
**DELHI HIGH COURT SETTLES THE BUZZ ON VALIDITY OF PROCEEDINGS
AGAINST A NON-EXISTENT ENTITY**

The Delhi High Court has, in the judgment rendered on 26.09.2024 in a batch of matters led by **Religare Enterprises Ltd.**¹ decided challenge to the assessment/ reassessment undertaken under the Income Tax Act, 1961 ('the Act') on an entity not in existence or dissolved under the provisions of law. The High Court, after taking note of the principles enunciated in the earlier judgments on the issue, reiterated the legal position enunciated and outlined by the Supreme Court in **Maruti Suzuki India Ltd.**² and held that *any proceedings initiated or completed on an entity which is dissolved or which no longer exists in law, is nullity and void in the eyes of law.*

The High Court specifically rejected the strong reliance placed by the Revenue on the Apex Court decision in **Mahagun Realtors**³ by holding that the conclusion in the said case turned on its own peculiar facts which weighed with the Court while deciding that case. While reaching its conclusion quashing the proceedings as being void ab initio, the High Court relied upon its earlier decision in **Sony Mobile Communication**⁴ to distinguish the judgment in **Mahagun**, on the premise that in the said case, the assessee had made a deliberate attempt to misrepresent the facts and evade full and true disclosure of material facts to the assessing officer regarding the factum of amalgamation. The High Court thus concluded that the decision in **Mahagun** does not dilute or strike a discordant chord with the legal principles enunciated in **Maruti Suzuki** and the said legal principles continue to apply to cases where proceedings are undertaken on an entity not in existence in law.

The High Court, further, made the following **important observations**:

- (a) Proceedings drawn in the name of an entity which has ceased to exist in the eyes of law is not a curable defect and section 292B cannot be resorted-to for validating such proceedings;
- (b) Section 159 deals with recovery of tax liability of a deceased assessee from its legal representatives and the said provision does not have any bearing on the issue of validity of proceedings initiated on an entity not in existence in law;
- (c) Similarly, section 170 would not have any impact on the aspect of validity of such proceedings particularly since the phrase "*when the predecessor cannot be found...*" employed in that provision cannot be construed to cover the situations where an entity ceases to exist in law;

¹ 2024: DHC: 7422-DB

² (2020) 18 SCC 331

³ 2022 443 ITR 194 (SC)

⁴ 2023 456 ITR 753 (Delhi)

- (d) The fundamental jurisdictional error of initiating and completing proceedings on an entity that ceases to exist in law cannot be rectified by passing an order under section 154 of the Act;
- (e) Any proceedings in the name of the successor entity cannot be called into question merely on the ground that PAN of the predecessor entity was mentioned in the notice/ order;
- (f) The information regarding merger/ amalgamation of the predecessor into the successor having been supplied to the Revenue during the course of proceedings before NCLT, cannot be considered as sufficient intimation to the assessing officer of the factum of merger/ amalgamation; the assessee is obligated to specifically apprise the assessing officer about the approval of the scheme of merger/ amalgamation.

The High Court, accordingly, quashed the proceedings instituted and undertaken in the name of amalgamating entities which were, at the time of such proceedings, not in existence in the eyes of law.

VA Comments

Pertinently, the decision signifies an important reinstatement of the legal position outlined by the Apex Court on the issue relating to validity of proceedings instituted and undertaken in the hands of amalgamating entities which had, at the time of such proceedings, ceased to exist in law. The Court has rendered a categorical affirmation to the effect that such proceedings, if initiated, continued and undertaken, despite due intimation of the factum of amalgamation/ merger by the assessee to the assessing officer, would fall foul of the scheme of the Act. At the same time, the Court has emphasized the importance of communication being furnished by the assessee duly intimating the assessing officer of the factum of such amalgamation or merger; additionally, the Court has provided some leeway to the Revenue particularly in cases where, while quoting the PAN of the erstwhile/ non-existing entity, the notices were issued in the name of the successor/ amalgamated entities, holding that such a mistake cannot be termed as “fundamental flaw” or “incurable illegality”.

The decision, while according a quietus to a recurring dispute, attempts to strike a balance between the interests of the Revenue and the rights of the assessee, by ring-fencing the jurisdictional challenge relating to validity of initiation of proceedings only in respect those cases, where on facts, a clear and substantive illegality is made out.

The matter was successfully represented by Mr. Rohit Jain, Mr. Aniket D. Agrawal, Ms. Manisha Sharma, Mr. Saksham Singhal, Ms. Somya Jain and Mr. Samarth Chaudhari, Advocates.

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