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IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA
आयकर अपीलीय अधीकरण, न्यायपीठ **"B"** कोलकाता,

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.240/Kol/2022
Assessment Year: 2011-12

Deputy Commissioner of Income-tax, Central Circle-4(4), Kolkata.	Vs.	M/s. G. K. & Sons Pvt. Ltd., Room No. 603, 6th Floor, Shantiniketan Building, 8, Camac Street, Kolkata-700017. (PAN:AAACG8389H)
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri P. P. Barman, Addl. CIT
Respondent by : Shri Ravi Tulsiyan, FCA

Date of Hearing : 12.10.2022
Date of Pronouncement : 20.10.2022

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-21, Kolkata vide order No. ITBA/APL/S/250/2021-22/1039861290(1) dated 17.02.2022 passed against the assessment order by DCIT, CC-XXI, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 13.03.2014.

2. The revised Grounds of appeal raised by the revenue vide letter dated 05.09.2022 are reproduced as under:

> *"1. For that the Learned CIT(A) erred in holding that the accumulated losses of amalgamating companies comprising of unabsorbed short term capital loss, unabsorbed long term capital loss, unabsorbed business loss would belong to the amalgamated company.*

2. For that the Learned CIT(A) erred in holding that the availability of the provision of Section 72 and 74 of the said Act and thereby ignoring the provision under Sub Section (2) of Section 78 of the said Act.

3. For that the Learned CIT(A) erred in holding that the provision of Section 72 and 74 would come into play with respect to set off of such accumulated loss of amalgamating companies against respective incomes of the amalgamated company.

4. For that the Learned CIT(A) failed to appreciate the fact that the case relied upon is distinguishable both in fact as well as in law and the instant case of the assessee is identical to the decision of the Hon'ble Punjab and Haryana High Court in the case of Smt. Harjit Kaur and in the case of Eastern Dooars Tea Company Limited.

5. For that the Learned CIT(A)'s Order is ex-facie bad, illegal, perverse, arbitrary without considering the materials on record.

6. For that the Learned CIT(A) erred in holding that the assessee had duly discharged is burden of proving the genuineness of the loss and are not perverse since the document did not prove any materials to controvert the claim of the assessee.

3. Brief facts of the case are that assessee filed its return on 14.09.2011 reporting total income of Rs.1,26,27,638/-. In the course of assessment, it was observed that during the year under consideration six companies where public are not substantially interest, got merged with the assessee company. In the computation of total income for the year following brought forward losses were adjusted in the current year's income under the respective heads as :

(i) brought forward business loss of Rs.2,52,153/- for AY 2010-11,

(ii) brought forward short term capital loss of Rs.4,18,45,150/- for AY 2010-11. After the adjustment of these losses with current year's income under the respective heads, a claim for carry forward of unabsorbed losses of Rs.42,98,533/- was made. Assessee had also claimed loss on sale of securities of Rs.2,57,986/- whereon at the time of holding these securities, earned exempt income in the form of dividend income.

3.1. On the above, Ld. AO required the assessee to explain why the brought forward losses under the two heads should not be disallowed in terms of provision of section 79 of the Act, since the beneficial ownership of 51% voting rights has changed with amalgamation taking

effect from 01.04.2010 and also why the losses claimed to be carried forward in future year should not be disallowed as per section 79 of the Act. In this respect, assessee explained its case that if the management and control remains with the same group, section 79 is not applicable. He referred to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Select Holding Resorts Pvt. Ltd. (2013) 35 taxmann.com 368 (Del.) wherein it was held that where there was no change in management of company which continued to remain with same set of people and change in shareholding was only due to merger, carry forward losses of company could not be denied. However, Ld. AO proceeded to disallow the claim of the assessee. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), it was submitted that assessee is a Non-Banking Financial Company (NBFC). In the year under consideration, by virtue of the order of Hon'ble High Court of Calcutta dated 06.10.2010, six companies got merged into the assessee company w.e.f. 01.04.2010 along with their respective unabsorbed losses. From para 9(iii) of the merger scheme it was submitted that scheme provides that the accumulated loss incurred by the transferor (amalgamating company) shall be deemed to be that of the transferee (amalgamated company) for all purposes including for the purpose of Income-tax Act. It was contended that the scheme is approved by the Hon'ble jurisdictional High Court of Calcutta and is binding under Article 227 of the Constitution. Accordingly, under the scheme, losses claimed by the assessee pertains to the amalgamated assessee company.

4.1. Attention in this regard was invited to the provisions of section 72 and 74 of the Act. In this respect reference was made to the judgment of Coordinate Bench of ITAT, Delhi in the case of Bharat Heavy Electricals Ltd. Vs. ITO 5 ITD 361 wherein it was observed that *"The scheme, in regard to the carried forward unabsorbed losses and*

depreciation had been specifically mentioned in the Act. That scheme has nothing to do with a situation where by an order of the Government the losses of one unit are treated as the losses of other unit. What BHEL is claiming now is not carry forward of unabsorbed loss or depreciation. It is claiming its own losses which have to be determined with reference to the order of amalgamation particularly cl. 4. By virtue of cl. 4 the loss of BHEL is increased to the extent of the unabsorbed loss and depreciation of HEL.

By insertion of s. 72A, it cannot be held that in no case earlier the benefit of unabsorbed losses or depreciation could be availed of in the case of amalgamation. If one compares s. 72A and the provisions of s. 396 of the Companies Act, there is a lot of similarity. In order, perhaps to obviate any possible conflict or dispute because of the provisions of the Act in relation to amalgamations under s. 396 of the Companies Act, what was contemplated under s. 396 has been incorporated in s. 72A. But that does not mean that prior to the insertion of s. 72A the provisions of the Companies Act especially s. 396 would not prevail over the provisions, of the Act. Whatever may be the other provisions with regard to the amalgamations under the Companies Act, the amalgamation ordered under s. 396 with a specific provision about the treatment of losses as in this case, the result would be that the order of amalgamation will have to be given effect to and, to that extent the provisions of the Act may be overridden."

4.2. It was also submitted that this identical issue was dealt by the Co-ordinate Bench of ITAT, Kolkata in assessee's own group company case in Electrocast Sales India Ltd. Vs. DCIT for AY 2011-12 in ITA No. 2145/Kol/2014 dated 09.03.2018 wherein also there was an amalgamation of six companies and the AO in his wisdom had not allowed the brought forward loss. Ld. CIT(A) gave finding by following the decision of the Co-ordinate Bench of ITAT, Kolkata in the case of

Electrocast Sales India Ltd. (supra) and held that losses claimed by the assessee belong to the amalgamated assessee company for the purpose of the Act. Relevant extract from the order of Electrocast Sales India Ltd. (supra) of the said finding is reproduced hereunder:

> "*4. We have heard the rival submissions and perused the materials available on record including the various paper books of the assessee. The contents of the paper books are as under:-*
>
> *a) Scheme of Amalgamation approved by the Hon'ble Calcutta High Court vide its order dated 6.10.2010 - Enclosed in Pages 4 to 32 of PB;*
>
> *b) Letters to the respective AOs for surrender of PAN of amalgamating companies - Enclosed in Pages 33 to 37 of PB;*
>
> ....
>
> 4.4. We find that the scheme of amalgamation would be approved by the Hon'ble High Court only after ensuring that the same is not prejudicial to the interests of its members or to public interest. Hence the merger scheme approved by the Hon'ble High Court having in mind the larger public interest, cannot be disturbed by the revenue merely because the assessee is not entitled for benefits u/s 72A of the Act. The expression 'Public interest' was discussed by the *Hon'ble Gujarat High Court in the case of Wood Polymer Ltd reported in 109 ITR 177 (Guj)* wherein the Hon'ble Court refused to sanction the scheme of amalgamation formulated solely for the purpose of avoiding taxes. It was held that :
>
> > *"The court is charged with a duty, before it finally permits dissolution of the transferor-company by dissolving it without winding up, to ascertain whether its affairs have been carried on, not only in a manner not prejudicial to its members but in even public interest. The expression "public interest" must take its colour and content from the context in which it is used. The context in which the expression "public interest" is used, enables the court to find out why the transferor company came into existence, for what purpose it was set up, who were its promoters, who were controlling it, what object was sought to be achieved through creation of the transferor company and why it was being dissolved by merging it with another company, That is the colour and content of the expression "public interest" as used in the second proviso to section 394(1) of the Act which have to be enquired into. If the only purpose appears to be to acquire certain capital asset through the intermediary of the transferor-company created for that very purpose to meet the requirement of law, and in the process to defeat tax liability which would otherwise arise, it could not be said that the affairs of the transferor-company sought to be amalgamated, created for the sole purpose of facilitating transfer of capital asset through its medium, have not been carried on in a manner prejudicial to public interest. Public interest looms large in this background and the machinery of judicial process is sought to be utilized for defeating public interest and the court would not lend its assistance to defeat public interest. The court would, therefore, not sanction the scheme of amalgamation.'*
>
> Hence it could be safely inferred that the Court would exercise due diligence and would conduct detailed enquiries before sanctioning the scheme. A scheme formulated for the purposes of tax evasion cannot be held to be in 'public interest' and hence the same cannot be sanctioned under the provisions of Companies Act, 1956. The fact that the Hon'ble Calcutta High Court had accorded its sanction to the scheme of amalgamation in the assessee's case implies that the same had been done by considering representations from the various fields and by duly considering the tax evasion point for income tax purposes. In this regard, we would like to place reliance on

the functions, powers and discretions of the court that had been noted by Shri A .Ramaiya in the Companies Act, Part 2 at pages 2499 and 2500 in Point No. 6 incorporated hereunder:

> *"That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same."*

4.4.1. Further we find that the provisions of section 394A of the Companies Act, 1956 reads as under:-

> *Notice to be given to Central Government for applications under sections 391 and 394 – The court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.*

Hence if there be any objections for the income tax department , they could raise the same at that stage i.e prior to sanction of scheme by the court. Once the scheme is approved, it implies that the same has been done after duly considering the representations from the Government / revenue. Similar view was expressed by the *Co-ordinate bench of this Tribunal in the case of ITO vs Purbanchaal Power Co. Ltd in ITA No. 201/Kol/2010 dated 17.7.2014* wherein it was held that :-

> *From the above provisions of section 394A of the Companies Act, 1956, legal position enunciated in the decisions of Hon'ble Gujarat High Court in the case of Wood Polymer Ltd ., in re and Bengal Hotels Pvt Ltd in re, supra and Vodafone Essar Gujarat Ltd., supra, evidently makes the purpose clear that if the revenue wants to object to the proposed scheme of amalgamation, it has to do so in the course of proceedings before the High Court but before the final order is passed. Whenever such objections have been raised, these have been considered on merits by the concerned High Court and also incorporated the condition for safeguarding the interest of revenue in the very scheme. As a matter of public policy, once a scheme of amalgamation is approved by Hon'ble High Court no authority should be allowed to tinker with the scheme. In the present case of the assessee, neither the official liquidator nor the Regional Director nor Central Government raised any objection to the scheme of amalgamation. In such circumstances , we are of the view that the revenue has nothing to say at the time of approval of the scheme by Hon'ble High Court in the present case.*

4.5. We find that the *Hon'ble Madras High Court in the case of Pentamedia Graphics Ltd vs ITO reported in 236 CTR 204 (Mad)* had categorically held that *once the scheme had been sanctioned with effect from a particular date by the Court, it is binding on everyone including the statutory authorities. It further held that having regard to the law declared by the Hon'ble Apex Court as to the effect of the scheme sanctioned by the Court, the only course open to the revenue would be to act as per the scheme sanctioned effective from 1st Jan 2004, which means that the tax authorities are bound to take note of the state of affairs of the applicant as on 1st Jan 2004 and a return filed regarding the same cannot be ignored on the strength of section 139(5) of the IT Act. The merits or otherwise on the returns filed , however, is a matter of assessment for the authorities to consider and pass order in accordance with law. It was further held that when the claim of the assessee in the appeal had already been granted, on a mere circumstance that the Department had not accepted the same and gone before the appellate forum does not mean that the scheme sanctioned would be of no consequence to the respondent. The respondent cannot ignore the order of this Court approving the scheme giving the effective date as 1st Jan, 2004.* Similar view, that once the court sanctions the scheme , the Income tax department will be bound by the same, including the appointed date and cannot review the same, has been held by the *Hon'ble Bombay High Court in the case of Casby CFS (P) Ltd reported in 231 Taxman 89 (Bom) dated 19.3.2015*

(underlining provided by us)

4.5.1. We also find that the *Hon'ble Supreme Court in the case of J.K.(Bombay) (P) Ltd vs New Kaiser –I-Hind Spg.& Wvg.Co. reported in 1970 AIR 1041 (SC) dated 22.11.1968* had held :

> *The Principle is that a scheme sanctioned by the court does not operate as a mere agreement between the parties ; it becomes binding on the company, the creditors and the shareholders and <u>has statutory force</u> , and therefore the joint-debtor could not invoke the principle of accord and satisfaction. By virtue of the provisions of sec. 391 of the Act, a <u>scheme is statutorily binding</u> even on creditors , and shareholders who dissented from or opposed to its being sanctioned. It has statutory force in that sense and therefore <u>cannot be altered except with the sanction of the Court</u> even if the shareholders and the creditors acquiesce in such alteration.*
>
> (underlining provided by us)

4.5.2. We find that the aforesaid observations of the Hon'ble Supreme Court had been followed by the *Hon'ble Bombay High Court in the case of Sadanand Varde and Others vs State of Maharashtra reported in 247 ITR 609 (Bom)* wherein it was held that :

> *"Once a scheme becomes sanctioned by the court, it ceases to operate as a mere agreement between the parties and becomes binding on the company, the creditors and the shareholders and has statutory operation by virtue of the provisions of section 391 of the Companies Act."*

The said judgement of Hon'ble Bombay High Court further provided that an appeal, if any, against the order of amalgamation lies u/s 391(7) of the Companies Act, 1956 and the same cannot be agitated in any collateral proceeding. The relevant extract of the same is reproduced hereunder for the sake of ready reference :-

> *"We are of the view that the amalgamation, which has become final and binding, cannot be permitted to be challenged by the petitioners, without locus standi, in a collateral proceeding in the present writ petition. An amalgamation order can only be challenged under the Companies Act by an appeal under section 291(7) by any one of the parties, but no such appeal was ever filed."*

In the instant case before us, the ld AR informed that the Income Tax Department , which is part of Union of India, had not filed any appeal u/s 391(7) of the Companies Act, 1956 against the order of amalgamation sanctioned by the Hon'ble High Court. This fact was not controverted by the ld DR before us.

4.6. The ld AR further argued that the scheme of amalgamation, as sanctioned by the Hon'ble Calcutta High Court, was effective from 1.4.2010 and the parties had acted according to the said scheme and cannot be subjected to reversal after a period of 7 years by virtue of the *principle of 'res judicata' , 'constructive res judicata' and 'acquiescence*'. In this regard, the ld AR placed reliance on the decision of *Hon'ble Supreme Court in the case of Forward Construction Co. and Others vs Prabhat Mandal reported in 1986 AIR 391 (SC)* wherein it was held that :

> *"The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided . It could only be deemed to have been heard and decided."*

We find that in the instant case, the income tax department had the opportunity to controvert the specific clause mentioned in para 10(iii) in the scheme of amalgamation , when the scheme was presented before the Hon'ble High Court for approval. Thus applying the principles of res

judicata as explained by the Hon'ble Apex Court in the aforesaid case, the issue can be deemed to be heard and decided . Accordingly, the argument that the same cannot be agitated in appeal u/s 391(7) of the Companies Act, 1956 deserves attention and merit. *The English Court of Chancery in case of Henderson vs Henderson reported in (1843-60) All ER Rep 378 while construing Explanation IV to Section 11 of Code of Civil Procedure* quoted hereunder:-

> *The plea of res judicata applies, except in special case (sic), not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a Judgement, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time".*

4.7. It would be relevant to note tha the scheme of amalgamation was approved on 6.10.2010 and intimation to this effect was sent by the assessee to the income tax department in January 2011 (copies of letters enclosed in pages 33 to 37 of paper book) . The same was acted upon by the assessee assuming acceptance from the income tax department since no appeal against the said judgement of the Hon'ble High Court was filed before the Hon'ble Supreme Court. Thus, at this juncture, if the revenue is allowed to challenge the same u/s 391(7) of the Companies Act, 1956, then it would be clearly barred by the doctrine of acquiescence and estoppel. In law, acquiescence occurs when a person knowingly stands by without raising any objection to the infringement of his or her rights, while someone else unknowingly and without malice aforethought acs in a manner inconsistent with their rights. As a result of acquiescence, the person whose rights are infringed may lose the ability to make a legal claim against the infringer, or may be unable to obtain an injunction against continued infringement. The doctrine infers a form of 'permission' that results from silence or passiveness over an extended period of time. Applying this principle to the instant case before us, the assessee probably paid a consideration for the set off of accumulated losses taken over from the amalgamating companies and accordingly the share exchange ratio (as approved under the scheme) was acted upon assuming acceptance from the income tax department. Thus by applying the Doctrine of acquiescence, the department would be now barred from raising an objection to the scheme. Further a claim of estoppel arises when one party gives legal notice to a second party of a fact or claim, and the second party fails to challenge or refute that claim within a reasonable time. The second party may be said to have acquiesced to the claim, and thus to be estopped from later challenging it or making a counterclaim based upon the actions of the other party. In the instant case also, the fact of amalgamation was intimated to the income tax department 7 years back against which no appeal was preferred by them. Accordingly the claim of estoppel applies. These Doctrines of Estoppel and Acquiescence had been approved by the *Hon'ble Calcutta High Court in the case of Suresh Kumar Rungta and Ors vs Roadco India Pvt Ltd dated 22.9.2011* wherein the Hon'ble Calcutta High Court upheld the view of Trial Court wherein it was held that *" the present appellants / applicants had knowledge about the passing of order of winding up. They had knowledge or have had occasion to come before this Court earlier, and did not come because they have accepted legality and validity of amalgamation".*

Applying the Doctrine of Acquiescence and Estoppel the Hon'ble Court held that *"It appears to us all the appellants have accepted the scheme of amalgamation and now these companies against whom relief is sought for are no longer in existence and they cannot be reverted back to their earlier position as by this time third parties right have been created by reallocation or reallotment of shareholding for there may be fresh subscribing. In true sense there has been sea change in the shareholding pattern of these companies. Therefore we dismiss the appeal.*"

4.8. In view of the aforesaid observations and findings in the facts and circumstances of the case, we hold that the accumulated losses of amalgamating companies, comprising of unabsorbed short term capital loss of Rs 10,26,44,123/- ; unabsorbed long term capital loss of Rs 6,34,784/- and unabsorbed business loss of Rs 6,63,574/- , would belong to the amalgamated company pursuant to clause in para 10(iii) of the scheme of amalgamation which was approved by the Hon'ble Calcutta High Court vide order dated 6.10.2010. Since the losses belonged to

the amalgamated company i.e the assessee herein, the provisions of section 72 and section 74 of the Act would come into play with respect to set off of the same against the respective incomes of the assessee . In view of this, the provisions of non-compliance of section 72A of the Act as narrated by the ld CITA does not hold any water. Accordingly, the Grounds 1 & 2 raised by the assessee are allowed."

5. Ld. CIT(A) concluded to allow the claim of the assessee in view of the order of Hon'ble jurisdictional High court, Calcutta which approved the aforesaid scheme of amalgamation in respect of the assessee so also in view of the decision of the Co-ordinate Bench of ITAT, Kolkata in one of the assessee's own group companies i.e. Electrocast Sales India Ltd. (supra). The relevant extracts of the findings given by the Ld. CIT(A) in this respect are reproduced as under:

"The above discussions clearly bring out the fact that in view of the order of the Hon'ble Calcutta High Court, referred to above, approving the aforementioned scheme of amalgamation with regard to the present appellant, the present appellant would be entitled to carried forward established and admissible losses of the transferor companies to the appellant (transferee company) to the extent that they existed at the time of amalgamation - of course as declared before the Income Tax Department, and accepted by the latter as being correct at the time - to subsequent years for set off as per .the provisions of the Act. This scheme, as passed by the Hon'ble Calcutta High Court has been accepted by all parties involved, without challenge, either during the proceedings before the Hon'ble High Court or after that, for now more than ten years and therefore has statutory effect, as stipulated by judicial authorities, as discussed above. The scheme therefore is binding as clearly spelt out by the Hon'ble jurisdictional ITAT in its order in the case of the appellant's own group company - as discussed at length above. At the time therefore of giving effect to this appeal, the AO is directed to give due attention and make verifications in respect thereof to the assertion of the appellant, during appeal, that these losses "have already been allowed in the respective block orders of the company (pre amalgamation). for assessment years 2008-09 and 2009-2010." Accordingly, subject to the above confirmations, the Grounds No.1 and 2 raised by the appellant are allowed."

Aggrieved, revenue is in appeal before the Tribunal.

6. Before us Ld. Counsel for the assessee Shri Ravi Tulsiyan, FCA represented the assessee and Shri P. P. Barman, Addl. CIT represented the department.

7. Before us, Ld. Sr. DR referred to the provisions of section 79 of the Act and submitted that there was change in the shareholding pattern of the assessee. He pointed out that assessee submitted that there was no

change in management of the company which continued to remain with the same set of people and change in shareholding was only due to merger. Thus, on this, Ld. Sr. DR contended that Ld. AO has rightly disallowed the set of brought forward losses and carry forward for the balances.

8. Per contra, Ld. Counsel for the assessee submitted that the assessee is a NBFC and during the year under consideration by virtue of the order dated 06.10.2010 of the Hon'ble High Court at Calcutta, six companies were merged along with their respective unabsorbed business loss and capital loss with the assessee company, effective from 01.04.2010. The six companies which were merged into the assessee company were -

(i) Axis Sales Limited,
(ii) Elcast Finance Limited
(iii) Kamal Kunj Commodities Pvt. Ltd.
(iv) Roloc Properties Pvt. Ltd.
(v) RSP Capital Markets Pvt. Ltd.
(vi) Pashupati Synthetics Pvt. Ltd.

8.1. Ld. Counsel reiterated the submissions made before the authorities below which have already been narrated in detail in the above paragraphs and are not repeated for the sake of brevity. He placed strong reliance on the decision of the Co-ordinate bench of ITAT, Kolkata in the case of Electrocast India Ltd. (supra) which is also one of the group companies of the assessee wherein also different set of six companies were merged vide the same order dated 06.10.2010 of the Hon'ble High court of Calcutta by which the scheme of merger/amalgamation was approved. He also placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT Vs. Select Holiday Resorts Pvt. Ltd. (supra). He submitted that carry forward losses cannot be denied on the ground of change in shareholding due to merger if management of the company continues to remain with the

same set of people. He thus, submitted that Ld. CIT(A) has rightly concluded by allowing the appeal of the assessee on this issue.

9. We have heard the rival submissions and perused the material available on record. We note that the scheme of merger/amalgamation was approved by the Hon'ble High Court of Calcutta vide its order dated 06.10.2010 by which the six companies along with their respective unabsorbed business loss and capital loss were allowed to be merged into the assessee company as referred in para 10(iii) of the said order. He also observed that Ld. CIT(A) has also exhaustively dealt with the aspect of binding nature of the order of Hon'ble High court of Calcutta in respect of approval of the scheme of amalgamation/ merger to arrive at a conclusion that scheme of amalgamation once approved has a statutory force and objections, if any, should be raised by the Income-tax Department prior to the sanction of the scheme by the Hon'ble High Court. The scheme once approved is binding on the Income-tax authorities and cannot be disturbed/reconsidered. We also take note of the findings given by the Co-ordinate Bench of ITAT, Kolkata in one of the assessee's group companies in the case of Electrocast Sales India Ltd. (supra) wherein also similar issue was dealt and held in favour of the assessee. We also concur with the reliance placed by the ld. Counsel on the decision of Hon'ble High Court of Delhi in the case of Select Holiday Resorts Pvt. Ltd. (supra) which deals with the similar issue present before us in the appeal. Considering the facts and circumstances of the present case which are similar to those dealt with by the Co-ordinate bench of ITAT, Kolkata and by the Hon'ble Delhi High Court (supra) and the detailed findings given by the Ld. CIT(A), we do not find any reason to interfere with the order of the Ld. CIT(A) on this issue. Accordingly, we allow the adjustment of brought forward business loss of Rs.2,52,153/- against the current year's business income and also the set off of brought forward capital loss of

Rs.4,18,45,150/- as claimed by the assessee. Thus, the grounds raised by the revenue are dismissed. Accordingly, the appeal of the revenue is dismissed.

10. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 20th October, 2022.

Sd/- (RAJPAL YADAV)	**Sd/- (GIRISH AGRAWAL)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 20.10.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(A)-21, Kolkata.
4. CIT, Kolkata
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata