IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No.303/Mum/2023
(**Assessment Year :2018-19**)

M/s. Patil Construction and Infrastructure Limited (M.B. Patil Constructions Limited since amalgamated) Flat No.02, Swadin Sadan 'C' Road Churchgate, Mumbai – 400 021	Vs.	Deputy Commissioner of Income Tax-1(2)(1) Mumbai Aayakar Bhawan Mumbai Maharashtra
PAN/GIR No.AAFCP4151P		
(Appellant)	..	**(Respondent)**

ITA No.98/Mum/2023
(**Assessment Year :2018-19**)

Asst. Commissioner of Income Tax-1(2)(1) Mumbai Aayakar Bhawan Mumbai Maharashtra	Vs.	M/s. Patil Construction and Infrastructure Limited (M.B. Patil Constructions Limited since amalgamated) Flat No.02, Swadin Sadan 'C' Road Churchgate, Mumbai – 400 021
PAN/GIR No.AAFCP4151P		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Neelkanth Khandelwal
Revenue by	Smt. Sanyogita Nagpal
Date of Hearing	**04/03/2024**
Date of Pronouncement	**16/04/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee as well as by the Revenue against order dated 15/11/2022 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. At the outset, appeal of the assessee is delayed by 19 days. In the petition of condonation of delay following reasons have been given:-

"a) The National Faceless Appeal Centre (the NFAC) passed an order dated 15.11.2022 (the impugned order) in the case of our clients for income-tax assessment year 2018-19. served through e-filing portal on even date

(b) Our clients were not aware that the NFAC has passed the order and uploaded the same on the e-filing portal

(c) On taking updates of pending income-tax matters of the Group towards the end of January, 2023, the management of our clients noticed that the NFAC has already passed an order for assessment year 2018-19, and partially allowed the appeal.

(d) that the management immediately sent the order to the accounts team for further action and to prepare and file an appeal to the Income-tax Appellate Tribunal.

Further, it would not be out of place to mention that there is absolutely no mala fide intention on the part of our clients for the aforesaid delay. No benefit would accrue to them on account of not filing of appeal within the due date. As such, you will appreciate that the error in not filing of appeal is, on facts, bona fide.

In view of the above, we on behalf of our clients urge you to condone the delay in filing the appeal under reference and admit the same for disposal on merits. Please find enclosed an

Affidavit of the Managing Director of the appellant-company, narrating the said facts."

3. After hearing both the parties and on perusal of averments made in the affidavit that assessee was not aware that NFAC had issued notice and uploaded the order in the portal and assessee came to know later that he received the order belatedly, therefore, looking to the bonafide as stated above and no latches on behalf of the assessee, the delay of 19 days is condoned.

4. Assessee in its appeal has raised the following grounds:-

"1. Because in the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the action of the A.O. in rejecting the books of accounts and making an addition of Rs. 13,88,21,090/- to the total income of the Assessee under the head Profit and Gains from Business and Profession.

2. Because in the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate that the action of the A.O. in rejecting the books of accounts of the Assessee under Section 145(3) of the Act was arbitrary and without any basis, since the transactions of the Assessee with its related parties were not proven to be beyond arm's length and were also not disputed in the previous years.

3. Because in the facts and circumstances of the case and in law, the CIT(A) has erred in allowing the estimation of the net profit of the Assessee at Rs. 42,56,80,011/- (which is 8% of the total receipt of Rs. 5,32,10,00,137/-), in terms of Section 44AD of the Act, which was without any basis, and further, without appreciating that the provisions of Section 44AD are not applicable to Assessee's case,

4. Because in the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the action of the A.O. in disallowing a sum of Rs. 1,32,56,01,210/- under Section 40(a)(ia) of the Act.

5. Because in the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate that the recipients of the sub-contracts have duly disclosed and offered to tax the income earned by them on the amounts of sub-contracts received by them, and therefore the Assessee cannot be deemed to be an assessee-in-default in terms of second proviso to Section 40(a)(ia) of the Act.

6. Because, without prejudice to what has been stated above, the CIT(A) has failed to appreciate that once the income of the Assessee has been estimated after rejection of the books of accounts, the A.O. could not make disallowance of the same books of account by invoking provisions of Section 40(a)(ia) of the Act."

4. Whereas the Revenue has raised the following grounds:-

"1.On the facts and in the circumstances of the case and in law the Id. CIT (Appeals) was not justified in allowing claim of deduction u/s 801A of the Act amounting to Rs. 10,14,22,382/- "?

2. "On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) failed to appreciate the fact that the assessee has not fulfilled the conditions laid down for claiming deduction u/s 801A of the Act"?

3. "On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) failed to appreciate that the assessee was involved in carrying out work in the nature of rehabilitation whereas there is no reference to the term "road widening" anywhere in Work Order and has not carried out any work of development of new infrastructure facility or maintaining the same"?

4. "On the facts and in the circumstance of the case and in law the ld. CIT (Appeals) failed to appreciate the fact that the assessee upon completion of the contractual obligations has been paid the agreed contract price as per work completed

whereas section 801A stipulates development or maintenance of Infrastructure facility"?

5. "On the facts and in the circumstance of the case and in law the ld. CIT Appeals) failed to appreciate the fact that the relationship between assessee and the government is that of the contractor and the contractee and the assessee has acted as a contractor only on a specific contract allotted by its principals, cost of which has been reimbursed from the principals who are the actual owner/ developer"?

6. The Appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ACIT 1(2)(1), Mumbai be restored

7. The Appellant craves leave to amend or alter any grounds or add a new ground which may necessary."

5. The assessee has also raised additional grounds dated 19/07/2023 reading as under:-

1. The Deputy Commissioner of Income-tax-1(2)(2), Mumbai (hereinafter referred to as the Jurisdictional Assessing Officer erred in issuing notice under section 143(2) to a non-existent entity.

The appellants contend that on the facts and in the circumstances of the case and in law, the impugned notice under section 143(2) is issued to a non-existent entity (dead person) inasmuch as the erstwhile company (the appellants) is amalgamated with Patil Construction & Infrastructure Ltd. with effect from 1st April, 2018, and hence, the issuance of the impugned notice under section 143(2) is invalid and bad in law and consequently, the assessment order is also bad in law and needs to be quashed.

2. The Officer at National Faceless Assessment Centre (hereinafter referred to as the Assessing Officer) erred in framing the assessment order on a non-existent entity.

The appellants contend that on the facts and in the circumstances of the case and in law, the impugned assessment order is framed in the name of a non-existent entity (dead-person) inasmuch as the erstwhile company (the appellants) is amalgamated with Patil Construction & Infrastructure Limited with effect from 1st April, 2018 and hence, the assessment order framed in the name of a non-existent entity is bad in law and needs to be quashed. The appellants crave leave to add to, alter and/or amend therefore stated grounds of appeal."

6. Since the legal issue raised by the assessee challenges the very validity of the order, that order has been passed in the case of a non-existent entity as much as erstwhile company M/s. M.B. Patil Constructions Ltd. has been amalgamated with Patil Constructions and Infrastructure Ltd w.e.f. 01/04/2018 and therefore, the issuance of notice u/s. 143(2) as well as the order passed by the AO is bad in law and deserves to be quashed.

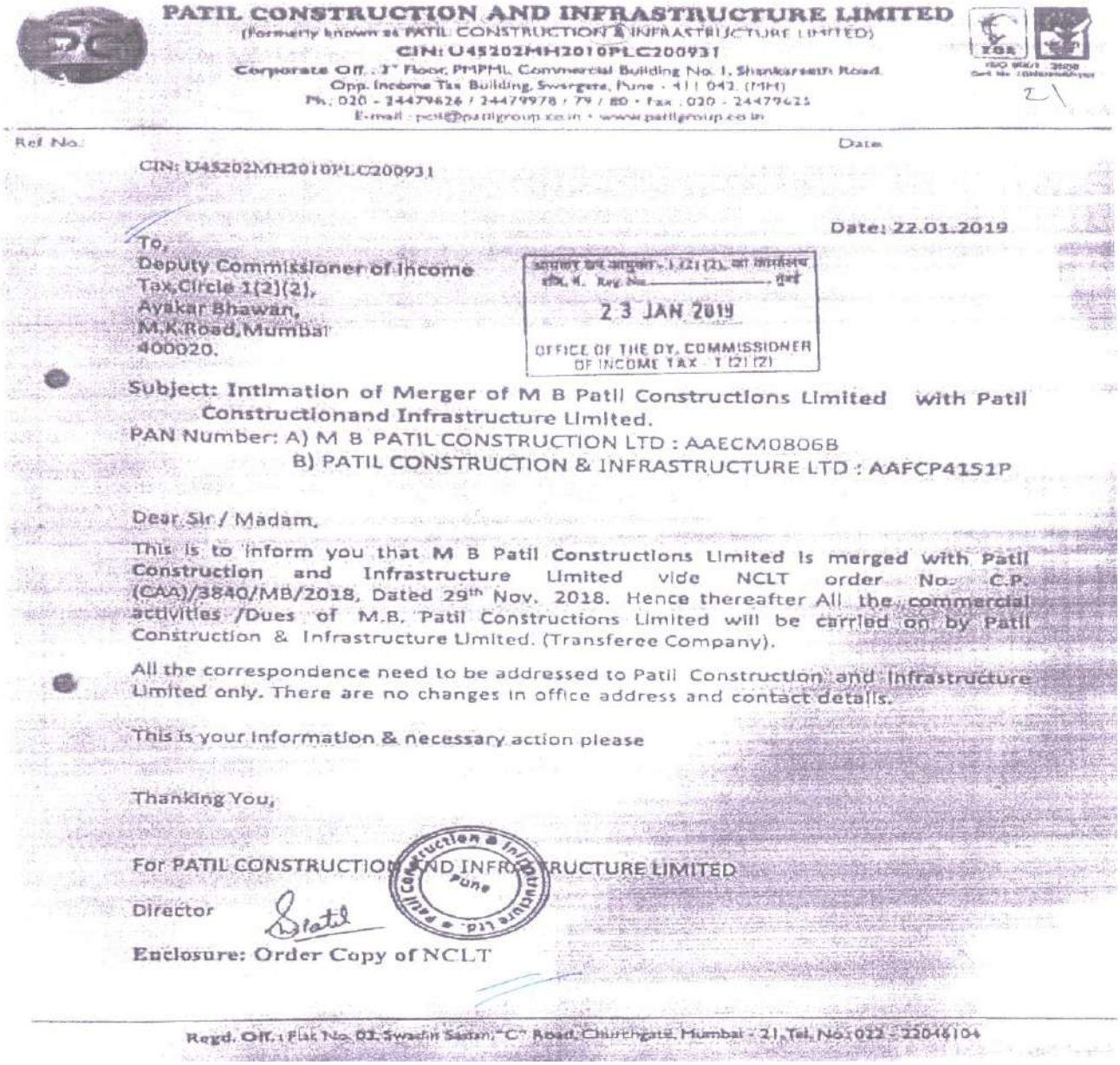
7. The brief facts qua the legal issue raised are that, M/s. M.B. Patil Constructions Ltd was incorporated on 23/01/2003, which was mainly engaged in the business of execution of civil infrastructure development contracts and had filed its return of income on 30/11/2018 for A.Y.2018-19 admitting total income of Rs.13,01,48,180/- after claiming deduction u/s.80IA of Rs.10,14,22,382/-. It has also declared share profit from joint venture of PCIPL and MBPCL of Rs.12,11,123/- which was not taxable in the hands of the assessee company being share profit. The assessment order u/s.143(3) r.w.s. 144B was completed on 26/07/2021 in the name of M/s. M.B. Patil Constructions Ltd., which had ceased to exist at the time of assessment proceedings,

determining the taxable income of Rs.169,61,21,740/- after making the following additions:-

Sl.No.	**Particulars**	**Amt. in Rs.**
1	Disallowance of claim of deduction u/s 80IA	10,14,22,382/-
2	Addition on account of rejection of books of A/cs	13,88,21,090/-
3	Disallowance of expenses u/s 40A(7)	1,28,873/-
4	Disallowance u/s 40(a)(ia)	132,56,01,210/-
	Total Additions	**156,59,73,555/-**

8. Before us it has been brought on record that under the scheme of merger M/s. M.B. Patil Constructions Ltd was merged with **M/s Patil Construction and Infrastructure Ltd.** and the scheme of merger was filed before the office of Dy. Commissioner of Income Tax 1(2)(2) on 02/08/2018. Assessee had also filed copy of communication dated 27/07/2018 filed on 02/08/2018 by 'Patil Construction and Infrastructure Ltd.' before the Assessing Officer intimating him about the proposed scheme of merger. Thereafter, assessee also filed copy of order of NCLT dated 29/11/2018 approving the merger w.e.f. 01/04/2018. Again vide letter dated 22/01/2019 filed on 23/01/2019, it was intimated to the ld. AO about the merger in the content of the

letter. Letter of Patil Construction Infrastructure Ltd. was as under:-



PATIL CONSTRUCTION AND INFRASTRUCTURE LIMITED
(Formerly known as PATIL CONSTRUCTION & INFRASTRUCTURE LIMITED)
CIN: U45202MH2010PLC200931
Corporate Off. : 1st Floor, PMPML Commercial Building No. 1, Shankarseth Road,
Opp. Income Tax Building, Swargate, Pune - 411 042. (MH)
Ph.: 020 - 24479626 / 24479978 / 79 / 80 • Fax : 020 - 24479625
E-mail : pcil@patilgroup.co.in • www.patilgroup.co.in

Ref No.: Date:

CIN: U45202MH2010PLC200931

Date: 22.01.2019

To,
Deputy Commissioner of Income
Tax,Circle 1(2)(2),
Ayakar Bhawan,
M.K.Road,Mumbai
400020.

आयकर अधिकारी, 1 (2) (2), का कार्यालय
रसीद में. Reg No. ——— दिनांक
23 JAN 2019
OFFICE OF THE DY. COMMISSIONER
OF INCOME TAX - 1 (2) (2)

Subject: Intimation of Merger of M B Patil Constructions Limited with Patil Constructionand Infrastructure Limited.
PAN Number: A) M B PATIL CONSTRUCTION LTD : AAECM0806B
B) PATIL CONSTRUCTION & INFRASTRUCTURE LTD : AAFCP4151P

Dear Sir / Madam,

This is to inform you that M B Patil Constructions Limited is merged with Patil Construction and Infrastructure Limited vide NCLT order No. C.P. (CAA)/3840/MB/2018, Dated 29th Nov. 2018. Hence thereafter All the commercial activities /Dues of M.B. Patil Constructions Limited will be carried on by Patil Construction & Infrastructure Limited. (Transferee Company).

All the correspondence need to be addressed to Patil Construction and Infrastructure Limited only. There are no changes in office address and contact details.

This is your information & necessary action please

Thanking You,

For PATIL CONSTRUCTION AND INFRASTRUCTURE LIMITED

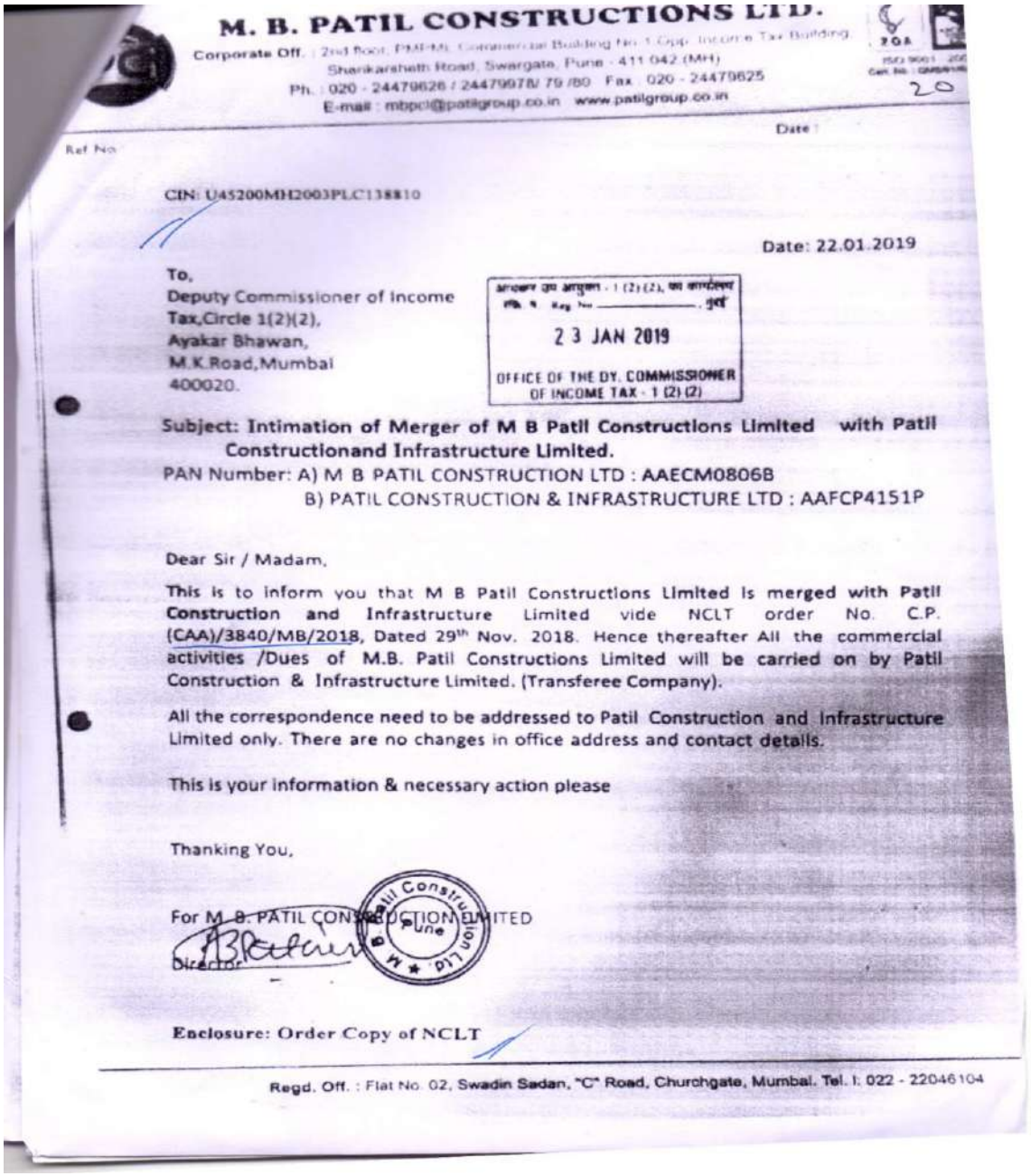
Director

Enclosure: Order Copy of NCLT

Regd. Off. : Flat No. 01, Swadhin Sadan, "C" Road, Churchgate, Mumbai - 21, Tel. No.: 022 - 22046104

9. Similarly, on the letterhead of M.B. Patil Construction Ltd. vide letter dated 22/01/2019 filed on 23/01/2019 before the ld. AO. Similar intimation was given that M.B.Patil Construction

Ltd. has been merged with Patil Constructions Limited vide NCLT order dated 22/01/2019 which reads as under:-



M. B. PATIL CONSTRUCTIONS LTD.

Corporate Off. : 2nd floor, PMPML Commercial Building No. 1 Opp. Income Tax Building, Shankarsheth Road, Swargate, Pune - 411 042 (MH)
Ph. : 020 - 24479626 / 24479978/ 79 /80 Fax : 020 - 24479625
E-mail : mbpcl@patilgroup.co.in www.patilgroup.co.in

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Ref No:

Date :

CIN: U45200MH2003PLC138810

Date: 22.01.2019

To,
Deputy Commissioner of Income
Tax,Circle 1(2)(2),
Ayakar Bhawan,
M.K.Road,Mumbai
400020.

आयकर उप आयुक्त - 1 (2) (2), का कार्यालय
प्राप्त की दिनांक ——— पुणे
23 JAN 2019
OFFICE OF THE DY. COMMISSIONER
OF INCOME TAX - 1 (2) (2)

Subject: Intimation of Merger of M B Patil Constructions Limited with Patil Constructionand Infrastructure Limited.
PAN Number: A) M B PATIL CONSTRUCTION LTD : AAECM0806B
B) PATIL CONSTRUCTION & INFRASTRUCTURE LTD : AAFCP4151P

Dear Sir / Madam,

This is to inform you that M B Patil Constructions Limited is merged with Patil Construction and Infrastructure Limited vide NCLT order No. C.P. (CAA)/3840/MB/2018, Dated 29th Nov. 2018. Hence thereafter All the commercial activities /Dues of M.B. Patil Constructions Limited will be carried on by Patil Construction & Infrastructure Limited. (Transferee Company).

All the correspondence need to be addressed to Patil Construction and Infrastructure Limited only. There are no changes in office address and contact details.

This is your information & necessary action please

Thanking You,

For M. B. PATIL CONSTRUCTION LIMITED
Director

Enclosure: Order Copy of NCLT

Regd. Off. : Flat No. 02, Swadin Sadan, "C" Road, Churchgate, Mumbai. Tel. I: 022 - 22046104

10. The ld. Counsel submitted that despite this intimation to the ld. AO, notice u/s. 143(2) dated 23/09/2019 was issued in

the name of M.B. Patil Construction Ltd. and on the PAN of erstwhile company. Before us ld. Counsel submitted that once intimation was given to the ld. AO on 02/08/2018 and again on 23/01/2019, then there was no occasion to issue notice on an non-existing entity and consequently, passing the assessment order in the case of erstwhile company which was no longer in existence at the time of passing of the order. In support of his contention, he strongly relied upon the judgment of the **Hon'ble Gujarat High Court in the case of Inox Wind Energy Ltd vs. Add.CIT reported in (2023) 454 ITR 162** wherein the Hon'ble High Court has taken note of the decision of the Hon'ble Supreme Court in the case **of PCIT vs. Maruti Suzuki India Ltd (2019) 416 ITR 613 and PCIT vs. Mahagun Realtors (P) Ltd. reported in 287 taxmann 566**. He also relied upon the Co-ordinate Bench decision of ITAT in the case of ACIT vs. **M/s. Candor Renewable Energy Pvt. Ltd in ITA Nos. 2561/Mum/2021 & 2560/Mum/2021 and others order dated 19/10/2022,** wherein the Tribunal has discussed both the judgments of the Hon'ble Supreme Court including M/s. Mahagun Realtors (P) Ltd.(supra) and have explained entire concept of law on this point.

11. On the other hand, ld. DR submitted that assessee has filed the return of income in the name of M/s. M.B. Patil Constructions Ltd. and since assessee's case was covered under CASS parameters which were identified from ITR filed by the assessee on 30/11/2018 and since return was selected for

scrutiny, it has picked up the PAN and name mentioned in the ITR. Further, the notices were delivered on the e-mail ID mentioned in the said ITR that aurangabadoffice@patilgroup.co.in. He further submitted that not only the notices were valid but also the conduct of the assessee during the assessment proceedings is also misleading and in his written submissions he has highlighted the following points:-

3.2 The conduct of the assessee during the assessment proceedings has been misleading.

3.2.1 The assessment proceedings were conducted by the DCIT, Circle 1(2)(2), Mumbai and thereafter from 19-10-2020 onwards, assessment proceedings were continued by the Assessing Officer of the National e- assessment unit under the Faceless Assessment Scheme. During the entirety of the assessment proceedings, the assessee had never questioned the validity of the aforesaid notice and also the subsequent notices issued u/s 142(1) of the Act. Hence, the provisions of section 292BB of the Act clearly apply.

3.2.2 Further, the assessee had never raised any objection to the continuance of assessment proceedings in its name before the Assessing Officer of the Faceless Unit. The A.O was never appraised of the facts of the amalgamation. Thus, the assessee has misled the A.O, who was conducting the assessment proceedings, by not bringing to his notice the facts of the amalgamation

3.2.3 In fact, despite being amalgamated into Patil Construction and Infrastructure Ltd, the assessee continued to participate in the assessment proceedings and made submissions on own behalf The said submissions were signed by Authorised Signatory of M B Patil Construction Ltd (enclosed) Thus, it is case of estoppel by conduct on part of the assessee.

3.3 The conduct of the assessee company during the appellate proceedings before the CIT(A) and the ITAT has been misleading 3.3.1 It is seen from the Form no 35 filed before the CIT(A) on 05-08-2021

that the said appeal had also been filed in the Tale of MB Patil Construction Ltd The statement of facts and grounds of appeal did not contain any grounds relating to assessment done in the name of non-existent entity. The plea that the assessee was not in existence was never taken throughout the appellate proceedings before the CIT(A).

3.3.2 It is seen from the original Form no 36 filed before the ITAT on 16-01- 2023 that the said appeal had also been filed in the name of M B Patil Construction Ltd. The grounds of appeal did not contain any ground relating to assessment done in the name of non-existent entity. It was only on 04-09-2023 that the assessee revised the Form no 36 by mentioning the name of the amalgamated entity

3.3.3 Thus, the amalgamating entity ie MB Patil Construction Ltd has held out itself as an existent entity throughout the first appellate proceedings. Though the entity ceased to be in existence, in law, yet appeals were filed on its behalf before the CIT(A) and the ITAT. After fully participating in the first appellate proceedings, for the first time, that too eight months after filing of the appeal an additional ground was raised before the ITAT, that the notice u/s 143(2) was issued and assessment order was made on non-existent entity.

3.4 The conduct of the amalgamated company during the assessment proceedings was lacking in propriety.

3.4.1 At the stage of assessment and first appellate proceedings, the amalgamated entity i.e Patil Construction and Infrastructure Ltd did not participate in the course of the proceedings. The facts related to the amalgamation and the continuance of assessment proceedings of amalgamating entity in its own name were never brought to the notice of the A.O or the CIT(A). IL was never plainly stated that the meet was not in

existence. This was despite the fact that it was incumbent upon the successor of the assessee to represent the assessee in the proceedings before the tax authorities.

3.5 The original PAN of the assessee (AAECM08068) mentioned in the notice u/s 143(2) and assessment order remains in existence. 3.5.1

The scheme of amalgamation of M B Patil Construction Ltd with Patil Construction and Infrastructure Ltd was approved by the NCLT, Mumbai Bench vide its order dated 29-11-2018. The scheme was deemed to be effective from 1 April, 2018. The assessment year under appeal i.e AY 2018-19 in relation to the previous year 2017-18 pertains to the period prior to the amalgamation. Therefore, the assessment of income of the amalgamating company had to be made separately in its own case, Thus, it is not the case that the assessment was supposed to be made on the amalgamated company by taking into account the income of both of the amalgamating and amalgamated companies. Further, amalgamation does not destroy the corporate entity, but instead the business and enterprise of existing entity continues within the new entity Therefore, the PAN of the amalgamating company is not cancelled or surrendered but it is linked to the PAN of the amalgamated entity for continuation of tax benefits and/or recovery of tax arrears. Thus, the original PAN of the assessee ile AAECM0806B has not been cancelled or surrendered, but it has been linked to the PAN of Patil Construction and Infrastructure Ltd (enclosed). Thus, the PAN which is mentioned in the jurisdictional notice u/s 143(2) as well as in the assessment order remains in existence and reflects demand of Rs 54.37 crores payable by the assessee.

4. Your kind attention is drawn to para 42 of the order of the Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax v Mahagun Realtors (P) Ltd (2022) 137 taxmann.com 91(SC), wherein the apex court has stated as follows 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."

5. In the light of the facts of the case discussed vividly in the above paragraphs, it is humbly requested that the additional grounds filed by the assessee be dismissed outright and that the case be heard on the merits.

12. We have heard both the parties and perused the relevant records on the additional ground raised by the assessee. It is not in dispute that M/s. M.B. Patil Constructions Ltd. was amalgamated with **M/s Patil Constructions and Infrastructure Ltd.** by the order of NCLT dated 29/11/2018 approving the scheme of merger w.e.f. 01/04/2018. It is on record that assessee had communicated this fact vide letter dated 27/07/2018 filed on 02/08/2018, both by erstwhile company M.B. Patil Construction Ltd. and also by M/s. Patil Constructions and Infrastructure Ltd about the proposed scheme of merger and also intimated to the ld. AO that M/s. Patil Constructions and Infrastructure Ltd. alongwith copy of NCLT order as per the letter incorporated above. The said letter bears the receiving stamp of the office of the Dy. Commissioner of Income Tax (2)(3) i.e. the Assessing Officer. Nowhere in the assessment order, the ld. AO has mentioned about this fact that this company is no longer in existence and has already amalgamated with another company, M/s. Patil Constructions and Infrastructure Ltd. The case of the Revenue before us is that,

firstly, the return of income was selected by computer aided scrutiny selection which has picked up the case of scrutiny on the basis of ITR filed by erstwhile company, therefore, such a notice issued on M/s. M B Patil Construction Ltd is correct. Another fact which has been harped upon is that the assessee continued to participate before the ld. AO of National Assessment Unit under the faceless assessment scheme and assessee never questioned the validity of the notices sent nor raised any objection to the contents of the assessment proceedings. Despite that this company was amalgamated into Patil Constructions and Infrastructure Ltd, assessee continued to participate in the assessment proceedings. Even the appeal was filed before the ld. CIT (A) under M.B. Patil Construction Ltd. Thus, the assessment order cannot be held to be invalid once the successor of the assessee company did not represent the assessee before the Income Tax authorities.

13. The ld. DR had also strongly relied upon the judgment of Hon'ble Supreme Court in the case of PCIT vs. Mahagun Realtors (P) Ltd and had submitted that the Hon'ble Supreme Court has discussed the law on this issue by the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd (supra) and had dealt that assessee had participated in the proceedings and no objection / intimation has been given to the ld. AO then the order cannot be invalid.

14. In rejoinder, ld. Counsel submitted that, once the ld. AO has passed the assessment order in the name of a non-existent

entity and on the PAN which is no longer in existence, there is no other way assessee could have filed the appeal on the e-filing portal as it would have refused to upload in the name of Patil Constructions and Infrastructure Ltd with its PAN and therefore, merely because assessee was precluded from filing the appeal in e-portal does not mean an order passed under non-existing entity gets valid.

15. Thus, the issue before us is, whether the assessment in the name of amalgamating company which was not in existence at the time of issuance of notice u/s.143(2) and passing of the assessment order is a valid order or not? First of all, simply because the return was filed under the name of amalgamating company and therefore, computer generated notice u/s.143(2) if it has been issued in the name of amalgamating company, validates the entire proceedings cannot be sustained. The NCLT vide order dated 29/11/2018 approved the scheme of merger w.e.f. 01/04/2018, so at least post 29/11/2018, when parties came to know about the merger, then *locus standi* of amalgamating company ceases to exist and all the proceedings then has to be in the name amalgamate company. It is the duty of the ld. AO that once the intimation has been given to him twice and brought on record, then he should have ensured that notice issued by him u/s. 143(2) is in the name of correct entity and not on a non-existing entity which already stood amalgamated. This co-ordinate Bench in the case of M/s. Candor Renewable Energy Pvt. Ltd (supra) after discussing the

provisions of the Act specially Section 170 of the Companies Act and the effect of amalgamation / merger as per the Companies Act and the judgments relevant on this issue including the judgment of the Hon'ble Apex Court in the case of General Radio & Appliances Co. Ltd. & Ors vs. M.A. Khader reported in 2 SCC 656 and judgment of the Hon'ble Supreme Court in the case of Saraswati Industrial Syndicate Ltd. vs. CIT reported in 186 ITR 278., have explained in the following manner:-

*"16. **Section 302 of the Companies Act, 2013** (earlier section 431 of the Companies Act, 1956) relates to dissolution of company, once the affairs of the company are completely wound up. **Sections 230 - 232** (earlier sections 391 - 394), deal with compromises, arrangements and amalgamations. **Section 232** of the Companies Act deals with merger or amalgamation and states that once NCLT approves the amalgamation and the same is registered by ROC, then the same shall "**be deemed to have the effect of dissolution of the transferor company without process of winding-up**".*

17. Let us examine the effect of Amalgamation/ Merger as per Companies Act and general law:
- Reorganisation, reconstruction and amalgamation of companies are governed under the provisions of Companies Act (i.e., section 394 of Companies Act 1956 / section 232 of Companies Act, 2013).
- As per the provisions of Companies Act, once the scheme of amalgamation is approved by the relevant Court/ Tribunal, the same results in mandatory dissolution of the amalgamating transferor company without winding-up.
- Meaning thereby that pursuant to the amalgamation being effective, the amalgamating entity ceases to exist in the eyes of the law.

- Further, Section 481 of the Companies Act, 1956 dealt with the dissolution of a company. The effect of dissolution of a company is that the company no longer survives and effectively, dies.

*- The effect of amalgamation of two companies was analysed by the Hon*ble Apex Court in the case of* ***General Radio & Appliances Co. Ltd. v. M.A. Khader [1986] 2 SCO 656.***

➢ *In the facts of that case, General Radio & Appliances Co. Ltd. was amalgamated with National Ekco Radio & Engg. Co. Ltd. under a scheme of amalgamation and order of the High Court under sections 391 and 394. Under the amalgamation scheme, the transferee company, namely, National Ekco Radio 85 Engg. Co. Ltd. had acquired all the interest, rights including leasehold and tenancy rights of the transferor company and the same vested in the transferee company.*

➢ *Pursuant to the amalgamation scheme the transferee company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorized sub-letting of the premises by the transferor company. The transferee company set up a defense that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including leasehold and tenancy rights held by the transferor company blended with the transferee company, therefore, the transferee company was legal tenant and there was no question of any sub-letting.*

➢ *The Hon'ble Apex Court held that under the order of amalgamation made on the basis of the High Court's order,* ***the transferor company ceased to be in existence in the eye of law and it effected itself for all practical purposes.*** *United Kingdom Court in the case of* ***M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA),*** *in the context of dissolution of a company that "****once a company is dissolved it becomes a nonexistent 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".*** *18. The aforesaid principle laid down in General Radio & Appliances Co. Ltd. (supra) was affirmed by the Hon'ble Apex*

Court in the case of ***Saraswati Industrial Syndicate Ltd. Vs. CIT 186 ITR 278 (SC).***

➢ *Briefly, the facts giving rise to this appeal are that the appellant, Saraswati Industrial Syndicate, was a limited company carrying on the business of manufacture and sale of sugar and machinery for sugar mills and other industries. Another company, namely, the Indian Sugar and General Engineering Corporation (hereinafter referred to as "the Indian Sugar Company") was also manufacturing machinery parts for sugar mills.*

➢ *On September 28, 1962, under the orders of the High Court, the Indian Sugar Company was amalgamated with the appellant-company. Prior to the amalgamation, the Indian Sugar Company had been allowed expenditure to the extent of Rs. 58,735 on accrual basis in its earlier assessment. The said trading liability was taken over by the appellant company. After amalgamation, the appellant-company claimed exemption of the amount of Rs. 58,735 from income-tax for the assessment year 1965-66 on the ground that the amalgamated company was not liable to pay tax under section 41(1) of the Income-tax Act, 1961 , as the expenditure had been allowed to the erstwhile Indian Sugar Company which was a different entity from the amalgamated company. The Income-tax Officer disallowed the appellant's claim for exemption.*

➢ *The assessee filed an appeal before the Appellate Assistant Commissioner who confirmed the order of the Income-tax Officer. The assessee, thereafter, preferred an appeal before the Income-tax Appellate Tribunal. The Tribunal allowed the appeal on the construction of section 41(1) of the Act. The Tribunal held that, after the amalgamation of the Indian Sugar Company with the assessee-company, the identity of the amalgamating company was lost and it was no longer in existence and therefore, the assessee-company was a different entity not liable to tax on the aforesaid amount of Rs. 58,735. On the Department's application, the Tribunal referred the matter to High Court.*

➢ *The High Court answered the question in favour of the Revenue holding that the exemption from tax liability claimed by*

the appellant-assessee was chargeable to tax under section 41(1) of the Act. The High Court held that, on the amalgamation of the two companies, neither of them ceased to exist; instead both the amalgamating and amalgamated companies continued their entities in a blended form. It further held that the amalgamated company was a successor-in-interest of the amalgamating company and since the assets of both the companies were merged and blended to constitute a new company, the liabilities attaching thereto must, therefore, be on the amalgamated company. On these findings, the High Court held that the amalgamated company, namely, the assessee, was liable to pay tax on Rs. 58,735.

- *The Apex court considered the question whether, on the amalgamation of the Indian Sugar Company with the appellant-company, the Indian Sugar Company continued to have its identity and was alive for the purposes of section 41(1) of the Act. The Apex court observed as under :-*

"Generally, where only one company is involved in a change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganization or scheme of arrangement In an amalgamation, two or more companies are fused into one by merger or by one over the other. Reconstruction or amalgamation has no precise legal meaning. Amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders 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 the other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See Halsbury's Laws of England, 4th Edition, Volume 7, para. 1539. Two companies may join to form new company, but there may be absorption or blending of one by the other and both amount to amalgamation. When two companies are merged and are so joined as to form a third company or one is absorbed into

the other or blended with another, the amalgamating company loses its entity."

The Apex court further observed:

"The Tribunal rightly held that the appellant-company was a separate entity and a different assessee and, therefore, the allowance made to Indian Sugar Company which was a different assessee could not be held to be the income of the amalgamated company for purposes of section 41(1) of the Act. The High Court's view that, on amalgamation, there is no complete destruction of the corporate personality of the transferor-company but instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that, when two companies amalgamate and merge into one, the transferor-company loses its entity as it ceases to have its business. However, their respective rights and liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor-company ceases to exist with effect from the date the amalgamation is made effective."
The afore-mentioned observations of the Apex Court support the view that after the amalgamation, the amalgamating company loses its identity and cannot be assessed as per the provisions of the Income Tax act, 1961.

Spice Entertainment Ltd vs. CST 2012 (280) ELT 43 (Del) [affirmed by SC]

19. Thereafter, the Division bench of ***Delhi High Court*** *in the case of* ***Spice*** *dealt with the question as to whether an assessment in the name of an amalgamating company which has been amalgamated and has been dissolved is null and void or whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The Hon'ble Delhi High Court held as follows:*

(a) Spice (amalgamating company) got amalgamated with M Corp Pvt. Ltd. It was the result of the scheme of the amalgamation filed before the Company Judge of Delhi High Court which was duly

sanctioned vide orders dated 1lth February, 2004. ***With amalgamation made effective from 1st July, 2003, Spice ceased to exist. That is the plain and simple effect in law.***
(b) The scheme of amalgamation itself provided for this consequence, inasmuch as simultaneous with the sanctioning of the scheme, Spice also stood dissolved by specific order of Delhi High Court. With the dissolution of the amalgamating company, its name was struck off from the rolls of Companies maintained by the Registrar of Companies.

(c) 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*** *by relying on the judgment of Apex Court in Saraswati Industrial Syndicate (Supra) and General Radio and Appliances (Supra).*

(d) Section 481 of the Companies Act provides for dissolution of the company. The High Court can order dissolution of a company on the grounds stated in section 481 of the Companies Act. ***The effect of the dissolution is that the company no more survives.*** *The dissolution puts an end to the existence of the company. Court relied upon the judgment of M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore) (Supra).*

(e) The amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void.

(f) This, it was held was not merely a procedural defect and it was held that participation by the amalgamated company would have no effect since there could be no estoppel against law.

20. Pertinently, the said judgment of Delhi High Court was challenged before the Hon'ble Apex Court along with other connected matters. The Hon'ble Apex Court ***vide judgment dated 02.11.2017,*** *dismissed the Civil Appeals and connected Special Leave Petitions by stating:*

"... Heard the learned Senior Counsel appearing for the parties. We do not find any reason to interfere with the impugned judgments) passed bu 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."

21. Supreme Court in Maruti (infra) held that doctrine of merger applies, and the judgment of the Delhi High Court stood affirmed by the Hon'ble Apex Court.

22. ***PCIT v. Maruti Suzuki India Ltd; (2019) 416 ITR 613 (SC)***

➢ *The issue whether notice issued/ assessment framed against an amalgamating/ non-existent entity post amalgamation is valid was decided by the Hon'ble Supreme Court in the landmark judgment of Maruti Suzuki (Supra). The facts of the said case were as follows:*

a) Assessee - Suzuki Power-train India Limited (SPIL), was a joint venture between Suzuki Motor Corporation (SMC) and Maruti Suzuki India Ltd (MSIL).

b) SPIL filed return declaring certain taxable income, which was processed u/s 143(1).

c) Subsequently, SPIL (Amalgamating Company) was amalgamated with 'MSIL' (Amalgamated Company) with effect from 1-4-2012 under Court orders on ***29.01.2013.***

d) MSIL intimated to the AO on ***2.04.2013.***

e) Notice under section 143(2) dated 26.09.2013 was issued to SPIL, non-existent entity.

f) Thereafter, MSIL participated in assessment proceedings of SPIL.

g) The assessment order under section 143(3), read with section 144C (1) of the Act was passed in the name of ***"SPIL (amalgamated with MSIL)".***

➢ *The assessee argued before the tax/ appellate authorities that an assessment order passed in the name of a non-existent entity was void ab initio, since after amalgamation, the amalgamating*

company ceases to exist. Tax Department was of the view that since name of both the entities were mentioned in the order, the assessment order cannot be declared as invalid.

- *Before the Apex Court, the* ***main contentions of the Revenue*** *were as follows:*

(a) Names of both amalgamating and amalgamated company was mentioned in the assessment order;
(b) Even otherwise, the mistake is curable u/s 292B
(c) Assessment and subsequently appeal was represented by Amalgamated company and no prejudice is caused to the parties;
(d) In Spice, the final order only referred to the name of nonexistent entity without any reference to the amalgamated company;
(e) Even as per decision in Spice, if the order is passed on the resulting company the same shall not be void - hence in present case since both the names were mentioned it cannot be regarded as a jurisdictional defect;
(f) Draft assessment order and the final assessment order referred to both the names;
(g) In case of Spice, doctrine of merger with the judgment of SC shall not apply.

- ***The main contentions of the Assessee*** *were as follows:*

a) Upon a scheme of amalgamation being sanctioned, the amalgamated company is dissolved without winding up, in terms of Section 394 of the Companies Act 1956. The amalgamating company ceases to exist in the eyes of law;

b) The amalgamating company cannot thereafter be regarded as a "person" in terms of Section 2(31) of the Act against whom assessment proceedings can be initiated and an assessment order passed by relying on Saraswati Industrial Syndicate Ltd. vs. CIT [1990] 186 ITR 278 (SC);

c) The jurisdictional notice under Section 143(2) of the Act, pursuant to which the assessing officer assumed jurisdiction to make an assessment was issued in the name of SPIL, a non-existent entity and was invalid. Hence the initiation of assessment proceedings against a non-existent entity was void ab initio.

d) Reliance was placed on CIT vs. Intel Technology India (P.) Ltd. [2016] 380 ITR 272 (Kar.), Pr. CIT vs. Nokia Solutions & Network India (P.) Ltd. 402 ITR 21 (Delhi), Spice Entertainment (supra), BDR Builders & Developers (P.) Ltd. vs. Asstt. CIT 397 ITR 529 (Delhi), Rustagi Engineering Udyog (P.) Ltd. vs. Dy. CIT 382ITR 443 (Delhi), Khurana Engineering Ltd. vs. Dy. CIT [2014] 364 ITR 600 (Guj), Takshashila Realties (P.) Ltd. vs. Dy. CIT [2017] 77 taxmann.com 160 (Guj.), Alamelu Veerappan vs. ITO 257 Taxman 72 (Mad.).

e) The order passed by the TPO in the name of SPIL, a nonexistent entity was invalid in the eyes of the law;
f) SPIL ceased to be an "eligible assessee", in terms of section 144C(15) (b) of the Act. Consequently, there was no requirement to pass a draft assessment order/ reference to DRPetc.;

g) The final assessment order dated 31 October 2016 is beyond limitation in terms of Section 153(1) read with Section 153 (4) of the Act.

h) The assessment framed in the name of the amalgamating Company is invalid [refer: Spice Entertainment vs. CIT, CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288 (Delhi); affirmed by Hon'ble Apex Court vide Civil Appeal No. 3125 of 2015, CIT v. Micron Steels (P.) Ltd. 372 ITR 386 (Delhi), CIT v. Micra India (P) Ltd. 231 Taxman 809 (Delhi)].

i) Assessment framed in the case of a non-existent entity is non-est in the eyes of law [refer: Pr. CIT vs. BMA Capfin Ltd. [2018] 100 taxmann.com 329 (Delhi) (Revenue's SLP dismissed against the same in Pr. CIT vs. BMA Capfin Ltd. [2018] 100 taxmann.com 330/[2019] 260 Taxman 89 (SC)]

➢ ***The Apex Court after taking into consideration submissions of both sides held as follows:***

a) Under the approved scheme of amalgamation, the transferee assumed the liabilities of the transferor company, including tax liabilities;

b) The consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist by relying

***on the judgment of Saraswati Industrial Syndicate Ltd vs. CIT** (Supra).*

*c) Upon the **amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act against whom assessment proceedings can be initiated or an order of assessment passed;***

d) Prior to the date on which the jurisdictional notice under Section 143(2) was issued, the scheme of amalgamation had been approved on 29th January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;

e) Assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143(2). The notice was issued in the name of the amalgamating company inspite of the fact that on 2nd April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation.

f) Initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.

g) 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.

h) Participation in the proceedings by MSIL in the circumstances cannot operate as an estoppel against law.

23. Subsequently, various Court/Tribunals followed the law laid down by the Hon'ble Apex Court in Maruti Suzuki Ltd (Supra) and quashed the assessments framed in the name of non-existent entities.

PCIT vs. Mahagun Realtors Pvt Ltd (Supra) – Analysis

24. The Hon'ble Apex Court in the recent case of PCIT vs. Mahagun Realtors Pvt Ltd (MRPL) has, in peculiar facts, held the assessment proceedings initiated and concluded in the name of non-existent entity (amalgamating entity), to be valid. The apex Court distinguished (and not disagreed) its earlier judgment in the case of Maruti Suzuki Ltd (Supra). The relevant facts of the case are as under:-

i. ***The original return of MRPL was filed under Section 139(1) on 30.06.2006.***

ii. The order of amalgamation was dated 11.05.2007 - but made effective from 01.04.2006. It contained a condition - Clause 220-whereby MRPL's liabilities devolved on MIPL.

iii. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised return was 31.03.2008, after the amalgamation order came into operation.

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

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

vi. A statement made on 20.03.2007 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 5.072 crores, in the course of the statement recorded.

vii. 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 27.08.2008.

viii. 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 27.08.2008 *in the course of the search operation, when a statement of Mr. Amit Jain was recorded under Section 132 (4) of the Act.*

ix. Upon being issued with a notice to file returns, ***a return was filed in the name of MRPL on 28.05.2010.*** *Before that, on two dates, i.e.,* ***22/27.07.2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for AY 2007-08 (for which separate proceedings had been initiated under Section 153A) and not for AY 2006-07.***

x. The return specifically suppressed - and did not disclose the amalgamation *(with MIPL) - as the response to Query 27(b) was "N.A".*

xi. ***The return - apart from specifically being furnished in the name of MRPL, also contained its PAN number.***

xii. 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.

xiii. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending 31.03.2006, in the cross-objection before the ITAT, 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.

xiv. Assessment order was issued - undoubtedly in the name of MRPL (shown as the assessee, but represented by the transferee company MIPL).

xv. Appeals were filed to the CIT (and a cross-objection, to ITAT) - by MRPL "represented by MIPL".

xvi. 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.

xvii. The counter affidavit filed before this court - (dated 07.11.2020) 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...".

FINDINGS OF THE COURT

i. Amalgamation is not like the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; 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.

ii. 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.*

iii. 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 transferee or amalgamated company- which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee.*** *Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues.*

iv. There is no doubt that MRPL amalgamated with MIPL had 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 present case, however, can be distinguished from the facts in Spice and Maruti Suzuki.***

v. 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 amalgamating/non-existent company. ***However, in the present case, for AY 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The ROI for the AY 2006-07 first filed by the respondent on 30.06.2006 was in the name of MRPL. MRPL amalgamated with MIPL on 11.05.2007, w.e.f. 01.04.2006. In the present case, the proceedings against MRPL started on 27.08.2008- 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 28.05.2010, the assessee filed its ROI 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 22.07.2010, it was for AY 2007-2008 and not for AY 2006-07. For the AY 2007-08 to 2008-2009, separate proceedings under Section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional CIT by order dated 30.11.2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated 11.08.2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

vi. 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.***

vii. 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 CIT, and a cross appeal was filed before ITAT. 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 AO, 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 Decor Pvt. Ltd.).

viii. The mere choice of the AO 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 AO is, in this court's opinion in consonance with the decision in* ***Marshall & Sons.***

ix. 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.***

25. Thus, in that case, the return was filed in the name of MRPL even it was non-existent on 28.05.2010. The return specifically suppressed and did not disclose the amalgamation with MIPL and also contained the PAN number of erstwhile company. During the assessment proceedings, there was full participation on behalf of all transferor companies and MIPL. Even objection to the special audit was filed in respect of portions relatable to MRPL, thus after fully participating in the proceedings which were specifically in respect of erstwhile MRPL for the year ending 31.03.2006, for the first time before the ITAT in cross objection in the appeal filed by the Revenue, additional ground was urged that the assessment

order was nullity because MRPL was not in existence. The assessment order was issued in the name of MRPL (representative of MIPL) and even in the first appeal before the Id. CIT (A) and cross objection before the ITAT, it was mentioned as "MRPL represented by MIPL". At no point of time, even at the time of search and subsequently on receipt of the notice, it was stated that MRPL was not in existence and its business of the erstwhile MRPL was taken over by MIPL. Even in the counter affidavit filed before the Hon'ble Apex Court, it has been affirmed by Shri Amit Jain, who has been described in the affidavit as Director of M/s. Mahagun Realtors (P) Ltd.. It was in this background, the Hon'ble Court in para 33 observed as under -

"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 present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases."***

26. Therefore, the Supreme Court merely distinguished the facts in Spice and Maruti, while continuing to agree with the fundamental principle that on amalgamation, the amalgamating entity ceases to exist. Thereafter, the Court in paras 34 onwards, held as under:

a) ***No intimation was given to the AO for A.Y 2006-07 [refer para 34];***

b) ***Return filed, pursuant to notice, suppressed the fact of amalgamation.*** *The return was filed in the name of MRPL. Further in Business Reorganization' column it was mentioned "not applicable" [refer* ***para 34, 40****].*

*c) Name of both the companies were mentioned in the order [****refer para 34];***

*d) Assessee before authorities held itself out to be as MRPL [****refer para 35];***

*e) Substantial surrender in survey and search on behalf of MRPL [****refer paras 37-38];***

f) ***Facts of present case distinctive [refer para 40];***

*g) **The fact of amalgamation** being known to the assessee, even at the stage when the search and seizure operations took place, as well as when statements were recorded of the directors and managing director of the group, **was not communicated to the income tax authorities** [refer **paras 40- 41**].*

h) Even when MRPL ceased to be in existence, in law, yet appeals were filed on its behalf before the CIT, and a cross appeal was filed before ITAT. Even the affidavit before Apex Court was on behalf of the director of MRPL .

*i) The assessment order was 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.*

j) Merely because instead of passing a common order for MIPL as the assessee, a separate order in respect of MRPL is passed, cannot nullify the assessment order.

k) 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).

*1) Having regard to all these reasons, the Apex Court was of the opinion that in the facts of the 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.** Thus, the assessment order passed in the name of MRPL was held to be valid.*

27. Further, the Court distinguished the judgments passed in the case of Maruti Suzuki (Supra) and Spice on the following grounds:
a) The legislative amendment by way of introduction of section 2(1A), defining "amalgamation", was not taken into account by the Apex Court in earlier decisions. Further, the tax treatment in case of amalgamation under various provisions (such as in section 72A, 80IA, etc.) of the Act were not brought to the notice of the Apex Court, in the earlier decisions;

*b) **In the relied upon cases, the assessee had duly informed the tax authorities about the fact of the merger of***

companies and yet the assessment order was passed in the name of the non-existent entity. *However, in the present case, the assessee failed to inform the assessing officer about the amalgamation for assessment year 2006-07 (year in dispute), though disclosure was made for subsequent years (AYs 2007-08 and 2008-09). The return of income filed on 28.05.2010 (post amalgamation) pursuant to notice under section 153A was filed in the name of MRPL and the fact of business reorganization was mentioned as 'not applicable" in the return form.*

c) ***In relied upon cases, the amalgamated companies participated in the assessment proceedings before the tax department in their own capacity****, due to which the Apex Court affirmed that participation of amalgamated company shall not be regarded as estoppel against law.* ***In the present facts, the participation in the assessment proceedings was by MRPL which held itself as MRPL.***

d) The relied upon judgment of Saraswati Syndicate (Supra) was decided in relation to assessment issues when the amalgamation was not separately defined under the Act. Specific definition of 'amalgamation" has been incorporated in section 2(1 A) of the Act by way of amendment in 1967.

28. Other relevant observations made in the judgment while expressing the aforesaid opinion and holding that Maruti/ Spice cannot (de-hors facts) be blindly applied in all cases, pointed out following points:

a) It has been observed that amalgamation is unlike 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.

b) Apex court noted that there are not less than 100 instances under the Act, wherein the event of amalgamation, the method of treatment of a particular subject matter is expressly indicated in

the provisions of the Act. In some instances, amalgamation results in withdrawal of a special benefit (such as an area exemption under Section 80IA) - because it is entity or unit specific. In the case of carry forward of losses and profits, a nuanced approach has been indicated. All these provisions support the idea that the enterprise or the undertaking, and the business of the amalgamating company continues.

c) The beneficial treatment, in the form of set-off, deductions (in proportion to the period the transferee was in existence, vis-a-vis the transfer to the transferee company); carry forward of loss, depreciation, all bear out that under the Act, (a) the business- including the rights, assets and liabilities of the transferor company do not cease, but continue as that of the transferor company; (b) by deeming fiction- through several provisions of the Act, the treatment of various issues, is such that the transferee is deemed to carry on the enterprise as that of the transferor.

d) Combined effect 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.

e) 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.

29. The Apex Court with the aforesaid observations, quashed the order of the High Court which held that the assessment order passed in the name of non-existent entity is invalid, and restored the revenue's appeal along with assessee's cross objections to the file of the Hon'ble Tribunal to decide the issues on merits other than nullity of assessment order.

30. The aforesaid judgment of Hon'ble Supreme Court in the case of ***Mahagun Realtors Pvt. Ltd.*** *(supra) in our humble opinion, nowhere disagrees with the principles laid down by the Hon'ble Apex Court in the case of* ***Maruti Suzuki India Ltd.*** *(supra) and* ***Spice Entertainment Ltd.*** *(supra) of Hon'ble Delhi High Court , for the reason that:-*

- ***Firstly****, the judgment in Mahagun nowhere disagrees with the principle in Maruti and Spice. In fact, in para 33,* ***the Court categorically held that there is no doubt that MRPL amalgamated with MIPL and ceased to exist thereafter which is an established fact and not in contention. Further the Court held that the respondent has relied upon Spice and Maruti Suzuki (supra) whereas the facts of present case can be distinguished from the facts in Spice and Maruti Suzuki.***

- ***Secondly****, the judgment by the* ***Hon'ble Apex Court in Mahagun Realtors*** *is rendered in peculiar facts and merely holds that the law declared in the case of Maruti Suzuki cannot be applied without looking into the overall facts, in particular the conduct of the assessee and the manner of framing of assessment.*

- ***Thirdly****, the judgment raises a pertinent point that the business of the amalgamating entity survives even after merger, though the corporate entity may have come to an end. This point is merely to emphasize that the liability of the successor and therefore, it cannot be held that merely on account of non-existence of the predecessor, successor is not liable.*

- ***Fourthly, in para*** *43, the Court categorically held that the aforesaid discussion is "****having regard to the facts of this case****" and the said observation is in continuation of repeated observations that the decision in Spice and Maruti are distinguishable and,*

- ***Lastly****, the Apex Court has decided the appeal on peculiar facts, without disagreeing with the decision in Maruti Suzuki India Ltd. and Spice Entertainment Ltd.*

31. Thus, the decision of Hon'ble Apex Court in the case of ***Mahagun Realtors Pvt. Ltd.*** *(supra) is not applicable on the facts of the assessee's case albeit its facts are clearly covered by the judgment of Apex Court in the case* ***Maruti Suzuki India Ltd****. (supra). Here right from the day one, the AO was brought to the notice and as was brought on record before him that the erstwhile entity M/s Bhadrawati Ispat & Energy Ltd had already stood amalgamated with M/s Reliable Record Keepers Pvt. Ltd. w.e.f. AY 2015-16 only and still he continued with the proceedings u/s 153A in the name of non-existing entity. Thus the entire proceedings including notice u/s 153A and also statutory notice issued in the name of non-existing entity was void ab initio. Consequently, the entire proceeding was illegal. Even the assessment order though which has been captioned as "****M/s Bhadrawati Ispat & Energy Ltd. (merged with M/s. Reliable Record Keepers Pvt. Ltd. which has now known as M/s. Candor Renewable Energy Private Limited"*** *is in fact in the name of non-existing entity only. Therefore, the reasons and principles laid down by the Hon'ble Apex Court in the case of* ***Maruti Suzuki India Ltd.*** *(supra) is applicable and accordingly assessment orders passed by the AO are invalid and non est.*

32. Accordingly, we hold that the entire assessment order is bad in law and therefore has rightly been quashed by the Ld. CIT(A). The aforesaid findings of the Ld. CIT(A) as incorporated supra is not only correct in law but also the facts and hence the order of Ld. CIT(A) is confirmed. Accordingly, the grounds raised by the revenue are dismissed for both the AY 2013-14 and 2014-15.

16. Exactly on same line **Hon'ble Gujarat High Court in the case of Inox Wind Energy Ltd vs. Add.CIT reported in (2023) 454 ITR 162** on almost similar kind of fact which in brief were as that, the assessee company was a wholly owned subsidiary of GFL. On 25-01-2021, the composite scheme of arrangement between INOX GFL and assessee was approved by the NCLT and the scheme of merger of INOX and GFL came into operation with

effect from 1-4-2020. Also demerger of energy business into assessee-company came into effect from 1-7-2020. The Assessing Officer was informed about said scheme on 10-3-2021 However, return filed by INOX for assessment year 2018-19 was selected for scrutiny for which notice was issued under section 143(2) on 23-9-2019 and thereafter show cause cum draft assessment order was issued in name of erstwhile company or on 23-9-2021.

17. The Hon'ble High Court after discussing various judgments of Hon'ble High Courts and Hon'ble Supreme Court including the decision of Maruti Suzuki India Ltd (2019) 416 ITR 613 and PCIT vs. Mahagun Realtors (P) Ltd. reported in 287 Taxman 566 made following observations:-

"17. *In the case of CIT v. Spice Enfotainment Ltd. [2020] 18 SCC 353, framing of assessment was against a non-existing entity/person, since the company had stood amalgamated in another company in the Assessment Year. Non-consideration of this aspect had led the Court to hold that the appeal against the judgement of the High Court was devoid of merits.*

18. *In the case of Pr. CIT v. BMA Capfin Ltd. [2018] 100 taxmann.com 330/[2019] 260 Taxman 89 (SC), rendered by the Apex Court, the assessee company got merged with another company. The Assessing Officer took note of the said development, but instead of completing the assessment in hand and in the name of amalgamated or merged entity, he proceeded to complete separate assessment in name of assessee, who, by then, had become a non-existent entity. The Tribunal and Commissioner (Appeals) both accepted assessee's plea that assessment so completed was a nullity. The High Court upheld the order passed by the Tribunal and the SLP filed against the decision of the High Court was dismissed.*

18.1 *The assessee had indicated that it underwent a change. The original assessment was completed, but the matter was remanded on two occasions and in the third round, the assessee had indicated how it had underwent the change. The decision of Spice Entertainment v. CST [IT Appeal No. 475 of 2011, dated*

3-8-2011] had been referred to, to hold that once the corporate entity is merged with another, i.e., transferee corporation or entity, the assessment had to be completed in the later's hands. The appeal was dismissed, as no substantial question of law was there to consider.

18.2 *The decision also makes it quite clear that the assessment when initiated in the name of the transferor company and before it gets completed, if the company goes into amalgamation and the Revenue still continues to assess the transferor company and not the transferee company, it is a nullity.*

19. *The decision of the Apex Court in the case of Pr. CIT v. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann. Com 91/287 Taxman 566, requires serious consideration at this stage. It was a case where no indication about amalgamation was given by the assessee during search operations and return filed pursuant to notice issued under section 153A suppressed the fact of amalgamation. Since the conduct of the assessee, commencing from the date of search and before all forums reflected that it consistently held itself as assessee, assessment order passed in the name of the assessee was valid. The assessee company MRPL was amalgamated with MIPL with effect from 1-4-2006 vide order of the High Court. Post amalgamation, search was conducted at premises of assessee-amalgamating company and discrepancies were noticed in the books of accounts. The Assessing Officer issued notice under section 153A in the name of amalgamating company i.e. MRPL, which filed return of income for the Assessment Year 2006-07 and the assessee company filed return in the name of MRPL. It appears that the Assessing Officer completed the assessment and made an addition. The Tribunal quashed the said order. The MRPL was not in existence when the assessment order was passed. The High Court upheld the said order.*

19.1 *It was noted by the Apex Court that no indication about amalgamation was given by assessee during search operations and return filed pursuant to notice issued under section 153A suppressed fact of amalgamation. The Court held that even though the assessee company ceased to exist, the appeals were filed on behalf of the assessee. Since the conduct of the assessee, commencing from the date of search and before all forums reflected that it consistently held itself as assessee, assessment order passed in the name of the assessee was valid. The corporate death of an entity upon amalgamation per se invalidate assessment order passed in name of amalgamating company cannot be determined on a bare application of section 481 of the Companies Act, 1956, but would depend upon terms of amalgamation and facts of each case. The matter was remanded back to the Tribunal for decision afresh.*

19.2 *……..*

20. *The Apex Court here looked beyond the construction "corporate entity", which otherwise brings to an end or terminates any assessment proceedings equating the same with the civil law and the 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 developed or upon whom the liability in the event it is adjudicated, would fall.*

20.1 *While distinguishing the decision of Maruti Suzuki India Ltd. (supra), the Court notices that the scheme of amalgamation was approved on 29-1-2013 with effect from 1-4-2012 and the same was intimated to the Assessing Officer on 2-4-2013 i.e. on the very next day and the notice under section 143(2) for the Assessment Year 2012-13 was issued to amalgamating company on 26-9-2013. Thus, the notice was issued to non-existing company and the assessment order was issued against the company, which was held to be substantive illegality and not procedural violation of the nature adverted to in section 292B.*

20.2 *In Maruti Suzuki India Ltd. (supra), the Court had further noticed that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The legal principle that had been applied was that the amalgamating entity ceases to exist against the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against the law. While so doing the Court had also relied on the decision of Spice Entertainment Ltd. (supra) and the Court held that there was no reason as to why 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 taken by the Apex Court in relation to the respondent for Assessment Year 2011-12 was found to be necessary to be adopted in respect of the appeal, as otherwise, the same would result into 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.*

20.3 *Distinguishing the facts from the case of Spice Entertainment Ltd. (supra) and Maruti Suzuki India Ltd. (supra), the Court held otherwise. In both the cases the assessee had duly informed the authorities about the merger of companies and, yet the assessment order was passed against the amalgamating or non-existing company. In Mahagun Realtors (P.) Ltd. (supra), there was no intimation by the assessee regarding the amalgamation of the company. The return of income for the Assessment Years 2006-07 was filed by the assessee on 30-6-2006 in the name of MRPL. The MRPL amalgamated with MIPL on 11-5-2007 with effect from 1-4-2006. The proceedings against MRPL started on 27-8-2008 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 of MRPL and the representative from MRPL corresponded with the department in the name of MRPL. 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. The intimation to the departmental authorities was for Assessment Year 2007-08 and not for Assessment Year 2006-07. For Assessment Years 2007-08 to 2008-09, a separate proceedings against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional CIT by order dated 30-11-2010, as the amalgamation was disclosed.*

20.4 *What overwhelmingly evident was 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 the notice, which suppressed the fact of amalgamation and, in fact, the return was filed by MRPL though the entity was ceased to exist and yet the appeals were filed before the CIT and the Tribunal. Even the affidavit was filed before this Court on behalf of the Director of MRPL. The assessment order attributes specific amounts surrendered by MRPL and after considering the special auditor's report, brings specific amounts to tax in the search assessment order.*

20.5 *All these clearly indicate that the order adopted a particular method of expressing the tax liability. And hence, the Court held that whether the corporate death of an entity upon amalgamation per se invalidates an assessment order, ordinarily cannot be determined on a bare application under section 481 of the Companies Act, but would depend on the terms of amalgamation and the facts of each case. In such circumstances, the Apex Court had not sustained the High Court's order and set it aside.*

21. *Reverting to the facts of the matter on hands and equating the same with the ration laid down by the Apex Court in the case of Maruti Suzuki India Ltd. (supra) and Mahagun Realtors (P.) Ltd. (supra), Inox Renewables Ltd. (the transferee company) was incorporated on 11-10-2010 under the Companies Act. For the Assessment Year 2018-19 the return of income was filed declaring the total income at nil. The case for scrutiny was selected and the notice under section 143(2) was issued on 23-9-2019. On 25-1-2021, the composite scheme of arrangement between Inox Renewables Limited and GFL Limited and the petitioner company was approved by the NCLT and the appointed date for the merger of Inox Renewables Limited and GFL Limited was fixed on 1-4-2010 and demerger of energy business into the petitioner company was from 1-7-2020. The scheme since came into operation from 9-2-2021, the Jurisdictional Assessing Officer received the intimation through email on 10-3-2021. The petitioner informed the respondent about such sanction of the composite scheme on 31-8-2021 and on 19-9-2021. Notices continued to be issued in the name of erstwhile company, which no longer existed from 1-4-2020. The show cause notice-cum-draft assessment order was also issued on 23-9-2021. Therefore, on 25-9-2021, once again the petitioner intimated and objected to the notice. It would be worthwhile to also elaborately consider the communication of e-assessment through email dated 10-3-2021, which in its subject speaks of the composite scheme of arrangement between Inox Renewables Ltd., GFL Limited and the petitioner company, the first and the second transferee company respectively informed authority concerned about the composite scheme of arrangement. Relevant paragraphs of email are reproduced as under:*

"We would like to inform that the Composite Scheme of Arrangement in the nature of amalgamation of Inox Renewables Limited, the Petitioner Transferor Company with GFL Limited (Part II of the Scheme) and De-merger and Transfer of the De-merged Undertaking viz.Renewable Energy Business of GFL Limited, the Petitioenr First Transferee/De-merged company to Inox Wind Energy Limited, the Petitioner Resulting/Second Transferee Company (Part III of the Scheme) was approved by the Hon'ble National Company Law Tribunal, Ahmedabad Bench ("NCLT") vide its order dated 25th January, 2021.

The Scheme has become effective upon filing of the certified copy of the Order passed by NCLT sanctioning the Scheme, with the Registrar of Companies, Gujarat (MCA website) today i.e. 9th February, 2021, with effect from the Appointed Date of 1st April, 2020 for Part II of the Scheme and 1st July 2020 for Part II of the Scheme.

Consequent to the Scheme becoming effective, Inox Renewables Limited stands dissolved without the process of winding up and Inox Wind Energy Limited is now the Holding and Promoter Company of Inox Wind Limited with effect from 0th February, 2021.

Copy of the Order passed by NCLT dated 25h January, 2021 along-with copy of the Scheme is attached herewith for ready reference.

This is for your information and needful consequential actions in the matter."

***21.1** This makes it abundantly clear that the scheme has been made effective from 9-2-2021 with effect from the appointed date of 1st April, 2020 for Part-II and 1st July, 2020 for Part III of the scheme.*
***21.2** ……..*
***21.3** Thereafter, a communication was sent to the petitioner by Joint Commissioner of Income Tax, National Faceless Assessment Centre, Delhi intimating that the Board of Directors of the Company, as a part of business restructuring, has approved composite scheme of arrangement as per the details given at Part A and Part B. After various queries, which had been raised, certain documents were requested to be taken on record. Thereafter, on 25-9-2021, in reply to the show cause notice dated 23-9-2021, justifications were given as to why the assessment should not be completed as per the draft assessment order. It also complained of less time given for compliance as the email was received on 23-9-2021 and the time given was only upto 25-9-2021, which was less than two days. However, it replied to the various aspects, which had been raised by the department. It has been argued before us by Mr. S.N. Soparkar, learned Senior Advocate for the petitioner that had there been no participation by the company, there could have been the possibility of the order having passed on the basis of no representation, which would have also caused serious prejudice. It is also further pointed out to this Court that the decision of Maruti Suzuki India Ltd. (supra), which has followed the decision of Spice Entertainment Ltd. (supra) had categorically held that the doctrine of merger resulted into settled legal position and peculiar facts of the case could not have been disregarded by the authority concerned.*

***22.** The decision of Mahagun Realtors (P.) Ltd. (supra) has been delivered in very peculiar facts and circumstances where not only the new company had posted itself as the old company never revealing before the authority concerned that the old company had not existed, it continued to represent the defendant and pressed its case as if nothing had changed, whereas in the case of Maruti Suzuki India Ltd. (supra), the Court has made is clear taking note of the case*

of Spice Entertainment Ltd. (supra) that the assessment in the name of the company, which has been amalgamated and has been dissolved is null and void and framing of assessment in the name of such companies is not merely a procedural difficulty, which can be cured. Amalgamated company had already brought the facts of amalgamation to the notice of the Assessing Officer and yet he chose not to substitute the name of the amalgamated company and proceeded to make the assessment in the name of non-existing company and thereby rendering it void. This surely could not be said to be a procedural difficulty on 23-9-2021. The show cause notice-cum-draft assessment order when was issued in the name of the non-existing company giving a very short period for the company to reply, the very objection was raised by the amalgamated company pointing out that the assessment was in the name of the non-existing company. Repeated objections on the part of the petitioner had fallen on deaf ears and no heed was paid to various correspondences addressed to the respondent department. It is not being disputed that the order of NCLT and all the requisite documents were furnished to the authority by the amalgamated company and it had virtually implored to discontinue the proceedings against the non-existing company.

23. *On the issue of prejudice also, we are convinced that when the proceedings continued against the non-existing company, if fort was held for some time by the amalgamated company to ensure that no further damage is caused, this participation surely cannot be held against it. Moreover, amalgamated company, with all its obligations, would file return of income and also continue the process, but once assessment order is passed against non-existing company, there would be no cure, even for filing of the appeal. Once it is found that the assessment is framed, in the instant case, in the name of the non-existing company, as held hereinabove, that surely does not remain the procedural irregularity, which can be cured under the provision of section 292B of the Act.*

24. *The assessment framed in the name of the existing company requires to be quashed. This Court has chosen to invoke the jurisdiction under Article 226 of the Constitution of India although the plea of alternative remedy of an appeal, is much emphasized upon by the respondent. Considering the fact that there is a non-existing company and the amalgamated company is a separate legal entity, these arguments cannot be endorsed by the Court and, moreover, despite being aware of the settled position of the law, when all facts in the instant case can be equated with those existing in the case of Maruti Suzuki India Ltd. (supra) and when the respondent authorities have chosen to ignore them despite reiterative requests on the part of the petitioner, the same would warrant interference at the hands of the Court.*

18. The sequitor of the aforesaid judgment, wherein various judgments of Hon'ble High Courts and Hon'ble Supreme Court have been discussed and that once an intimation has been given to the ld. AO that amalgamating company is not in existence and has been amalgamated much prior to the commencement of the proceedings, then no order can be passed in the name of non-existent entity even if the assessee had participated in the proceedings or not? If intimation has been given, it is the duty of the ld. AO not only to issue notices in the case of amalgamate company to pass the order in the name of the existing entity in which erstwhile company has been amalgamated. Accordingly, the entire assessment order is bad in law because order in the case of non-existing entity cannot be sustained at all. Thus, assessment order is hereby quashed and appeal of the assessee is allowed.

19. Since, we have quashed the assessment order, the grounds on merits raised by both the parties have become purely academic and infructuous.

20. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced on 16th April, 2024.

Sd/-	**Sd/-**
(GAGAN GOYAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 16/04/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy// BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai