt. Ltd (Formerly known as, Nokia Siemens Network Pvt. Ltd.)**[26], the decision in *Nokia Solutions* was dealing with a case of an incurable illegality. This since the directions of the Dispute Resolution Panel as well as the final order of assessment were made in the name of an entity which had ceased to exist. The case in *Nokia Solutions* is distinct from the facts which obtain in the present writ petitions and where the only mistake which is alluded to is the mentioning of a wrong PAN.

44. Although in the writ petition it is averred that the original Section 148 notice was never served upon the petitioner, we find that the order of 15 March 2022 speaks of various subsequent notices which had been issued and remained unanswered. In any event, the present writ petitions merely impugn the notice under Section 142(1) with no challenge having been mounted in respect of the original notice of reassessment. These petitions would consequently merit dismissal.

45. The present order, however, would be without prejudice to such other rights and contentions that may be available and would be open to be canvassed in the ongoing reassessment action.

W.P.(C) 5475/2022 [Shakuntlam Softech Private Limited (now amalgamated with Shakuntlam Securities Private Limited) vs. Income Tax Officer Ward 23(1) Delhi & Anr.] and W.P.(C)

[26] ITA 135/2018 decided on 06 February 2018

4558/2023 [Suncity Hi-Tech Infrastructure Private Limited - After Merger of M/s Super Built Real Estates and Land Developers Pvt. Ltd. vs. Income Tax Officer, Ward 24-1, Delhi & Anr.]

46. Although these matters were included in the batch, there appears to be a factual dispute as to whether disclosures with respect to the sanction of the Scheme were made in the course of the assessment proceedings. The respondents categorically assert that no information with respect to a Scheme that may have been approved was provided during the course of assessment. The petitioners on the other hand aver that the respondents had been duly placed on notice of the proceedings pending before the NCLT and which had preceded the ultimate approval of the Scheme. In W.P.(C) 4558/2023, the petitioners allude to a communication issued by the Regional Director while the Scheme was pending approval.

47. As is manifest from the aforesaid recordal of facts, there was an abject and evident failure on the part of the petitioners to apprise the respondents of a Scheme which stood duly approved. Even if the concerned AO were assumed to have derived knowledge of the pendency of proceedings before the NCLT or called upon to furnish a consent to the proposed Scheme, the same would not absolve the assessee from the obligation of duly apprising the respondents once a Scheme of Arrangement came to be approved. These writ petitions would thus merit dismissal.

OPERATIVE DIRECTIONS

48. We accordingly allow the following writ petitions and quash the below mentioned notices/orders:-

Case Number	Date of Impugned Notice/Order	Section under which the Notice/Order has been issued
W.P(C)13807/2022	15 April 2021 25 May 2022 28 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C)11498/2019	28 March 2019	Notice under Section 148
W.P.(C) 1894/2020	29 March 2019	Notice under Section 148
W.P.(C)10882/2021	30 June 2021	Assessment Order under Section 143(3) read with Section 144B
W.P.(C) 13862/2021	28 March 2021	Notice under Section 148
W.P.(C) 13883/2021	28 March 2021	Notice under Section 148
W.P.(C) 13930/2021	26 March 2021	Notice under Section 148
W.P.(C) 14005/2021	26 March 2021	Notice under Section 148
W.P.(C) 14061/2021	26 March 2021	Notice under Section 148
W.P.(C) 14062/2021	26 March 2021	Notice under Section 148
W.P.(C) 14296/2021	28 March 2021	Notice under Section 148
W.P.(C) 14306/2021	26 March 2021	Notice under Section 148
W.P.(C) 14798/2021	26 March 2021	Notice under Section 148
W.P.(C) 4035/2022	26 March 2021	Notice under Section 148
W.P.(C) 4038/2022	26 March 2021	Notice under Section 148
W.P.(C) 4103/2022	26 March 2021	Notice under Section 148
W.P.(C) 4925/2022	26 March 2021	Notice under Section 148
W.P.(C) 5082/2022	26 March 2021	Notice under Section 148

W.P.(C) 5134/2022	26 March 2021	Notice under Section 148
W.P.(C) 5161/2022	27 March 2021	Notice under Section 148
W.P.(C) 5165/2022	26 March 2021	Notice under Section 148
W.P.(C) 5166/2022	26 March 2021	Notice under Section 148
W.P.(C) 5171/2022	26 March 2021	Notice under Section 148
W.P.(C) 7151/2022	28 March 2022	Assessment Order under Section 147 read with Section 144
W.P.(C) 7217/2022	30 March 2022	Assessment Order under Section 147 read with Section 144
W.P.(C) 13991/2022	21 June 2021 23 May 2022 25 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 14034/2022	27 May 2022 28 July 2022	Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 17290/2022	25 June 2021 30 May 2022 30 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 17329/2022	20 April 2021 27 May 2022 28 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 3885/2023	15 April 2021 26 May 2022 27 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148

W.P.(C) 5868/2023	30 June 2021 20 May 2022 30 July 2022	Notice under Section 148 Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 7775/2023	14 March 2023 23 March 2023	Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148
W.P.(C) 7487/2024	23 February 2024 22 March 2024	Order under Section 148A(b) Order under Section 148A(d) and Notice under Section 148

49. For reasons assigned in Paragraphs 43 to 45 we dismiss W.P.(C) 5021/2022, W.P.(C) 5022/2022, and W.P.(C) 5118/2022. All rights and contentions of respective parties on merits are kept open.

50. For reasons assigned in Paragraphs 46 and 47 we dismiss W.P.(C) 5475/2022 and W.P.(C) 4558/2023. All rights and contentions of respective parties on merits are kept open.

51. In light of our conclusion rendered in paragraph 42, ITA 116/2023 shall stand allowed. The order of the Tribunal dated 23 September 2022 is set aside. The appellant would be entitled to consequential relief.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 26, 2024/*neha/RW*

APPENDIX- A

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

Landscape Chart in: Non-existent Entities Batch

NDOH: 11.09.2024

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
67.	WP(C) No.13807 of 2022 Religare Enterprises Ltd. [as successor in interest of Religare Securities Ltd.] vs. ACIT	2015-16	w.e.f. 01.04.2016 [@ Pg.193 /***PDF 198***]	28.09.2017 [@ Pg.168/ ***PDF 173***]	08.12.2017 (w.e.f. 01.04.2016) [@ Pg.190/ ***PDF 195***]	29.12.2017 [@Pg.169/ ***PDF 174***]	29.03.2019 (Revised) [@ Annex I/ ***PDF 240*** onwards]	Order dated **10.12.2018** passed under section 143(3) of the Act [@Pg.157/ ***PDF 162*** onwards]	**15.04.2021** Notice (section 148 of the Act) *New regime* [@ Pg.92/ ***PDF 97***]
68.	WP(C) 11498/2019 BABA LEASE & INVESTMENT PRIVATE LIMITED	2012-13	01.01.2014	-	21.05.2014	**09.02.2015** (Through ITR of Transferor	**09.02.2015** (ITR of Transferor	**02.11.2016** (Assessment u/s 143(3) the case of	**28.03.2019** Notice to Transferor

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	(Transferor company – Ladliji enterprises private limited PAN AAECR1528F) Transferee company- BABA LEASE & INVESTMENT PRIVATE LIMITED -PAN					company for AY 2014-15) & **14.03.2016** (through letter) & **02.11.2016** (In the assessment order of 2014-15 in the case of Transferee company such fact was recorded by the AO)	company for AY 2014-15)	Transferee company for AY 2014-15, recording the facts of such amalgamation)	company) *Erstwhile regime*
69.	WP(C) 1894/2020 BABA LEASE & INVESTMENT PRIVATE LIMITED (Transferor company – Madhav Fin	2012-13	01.01.2014	-	21.05.2014	**09.02.2015** (Through ITR of Transferor company for AY 2014-15)	**09.02.2015** (ITR of Transferor company for AY 2014-15)	**02.11.2016** (Assessment u/s 143(3) the case of Transferee company for AY 2014-15,	**29.03.2019** Notice to Transferor company)

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	cap Private limited PAN AAMCS4890B) Transferee company- BABA LEASE & INVESTMENT PRIVATE LIMITED -PAN					& **14.03.2016** (through letter) & **02.11.2016** (In the assessment order of 2014-15 in the case of Transferee company such fact was recorded by the AO)		recording the facts of such amalgamation)	*Erstwhile regime*
70.	WP(C) No.10882/2021 Gartner India Research & Advisory Services Private Ltd. vs. Assessing Officer, NFAC & Anr.	2017-18	w.e.f. 01.04.2018	-	20.12.2018	Emails dated 20.12.2019, 07.08.2020, 05.11.2020 and letter dated 19.01.2021 filed before	-	TPO Order passed on 25.01.2021, draft Assessment Order dated 07.04.2021, and final assessment order dated 30.06.2021	**25.01.2021** TPO Order **07.04.2021** Draft Assessment Order

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
						TPO Letter dated 31.10.2019, 14.12.2020 & 04.02.2021 filed before AO		passed by AO	**30.06.2021** Final Assessment Order
	Distinguishing features:* ❖ The subject writ petition has been filed challenging the order dated 25.01.2021 passed by the TPO and consequential draft assessment order dated 07.04.2021 and final assessment order dated 30.06.2021 passed by the AO for the subject assessment year in the name of the non-existent entity which is *non-est*, invalid, bad in law and liable to be quashed. ❖ The Revenue Respondent has duly accepted in the Counter Affidavit filed, in respect of the subject writ petition that the Petitioner had duly informed about the fact of merger to the TPO during transfer pricing proceedings for the subject assessment year and had also requested for transfer of case of the Petitioner to the correct jurisdiction post-merger. ❖ The present case admittedly falls under Category I and is squarely covered by the law laid down in the case of ***PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC)* and ***CIT vs Sony Mobile Communications Ind (P.) Ltd. : [2023] 456 ITR 753 (Del)*** as impugned orders have been passed by the AO/ TPO on the non-existent entity despite numerous intimations being filed by the Petitioner with AO/ TPO at various intervals intimating about the factum of merger.								
71.	WP(C) No.13862/2021	2017-18	w.e.f. 01.04.2016	-	02.08.2018	19.11.2018	Statutory notice u/s 148	-	**28.03.2021** Notice (section

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	BSBK Engineers Pvt. Ltd. (resulting company of **Vogue** Leasing & Finance Company Pvt. Ltd. vs. ACIT					**[ANN: P-4] Page-49**	issued to amalgamating entity i.e., **Vogue** Leasing which ceased to exist w.e.f - 02.08.2018.		148 of the Act) *Erstwhile regime*
72.	WP(C) No.13883/2021 BSBK Engineers Pvt. Ltd. (resulting company of **Madhulika** Finance Company Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2016	-	02.08.2018	19.11.2018 **[ANN: P-4] Page-49**	Statutory notice u/s 148 issued to amalgamating entity i.e., **Madhulika** Finance which ceased to exist w.e.f - 02.08.2018.	-	**28.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
73.	WP(C) No.13930 of 2021	2017-18	w.e.f.	28.09.2017	08.12.2017	29.12.2017	29.03.2019	Order dated	**26.03.2021**

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	Religare Enterprises Ltd [as successor in interest of RGAM Investment Advisers Pvt. Ltd.] vs. ACIT		01.04.2016 [@ Pg. 86]	[@ Pg.64]	(w.e.f. 01.04.2016) [@ Pg.83]	[@ Pg.128-130]	(Revised) [@Annex E/ Pg.131 onwards	**31.03.2021** passed under section 143(3)/144C, assessing the revised return of income [@ Annex G/ Pg.227 onwards]	Notice (section 148 of the Act) *Erstwhile regime* [@ Pg.63]
	Remarks: *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite the categorical NOC given by IT Dept. before NCLT on 28.09.2017, and despite intimation of amalgamation/surrender of old PAN by the Petitioner (amalgamated entity) on 29.12.2017. The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC)*								
74.	WP(C) No.14005 of 2021 Religare Enterprises Ltd [as successor in interest of Religare Capital Markets (India) Pvt. Ltd.] vs. ACIT	2017-18	w.e.f. 01.04.2016 [@Pg.86]	28.09.2017 [@Pg.64]	08.12.2017 (w.e.f. 01.04.2016) [@ Pg.83]	29.12.2017 [@Pg.128-130]	29.03.2019 (Revised) [@ Annex E/ Pg.131 onwards]	Order dated **31.03.2021** passed under section 143(3)/144C, assessing the revised return of	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
								income [@ Annex G/ Pg.227-232]	[@Pg. 63]
	Remarks: *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite the categorical NOC given by IT Dept. before NCLT on 28.09.2017, and despite intimation of amalgamation/surrender of old PAN by the Petitioner (amalgamated entity) on 29.12.2017. The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC)*								
75.	WP(C) No.14061 of 2021 Religare Enterprises Ltd [as successor in interest of Religare Arts Investment Management Ltd.] vs. ACIT	2017-18	w.e.f. 01.04.2016 [@ Pg.86]	28.09.2017 [@Pg.64]	08.12.2017 (w.e.f. 01.04.2016) [@ Pg.83]	29.12.2017 [@Pg.128-130]	29.03.2019 (Revised) [@ Annex E/ Pg.131 onwards]	Order dated **31.03.2021** passed under section 143(3)/144C, assessing the revised return of income [@ Annex G/ Pg.227-232]	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime* [@ Pg.63]

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	Remarks: *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite the categorical NOC given by IT Dept. before NCLT on 28.09.2017, and despite intimation of amalgamation/surrender of old PAN by the Petitioner (amalgamated entity) on 29.12.2017. The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC)*								
76.	WP(C) No.14062 of 2021 Religare Enterprises Ltd [as successor in interest of RGAM Capital India Ltd.] vs. ACIT	2017-18	w.e.f. 01.04.2016 [@Pg.86]	28.09.2017 [@Pg.64]	08.12.2017 (w.e.f. 01.04.2016) [@ Pg.83]	29.12.2017 [@Pg.128-130]	29.03.2019 (Revised) [@ Annex E/ Pg.131 onwards]	Order dated **31.03.2021** passed under section 143(3)/144C, assessing the revised return of income [@ Annex G/ Pg.227-232]	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime* [@ Pg.63]
	Remarks: *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite the categorical NOC given by IT Dept. before NCLT on 28.09.2017, and despite intimation of amalgamation/surrender of old PAN by the Petitioner (amalgamated entity) on 29.12.2017. The present case admittedly falls under Category I as notice has*								

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC)								
77.	WP(C) No.14296/2021 BSBK Engineers Pvt. Ltd. (resulting company of **Parishudh** Finance Company Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2016	-	02.08.2018	19.11.2018 **[ANN: P-4] Page-49**	Statutory notice u/s 148 issued to amalgamating entity i.e., **Parishudh** Finance which ceased to exist w.e.f - 02.08.2018.	-	**28.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
78.	WP(C) No. 14306 of 2021 Rangoli Resorts Pvt. Ltd. [as successor in interest of Ployflex Marketing Pvt. Ltd.] vs. ACIT	2017-18	w.e.f. 01.04.2016 [@Pg.68]	-	28.11.2017 (w.e.f. 01.04.2016) [@ Annex B/ Pg.61]	31.03.2018 [@ Annex D/ Pg.109]	25.01.2018 (Belated) [@Annex E/ Pg.110 onwards]	Order dated **07.12.2019** passed under section 143(3) assessing the belated return of income	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
								[@ Annex F/ Pg.160-167]	[@ Pg.60]
	Remarks: *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite intimation of amalgamation/surrender of old PAN by the Petitioner (amalgamated entity) on 31.03.2018. The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC)*								
79.	WP(C) No.14798/2021 Madhu Viniyog Pvt. Ltd. (Marigold Nirman Pvt. Ltd. merged with Petitioner) vs. DCIT	2013-14	w.e.f. 01.04.2016	18.12.2017	09.07.2018	18.09.2018 & 04.02.2019	-	Merged entity filed return on 21.09.2018	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
80.	WP(C) No.4035/2022 Qualcomm India Pvt. Ltd. after merger of CSR Technology India Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2016	-	25.09.2017 & 28.09.2017	30.11.2017 (filed on 04.12.2017) and several letters thereafter	30.11.2017 (original) (aspect of merger is disclosed)	Draft Order passed is dated 29.03.2021 and final assessment order is dated 31.01.2022	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
	Remarks:								

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	❖ *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite intimation of amalgamation/surrender of old PAN/request for transfer of TDS/advance tax credit by the Petitioner (amalgamated entity).* ❖ *The present case admittedly falls under Category II as notice has been issued in the name of the amalgamating entity (Pg. 129 of the writ petition (Annexure P-8) and the notice is in the name of- "CSR Technology (India) Pvt. Ltd. (Now merged with Qualcomm India Pvt. Ltd.)". It is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC). It is stated that identical was the position in Maruti Suzuki also and hence Hon'ble Apex Court has discussed the cases falling in Category II in detail and ruled in favor of the Assessee.* ❖ *The revised return has been filed by Qualcomm India Pvt. Ltd. after incorporating all the incomes/TDS/advance tax of the amalgamating entity and the same has been assessed to tax as well u/s 143(3) proceedings (Annexure P-6). During assessment proceedings, a specific question was asked about the merger, which was duly explained and responded to.* ❖ *The aspect of merger was also informed in the ROI under the 'Business Organization' Column (Annexure P5). Hence, the Respondents have been well aware of the merger/amalgamation.*								
81.	WP(C) No.4038/2022 Qualcomm India Pvt. Ltd. after merger of Ikanos Communications India Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2016	-	25.09.2017 & 28.09.2017	30.11.2017 (filed on 04.12.2017) and several letters thereafter	30.11.2017 (Original) (aspect of merger is disclosed)	Draft Order passed is dated 29.03.2021 and final assessment order is dated 31.01.2022	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
	Remarks: ❖ *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite intimation of amalgamation/surrender of old PAN/request for transfer of TDS/advance tax credit by the Petitioner (amalgamated entity).*								

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	❖ *The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone (Pg. 129 of the writ petition-Annexure P-8). It is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC).* ❖ *The revised return has been filed by Qualcomm India Pvt. Ltd. after incorporating all the incomes/TDS/advance tax of the amalgamating entity and the same has been assessed to tax as well u/s 143(3) proceedings (Annexure P-6). During assessment proceedings, a specific question was asked about the merger, which was duly explained and responded to.* ❖ *The aspect of merger was also informed in the ROI under the 'Business Organization' Column (Annexure P5). Hence, the Respondents have been well aware of the merger/amalgamation*								
82.	WP(C) No.4103/2022 Qualcomm India Pvt. Ltd. after merger of CSR Technology India Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2016	-	25.09.2023 & 28.09.2017	30.11.2017 (filed on 04.12.2017) and several letters thereafter	30.11.2017 (Original) (aspect of merger is disclosed)	Draft Order passed is dated 29.03.2021 and final assessment order is dated 31.01.2022	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
	Remarks: ❖ *Notice u/s 148 (old regime) issued in the name of non-existent amalgamating entity on 26.03.2021 despite intimation of amalgamation/surrender of old PAN/request for transfer of TDS/advance tax credit by the Petitioner (amalgamated entity).* ❖ *The present case admittedly falls under Category I as notice has been issued in the name of the amalgamating entity alone (Pg. 133 of the writ petition-Annexure P-8). It is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC).* ❖ *The revised return has been filed by Qualcomm India Pvt. Ltd. after incorporating all the incomes/TDS/advance tax of the amalgamating entity and the same has been assessed to tax as well u/s 143(3) proceedings (Annexure P-6). During assessment proceedings, a specific question was asked about the merger, which was duly explained and*								

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	responded to. ❖ *The aspect of merger was also informed in the ROI under the 'Business Organization' Column (Annexure P5). Hence, the Respondents have been well aware of the merger/amalgamation*								
83.	WP(C) No.4925/2022 Radiant Polymers Pvt. Ltd. vs. ACIT	2016-17	w.e.f. 01.04.2015	-	14.06.2018	Amalgamation discussed in assessment order dated 22.04.2021 of successor for AY 2018-19. Assessment proceedings initiated vide notice dated 11.03.2022 for AY 2018-19 against predecessor is dropped	26.09.2016 (Original)	-	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
87.	WP(C) No.5082/2022 Radiant Polymers Pvt. Ltd. vs. ACIT	2017-18	w.e.f. 01.04.2015	-	14.06.2018		31.10.2017 (Original)	17.12.2019	**26.03.2021** Notice (section 148 of the Act) *Erstwhile regime*

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	Remarks for Radiant Polymers: Revenue has wrongly contested in its chart that the intimation of amalgamation has not been given to them (this has been done without filing a counter affidavit). The Counsel for the Petitioner has sent an e-mail dated 24.08.2024 whereby it has been asserted that the due process followed in case of amalgamation matters before NCLT, in itself, incorporates such intimation. The AO vide notice dated 21.12.2020 for AY 2018-19 (on the successor) had called for the details of amalgamation and the assessee *vide* reply dated 19.01.2021 submitted the copy of court order regarding Amalgamation and copy of forms filled with MCA. Thereafter, the AO, *vide* notice dated 19.03.2021 for AY 2018-19 asked the following query *"**5. During the year, amalgamation has taken place.** Please submit the details and explain with proper justification"* in respect of which the submission was filed vide letter dated 26.03.2021 as *"A wholly owned subsidiary namely Radiant Complast Private Limited was merged with the company as per court order. Copy of court order regarding Amalgamation and copy of forms filled with MCA were already been filed as Annexure -9 and 10 with our reply dated 19/01/2021.Kindly refer the same."* Thereafter, the assessment order dated 22.04.2021 was framed for AY 2018-19, which specifically mentions "amalgamation" as one of the major issues examined. All the above documents were duly provided to the counsel for the Respondents *vide* e-mail dated 24.08.2024 sent by the counsel for the Petitioner.								
93.	WP(C) No.5475/2023 Shakuntlam Softech Private Limited (now amalgamated with Shakuntalam Securities Pvt. Ltd.) vs. ITO	2017-18	w.e.f. 01.04.2018	-	07.06.2019 (w.e.f. 01.04.2018)	01.04.2019	The statutory notice u/s. 148 issued to company which already stands amalgamated	Order dated **04.03.2022** passed u/s. 144 r.w.s. 144B of the Act for AY 2017-18 in the name of amalgamated company	**31.03.2021** Notice (section 148 of the Act) *Erstwhile regime*
94.	WP(C) No.7151/2022	2013-14	w.e.f. 01.04.2011	-	Hon'ble Delhi High Court	30.11.2019 (ROI for AY	Not applicable as the	14.02.2017 (on the successor	**30.03.2021** (notice under s.

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	Mercer Consulting (India) Pvt. Ltd. vs. DCIT				& Hon'ble High Court of Punjab & Haryana 28.02.2013 and 23.05.2013	2013-14) Letter dated 24.07.2014 – proceedings for AY 2012-13 dropped on the predecessor entity after being intimated that the predecessor ceased to exist **@pg 153** TPO order for the preceding year i.e. AY 2012-13 dated 29.01.2016 passed in case	amalgamation order was passed prior to commencement of AY 2013-14 and 2016-17		148) **28.03.2022** (assessment order)
95.	WP(C) No.7217/2022 Mercer Consulting (India) Pvt. Ltd. vs. DCIT	2016-17	w.e.f. 01.04.2011	-				20.01.2020 (on the successor	**27.03.2021** (notice under s. 148) **30.03.2022** (assessment order)

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
						of the successor categorically records that the predecessor entity ceased to exist **@pg 157**			
	Remarks for Mercer Consulting: The Petitioner has asserted that the amount of addition proposes has already been considered in the P&L account of the successor and the said fact regarding the interest income has been admitted by the Respondents. As regards, the expenditure proposed to be added, the counsel for the Revenue was supposed to obtain instruction which were never intimated to the Hon'ble Court [refer interim order dated 24.05.2022].								
96.	WP(C) No.13991/2022 Ekum Design Pvt. Ltd. vs. ITO	2017-18	w.e.f. 01.04.2016	-	01.07.2019	23.08.2019	Period to file revised return expired before approval of NCLT	No notice issued u/s. 143(2)	**21.06.2021** Notice (section 148 of the Act) *Erstwhile regime*
	Remarks: - *The present case clearly falls under Category I, as the notice U/s 148A(b) was issued solely in the name of the amalgamating entity. This situation is unequivocally covered by the legal*								

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	*precedents set forth in **PCIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC)**, which establish that any proceedings initiated in the name of a non-existent entity are void ab initio.*								
97.	WP(C) No.14034/2022 Siddheshwari Tradex Pvt. Ltd. (successor of Danta Enterprises Pvt. Ltd.) vs. ACIT	2014-15	w.e.f. 01.04.2018	-	18.01.2021 (w.e.f. 01.04.2018)	***06.09.2019*** – Intimation to AO ***09.09.2019*** – Intimation to PCIT Letter dtd. ***23.01.2020*** (sent via post on 25.01.2020) – 2nd intimation	15.02.2021 – revised Tax Audit filed 15.02.2021 – ITR filed intimating the fact of amalgamation	Return was processed u/s.143(1) of the Act, for the relevant assessment year	**19.04.2021** Notice (section 148 of the Act) *Erstwhile regime*
	Distinguishing Features: ❖ *Present case is clearly a category-I matter since original notice u/s 148 and notice u/s. 148A(b) was issued in the name of amalgamating/ non-existent company only;* ❖ *Although Notice u/s. 148A(b) was issued by R1, Order u/s. 148A(d) passed by R2 (different authority);* ❖ *No taxability in terms of section 56(2)(viia)/ no indication of any income having escaped assessment* ❖ *Re-opening based on an order subsequently reversed in appeal.*								

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100.	WP(C) No. 3885/2023 Ncubate India Services Pvt Ltd	2014-15	01.04.2013	-	09.09.2014	It is recorded in the order dated 09.09.2014 that the Income Tax Department has not raised any objections. Further, vide reply dated 17.04.2021, the factum of amalgamation was once again intimated.			**26.05.2022** Notice u/s 148A(b) of the Act. **27.07.2022** Order u/s 148A(d) of the Act. **27.07.2022** Notice u/s 148 of the Act
101.	WP(C) No.4473 of 2023 Capgemini Technology Services India Ltd. [as successor in interest of Aricent Technologies Pvt. Ltd.] vs.	2017-18	w.e.f. 01.04.2020	Intimation filed with AO on 30.05.2020.	21.12.2020	26.07.2021	-	Scrutiny assessment was initiated u/s 143(2), however, final assessment order was not	**30.06.2021** Notice under section 148 of the Act – *Erstwhile*

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	ACIT							passed before the expiry of period of limitation. Hence, the original assessment proceedings became barred by limitation.	*Regime* **<u>24.05.2022</u>** – Notice pursuant to apex Court decision in Ashish Agarwal **<u>29.07.2022</u>** – Order u/s 148A(d) and fresh notice u/s 148 of the Act
	<u>Distinguishing features from the facts arising in the case of Mahagun Realtors:</u> (a) Scrutiny assessment was originally initiated u/s 143(2), however, the final assessment order was not passed before the expiry of period of limitation provided under section 153 of the Act. Thus, the assessing officer attempted to initiate re-assessment proceedings. (b) In the course of the proceedings before the Regional Director (RD), the Petitioner vide email dated 30.05.2020 (during Covid-19) informed the assessing officer that Aricent Technologies Pvt Ltd is being merged with Aricent Technologies (Holdings) Ltd alongwith Form CAA-9 and scheme of merger. [**Refer**: Annexure 'R' @ Pg. 268]; (c) Vide letter dated 26.07.2021 filed with the assessing officer, the Petitioner duly informed / reiterated that the erstwhile entity stands merged with Aricent Technologies								

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	(Holdings) Ltd. [**Refer**: Annexure 'S' @ Pg. 270] (d) Petitioner filed detailed reply dated 15.09.2021 before the assessing officer raising the objections that proceedings cannot be initiated on non-existent entity. [**Refer**: Annexure 'L' @ Pg. 221] (e) Petitioner filed objections dated 07.06.2022 in response to intimation/ letter dated 24.05.2022 reiterating that the erstwhile entity stands merged with Aricent Technologies (Holdings) Ltd. [**Refer**: Annexure 'N' @ Pg. 244] (f) Even after repeatedly informing the assessing officer about the amalgamation of Aricent Technologies Pvt Ltd with Aricent Technologies (Holdings) Ltd, the assessing officer passed the order dated **29.07.2022** under section 148A(d) of the Act and issued the notice **dated 29.07.2022** under section 148 in the name and PAN of Aricent Technologies Pvt Ltd. [**Refer**: Annexure 'C' @ Pg. 97 and Annexure 'D' @ Pg. 103] (g) Shockingly, in the impugned order dated 29.07.2022 passed under section 148A(d) of the Act, the assessing officer himself recorded the fact that Aricent Technologies Pvt Ltd. merged with Aricent Technologies (Holdings) Ltd, even then, the Respondents are taking an averment that the facts of amalgamation was not informed to assessing officer before issuance of jurisdictional notice under section 148 on 29.07.2022. [**Refer**: Annexure 'C' @ Pg. 99] Thus the Petitioner has repeatedly informed the assessing officer regarding the amalgamation and, therefore, the decision in the case of Mahagun Realtors does not apply on facts of the present case.								
102.	WP(C) No.4558/2023 Suncity Hi-Tech Infrastructure Pvt. Ltd. after merger of M/s Super Built Real Estates and Land Developers	2013-14	w.e.f. 01.04.2014	-	21.03.2016	02.03.2017	06.09.2013	-	**30.06.2021** Notice (section 148 of the Act) *Erstwhile regime*

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
	Pvt. Ltd.								**27.05.2022** Notice (section 148A(b) of the Act) **30.07.2022** Order (section 148A(d) of the Act) **30.07.2022** Notice (section 148 of the Act)
	Remarks: ❖ *Notice u/s 148 issued in the name of non-existent amalgamating entity on 30.06.2021 (Annexure P-4, Pg. 108). Thereafter, pursuant to Ashish Agarwal(supra), notice under Section 148A(b) was issued on 27.05.2022 in the name of non-existent amalgamating entity (Annexure P-8, Pg. 182). Even Section 148A(d) order dated 30.07.2022 and impugned Section 148 notice dated 30.07.2022 (Annexure P-12, Pg. 285 and Pg. 292).* ❖ *The present case admittedly falls under Category I as notice has been issued/order has been passed in the name of the amalgamating entity alone. It is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC).* ❖ *The Respondent was made aware of the fact of the amalgamation while the proceedings for approval of amalgamation was pending before this Hon'ble Court Company Petition 731/2015 (para 8, Annexure P-2, Pg. 69). Furthermore, the Resultant Merged Company (i.e., the Petitioner herein) has been regularly assessed under scrutiny*								

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	assessment proceedings from time-to-time post-merger and thus the fact of merger was privy to the Tax Department. The fact that the SBRL stands merged with the Petitioner Company was well within the knowledge of the Income Tax Department as on as many as several prior occasions, the same was disclosed; (i) during scrutiny assessment proceedings pertaining to AY 2015- 16, wherein the Audited Financial Statements of the Petitioner evidencing the fact of the merger was submitted (Pg.73-74 and Pg.83 Annexure P-3). (ii) intimation to Respondent No. 1 vide W.P. (c) 9137/2021 on 21.08.2021, and (iii) Petitioner's reply dated 28.06.2022 in response to Notice dated 27.05.2022 under section 148A(b) of the Act issued by Respondent No. 1 (Annexure P-10). The same is also accepted by the Respondent No. 1 while passing the impugned order at Pg. 286 (para 7.c) however, still the Respondent No. 1 proceeded to issue notice in the name of the non-existent amalgamating entity. ❖ *Apart from the above, the Petitioner has also raised other legal issues including AY 2013-14 being barred by time limitation in view of the first proviso.* ❖ *The Petitioner has also raised the issue that no income chargeable to tax has escaped assessment in the facts of the present case. On merits, this issue is covered by the decision of this Hon'ble Court passed in the case of the sister-concern annexed as Annexure P-15, Pg. 333.*								
103.	WP(C) No.5868/2023 Elite Wealth Ltd. vs. ITO	2015-16	w.e.f. 01.04.2020	16.03.2021	08.06.2021	*Earlier a W.P(C)-13647/2021 was filed before this Hon'ble Court and Department was well Informed. That the same was disposed	-	28.11.2017 u/s 143(3) in the hands of Amalgamating Entity i.e., Elite Comtrade Private Limited	**30.06.2021** Notice (section 148 of the Act) issued to Amalgamating Entity i.e., Elite Comtrade Private Limited *In the Erstwhile regime* **Notice u/s.**

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						off in light of the decision passed in the case of Mon Mohan Kohli. **[ANN: P-7]**			**148A(b) dated 20.05.2022** issued in the name of non-existent entity.
86.	WP (C) 5118/2022 Nokia Solutions and Networks India Pvt. Ltd. (successor of Nokia Siemens Networks India Pvt. Ltd.) v. DCIT *(The challenge is to the initiation of reassessment proceedings by way of issuance of notice under section 148 of the Act and the proceedings emanating therefrom)*	2013-14	w.e.f. 01.04.2008		09.01.2009	Intimation dated 25.05.2009 – surrendering the PAN of the amalgamating company. **[Ann. P5 - Pg. 110 of the WP]** Letter issued by the Income Tax PAN Services		28.12.2017	Notice under section 148 of the Act was never served on the Petitioner. The factum of reassessment proceedings was informed by virtue of a notice issued under section 142(1) of the Act.

Item No.	WP(C) No. & Cause Title	Assessment Year	Appointed date of Amalgamation as per the scheme	NOC given by AO before NCLT on	Date of approval of scheme by NCLT/ HC	Factum of amalgamation intimated to AO/ old PAN surrendered on	Revised/ Belated return filed (if any) on	Details of regular assessment	Date of Impugned Notice/ Order
						Unit whereby the Petitioner was informed about the issuance of new PAN to the amalgamated entity. **[Ann. P3 - Pg. 49 of the WP]**			**Notice u/s 142(1) dated 15.03.22** issued in the name of non-existent entity **[Ann. P1 - Pg. 43 to 45 of the WP].** *Erstwhile regime*
84.	WP (C) 5021/2022 Nokia Solutions and Networks India Pvt. Ltd. (successor of Nokia Siemens Networks India Pvt. Ltd.) v. DCIT *(The challenge is to the initiation of reassessment proceedings by way of*	2016-17	w.e.f. 01.04.2008		09.01.2009	This Hon'ble Court in the case of **PCIT v. Nokia Solutions & Network India (P.) Ltd.,**		31.12.2019	Notice under section 148 of the Act was never served on the Petitioner. The factum of reassessment proceedings was informed

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	issuance of notice under section 148 of the Act and the proceedings emanating therefrom)					**[2018] 90 taxmann.com 369 (Delhi HC)** has upheld the order of the Tribunal wherein the regular assessment framed for AY 2006-07 on the non-existent entity was quashed. Intimation – 25.05.2009 – surrendering the PAN of the amalgamating company. **[Ann P5 - Pg. 110 of**			by virtue of a notice issued under section 142(1) of the Act. **<u>Notice u/s 142(1) dated 15.03.22</u>** issued in the name of non-existent entity **[Ann. P1 - Pg. 43 to 45 of the WP].** *Erstwhile regime*
85.	<u>WP (C) 5022/2022</u> Nokia Solutions and Networks India	2014-15	w.e.f. 01.04.2008		09.01.2009			28.12.2017	Notice under section 148 of the Act was

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	Pvt. Ltd. (successor of Nokia Siemens Networks India Pvt. Ltd.) v. DCIT *(The challenge is to the initiation of reassessment proceedings by way of issuance of notice under section 148 of the Act and the proceedings emanating therefrom)*					**the WP]**			never served on the Petitioner. The factum of reassessment proceedings was informed by virtue of a notice issued under section 142(1) of the Act. **Notice u/s 142(1) dated 15.03.22** issued in the name of non-existent entity **[Ann. P1 - Pg. 42 to 44 of the WP]**.

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									Notice dated 20.05.2022 issued under section 148A(b) of the Act **[Pg. 153 -155 of the WP].** *Erstwhile as well as New regime*
91.	WP(C) No. 5166/2022 Paytm Mobile Solutions Pvt. Ltd. (now merged into One 97 Communications Ltd.) v. ACIT	2013-14	01.04.2011		27.05.2013	Intimation – 03.05.2018 – also requested to surrender PAN [**Pg. 63 of the WP – Ann. P5**]	Amalgamation related modification was not required as necessary changes were incorporated during the course of filing of original return.	Order dated 29.01.2016 – scrutiny assessment – the returned income was accepted. **[Pg. 59-60 of the WP – Ann. P4]**	Notice dated 26.03.2021 under section 148 of the Act **[Pg. 49 of the WP – Ann. P1]** *Erstwhile regime*

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							The fact that revised return was filed for AY 2012-13, has been noted in Assessment Order dated 23.03.2015 for AY 2012-13. **[Pg. 55 of the WP – Ann. P3]**		
89.	WP(C) No. 5161/2022 Paytm Mobile Solutions Pvt. Ltd. (now merged into One 97 Communications Ltd.) v. ACIT	2014-15	01.04.2011		27.05.2013	Intimation – 03.05.2018 – also requested to surrender PAN [**Pg. 65 of the WP – Ann. P5**]	Amalgamation related modification was not required as necessary changes were incorporated during the course of filing of original return. The fact that	Order dated 23.11.2016 – scrutiny assessment – the returned income was accepted. **[Pg. 60-61 of the WP – Ann. P4]**	Notice dated 27.03.2021 under section 148 of the Act – **Pg. 49 of the WP – Ann. P1.** *Erstwhile regime*

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							revised return was filed for AY 2012-13, has been noted in Assessment Order dated 23.03.2015 for AY 2012-13. **[Pg. 56-57 of the WP – Ann. P3]**		
88.	WP(C) No. 5134/2022 Paytm Mobile Solutions Pvt. Ltd. (now merged into One 97 Communications Ltd.) v. ACIT	2015-16	01.04.2011		27.05.2013	Intimation – 03.05.2018 – also requested to surrender PAN [**Pg. 59 of the WP – Ann. P4**]	Amalgamation related modification was not required as necessary changes were incorporated during the course of filing of original return. The fact that revised return was	• Regular assessment concluded *vide* Order dated 26.12.2017. **[Pg. 209-210 of the WP – Ann. P11]** • Reassessment on the	Notice dated 26.03.2021 under section 148 of the Act – **Pg. 49 of the WP – Ann. P1.** *Erstwhile regime*

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							filed for AY 2012-13, has been noted in Assessment Order dated 23.03.2015 for AY 2012-13. **[Pg. 215-216 of the WP – Ann. P12]**	amalgamated entity was concluded *vide* Order dated 30.03.2022 **[Pg. 502-503 of the WP (5134-2022)]**	
92.	WP(C) No. 5171/2022 Paytm Mobile Solutions Pvt. Ltd. (now merged into One 97 Communications Ltd.) v. ACIT	2016-17	01.04.2011		27.05.2013	Intimation – 03.05.2018 – also requested to surrender PAN [**Pg. 59 of the WP – Ann. P4**]	Amalgamation related modification was not required as necessary changes were incorporated during the course of filing of original return. The fact that revised return was	• Regular assessment concluded *vide* Order 27.12.2018. **[Pg. 209-210 of the WP – Ann. P11]** • Reassessment on the amalgamated	Notice dated 26.03.2021 under section 148 of the Act – **Pg. 49 of the WP – Ann. P1.** *Erstwhile regime*

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							filed for AY 2012-13, has been noted in Assessment Order dated 23.03.2015 for AY 2012-13. **[Pg. 211-212 of the WP – Ann. P12]**	entity was concluded *vide* Order dated 30.03.2022. **[Pg. 504-505 of the WP (5134-2022)]**	
90.	WP(C) No. 5165/2022 Paytm Mobile Solutions Pvt. Ltd. (now merged into One 97 Communications Ltd.) v. ACIT	2017-18	01.04.2011		27.05.2013	Intimation – 03.05.2018 – also requested to surrender PAN [**Pg. 75 of the WP – Ann. P6**]	Amalgamation related modification was not required as necessary changes were incorporated during the course of filing of original return. The fact that revised return was	• Regular assessment concluded *vide* dated 29.12.2019. **[Pg. 73-34 of the WP – Ann. P5]** • Reassessment on the amalgamated	Notice dated 26.03.2021 under section 148 of the Act – **Pg. 59 of the WP – Ann. P1.** *Erstwhile regime*

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							filed for AY 2012-13, has been noted in Assessment Order dated 23.03.2015 for AY 2012-13. **[Pg. 69-70 of the WP – Ann. P4]**	entity was concluded *vide* Order dated 30.03.2022. **[Pg. 506-507 of the WP (5134-2022)]**	
	Remarks: *Assessment in the case of amalgamated entity was framed in 23.03.2015 for AY 2012-13 wherein the AO has categorically recorded the aspect of amalgamation. In the Financial Statements of the amalgamated entity, it is categorically recorded that in terms of the scheme of amalgamation all the assets and liabilities of the amalgamating company got transferred to the amalgamated entity w.e.f. 01.04.2011. Further, specific request for surrender of PAN was made vide letter dated 03.05.2018, however, the status of the same was still appearing as active. The present case admittedly falls under Category I as notice under section 148 of the IT Act has been issued in the name of the amalgamating entity alone and is squarely covered by the law laid down in the case of PCIT v. Maruti Suzuki India Ltd.: [2019] 416 ITR 613 (SC) & Dalmia Power Ltd. vs. ACIT [2020] 420 ITR 339 (SC). Further, reliance is also placed on judgment passed in the case of CLSA India Pvt. Ltd. v. DCIT, [2023] 149 taxmann.com 380 (Bombay High Court) and DCIT v. Sterlite Technologies Ltd., [2024] 158 taxmann.om 242 (SC) confirming the judgement rendered in Sterlite Technologies Ltd. v. DCIT, [2023] 152 taxmann.com 381 (Bombay High Court), wherein it is held that merely because PAN in the name of non-existent entity had remained active does not create any exception in favour of Revenue to justify the initiation of reassessment proceedings and dilute the legal position as laid down by the Hon'ble Supreme Court in Maruti Suzuki India Ltd. (supra).*								
16.	ITA No. 539/2023	2019-20	w.e.f. 15.05.2018	-	-	13.04.2021 – 1st intimation	28.11.2019	Draft Order - 29.09.2021	**Order of Tribunal -**

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	CIT vs John Wiley & Sons, Inc. *(The assessment order dated 20.06.2022 passed in the name of erstwhile entity is under challenge)*		(Scheme approved by Secretary of State, New York on 15.05.2018)			17.03.2021 – 2nd intimation	(Belated)	DRP directions- 29.04.2022 Final assessment order- 20.06.2022. Thereafter, the Tribunal vide order dated 20.02.2023 held final assessment order passed in the name of erstwhile entity to be bad in law.	**20.02.2023** Departmental appeal against common order of the Tribunal quashing **final assessment order dated 20.06.2022**
	Remarks: ❖ The Department has filed an appeal against the order of the Tribunal dated 20.02.2023, quashing final assessment order dated 20.06.2022. Thus, the assessment order dated 20.06.2022, passed in the name of the erstwhile entity, is under challenge. ❖ The DRP vide directions dated 29.04.2022, categorically directed the AO to pass the final assessment order as per the name given in the directions (i.e., John Wiley & Sons, Inc. / amalgamated entity) *(refer para 2.1 of the DRP directions on page 54 and 55 of the appeal for DRP directions in AY 2018-19 and 3 2019-20 respectively).* The said fact								

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	has also been acknowledged by the ITAT vide order dated 20.02.2023 *at para 2.1 on page 27 for the ITAT order at page 22-27 of the appeal for AY 2018-19 and AY 2019-20*. Thus, since the DRP directions were not followed by the AO in both letter and spirit, as per scheme of 144C of the Act, the final assessment order is bad in law and liable to be quashed on this count as well.								
17.	ITA No. 554/2023 CIT vs John Wiley & Sons, Inc. *(The assessment order dated 20.06.2022 passed in the name of erstwhile entity is under challenge)*	2018-19	w.e.f. 15.05.2018 (Scheme approved by Secretary of State, New York on 15.05.2018)	-	-	18.11.2020 – 1st intimation 17.03.2021 – 2nd intimation 23.03.2021 – 3rd intimation	11.04.2019 (Revised post defect notice)	Draft Order - 29.09.2021 DRP directions- 29.04.2022 Final assessment order- 20.06.2022. The Tribunal vide order dated 20.02.2023 held final assessment order passed in the name of erstwhile entity to be bad in law.	**Order of Tribunal - 20.02.2023** Departmental appeal against common order of the Tribunal quashing **final assessment order dated 20.06.2022**
	Remarks: ❖ The Department has filed an appeal against the order of the Tribunal dated 20.02.2023, quashing final assessment order dated 20.06.2022. Thus, the assessment order dated								

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	20.06.2022, passed in the name of the erstwhile entity, is under challenge. ❖ The DRP vide directions dated 29.04.2022, categorically directed the AO to pass the final assessment order as per the name given in the directions (i.e., John Wiley & Sons, Inc./ amalgamated entity) *(refer para 2.1 of the DRP directions on page 54 and 55 of the appeal for DRP directions in AY 2018-19 and 3 2019-20 respectively).* The said fact has also been acknowledged by the ITAT vide order dated 20.02.2023 *at para 2.1 on page 27 for the ITAT order at page 22-27 of the appeal for AY 2018-19 and AY 2019-20.* Thus, since the DRP directions were not followed by the AO in both letter and spirit, as per scheme of 144C of the Act, the final assessment order is bad in law and liable to be quashed on this count as well.								