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

% Judgment Reserved on*: 13.11.2025*
Judgment delivered on*: 16.03.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **ITA 586/2025**

PRINCIPAL COMMISSIONER OF INCOME TAX-1 .....Appellant
versus
BOEING INDIA PVT. LTD. .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Debesh Panda, SSC, Ms. Zehra Khan, JSC, Mr. Vikramaditya Singh, JSC, Ms. Nivedita, Ms.Delphina Shinglai, Mr. Harshpreet Singh, Ms. A. Shankar, Ms. Ravicha Sharma, Advocates.

For the Respondent : Mr. Sachit Jolly, Sr Advocate with Ms. Sherry Goyal, Ms. Viyushti Rawat, Mr. Devansh Jain, Mr. Sohum Dua and Mr. A. Shankar Bajpai, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed with the following prayers:

"A. Admit the appeal on the substantial questions of law as proposed in Para 3, allow the same, and set aside the impugned judgment dated 27.03.2024 in ITA No.828/Del/2021 by the Hon'ble ITAT;

B. Grant such other relief as this Hon'ble Court may deem fit

and proper."

2. The present appeal has been filed by the appellant under Section 260A of the Income Tax Act, 1961 (the Act), against the judgment dated 27.03.2024 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.828/Del/2021 whereby the ITAT has allowed the ITA in favour of the respondent. The ITAT, while relying upon the decision of the Supreme Court in the case of ***PCIT v. Maruti Suzuki (2020) 18 SCC 331*** and of the judgment of a Coordinate Bench of this Court in the case of ***CIT v. Sony Mobile Communications India Pvt. Ltd. 2023/DHC/001366***, had held that the final assessment order dated 30.03.2021 (wherein the income of the respondent was assessed as Rs.1,21,75,58,080/-) was void *ab initio* as the same was issued in the name of the erstwhile amalgamating entity before amalgamation i.e., Boeing International Corporation India Pvt. Ltd. (BICIPL) instead of the amalgamated entity named Boeing India Pvt. Ltd. (BIPL).

3. Before delving into the merits of the controversy it is pertinent to give a factual background leading to the filing of this appeal. It is an admitted fact that the respondent is an eligible assessee for the purposes of Section 144C of the Act. The present matter relates to the Assessment Year (AY) 2016-17 and the return of Income was filed by the respondent as on 29.11.2016 wherein the assessee had reported an income of Rs.60,55,17,000/-. It is also an admitted fact that the notice for initiating scrutiny assessment under Section 143(2) of the Act was issued on 21.07.2017. It was thereafter, that the assessee informed the Revenue about the amalgamation.

4. The ITAT in the impugned decision dated 27.03.2024 held as under:-

"9. We have given a thoughtful consideration to rival contentions and perused the material on record. We have also applied our mind to the judicial precedents cited before us. The factual matrix reveals that the return of income for the impugned assessment year was filed in the name of the erstwhile company Boeing International Corporation India Ltd. in November 2016. However, post filing of return of income, Boeing International Corporation India Ltd. merging with Boeing India Pvt. Ltd. through a scheme of merger approved on 27.02.2018. There is no dispute that the fact of merger was immediately brought to the notice of the Assessing Officer by the assessee through letter dated 10.04.2018 with all supporting evidences. In fact, in the remand report dated 26.02.2019 furnished before learned DRP in course of proceedings in assessment year 2015- 16, the Assessing Officer has clearly accepted this fact.

10. Thus, it is an undisputed fact that the merger of Boeing Internationals Corporation India Ltd. with Boeing India Pvt. Ltd. was very much in the knowledge of the Assessing Officer much prior to framing of the draft assessment order for the impugned assessment year. In fact, at the draft assessment stage, the Assessing Officer made a reference to the TPO to determine the Arm's Length Price (ALP) of international transaction undertaken by the assessee in the impugned assessment year. Interestingly, the TPO has passed the order under Section 92CA(3) of the Act on 31.10.2019 in the name of Boeing India Pvt. Ltd., the successor company. Inspite of that, the Assessing Officer went ahead and framed the draft assessment order in the name of the erstwhile company , Boeing International Corporation India Ltd.

11. Before us, learned Departmental Representative has submitted that in the draft assessment order the Assessing Officer has mentioned the name of both the erstwhile company and the successor company.

12. However, we do not accept the contention of the learned Departmental Representative. A cursory glance of the draft assessment order dated 21.12.2019 clearly reveals that against the name of the assessee, the Assessing Officer has mentioned "Boeing International Corporation India Ltd. " Whereas, in the column showing address of the assessee, the Assessing Officer has mentioned "M/s. Boeing International Corporation India Ltd . (3rd Floor) DLF Centre, Sansad Marg, New Delhi (India)". The aforesaid facts clearly show that the assessment order has been passed in the name of Boeing International Corporation India Ltd., which as on the date of passing of the draft assessment order has become a non-existent entity. Undisputedly, against the draft assessment order, assessee raised objections before learned DRP . Interestingly , the directions of learned DRP is in the name of Boeing India Pvt. Ltd., the successor company. However, the final assessment order has again been passed by the Assessing Officer in the name of Boeing International Corporation India Ltd., the erstwhile company. More interestingly, the name of the successor company i.e. Boeing India Pvt. Ltd., nowhere appears in the body of the final assessment order.

13. It is further relevant to observe, the PAN appearing both in the draft and final assessment orders is of the erstwhile company, Boeing International Corporation India Ltd. and not of the successor company Boeing India Pvt. Ltd. Thus, the facts on record establish beyond doubt that both the draft as well as final assessment orders have been passed in the name of a non-existent company.

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16. Thus, applying the ratio laid down by the Hon'ble Supreme Court, in case of Maruti Suzuki (supra) and by the Hon'ble jurisdictional High Court in case of CIT vs. Sony Mobile Communications India Pvt. Ltd. (supra) to the factual matrix of the issue, we have no hesitation in holding that the impugned assessment order passed in the name of a non-existent entity is void ab initio. Accordingly, it is quashed.

17. In view of our decision above, the other grounds raised by the assessee including the grounds raised on merits having

become purely academic, do not require adjudication. However, the issues are kept open."

5. Mr. Debesh Panda, learned Senior Standing Counsel appearing on behalf of the appellant has stated as under:

a) The date of the issuance of notice under Section 143(2) of the Act for scrutiny assessment was 21.07.2017 and the same was issued in the correct name as no amalgamation had taken place as on that date.

b) The erstwhile entity /amalgamating entity/predecessor, BICIPL amalgamated with the respondent entity i.e., BIPL vide order dated 27.02.2018.

c) This would be the first point of difference between the present case and the facts in the case of ***Maruti Suzuki (supra)***. It is his case that the Transfer Pricing Officer (TPO) passed an order under Section 92CA dated 31.10.2019 which was also issued in the correct name i.e., in the name of BIPL.

d) The draft assessment order as passed under Section 144C(1) of the Act as on 21.12.2019 mentioned the names of the amalgamated as well as the amalgamating entity i.e., BICIPL.

e) According to him, the Dispute Resolution Panel (DRP) directions under Section 144C(5) of the Act dated 19.10.2020 were also issued in the correct name, being BIPL.

f) Thereafter, the order giving effect to the DRP directions dated 25.03.2021 were also issued in the correct entity's name.

g) After which the final assessment order dated 30.03.2021 was issued in the name of BICIPL.

6. Mr. Panda argued that one of the reasons for filing the present appeal is the fact that the ITAT has failed to consider the plea as advanced by the appellant about the glitch on the Income Tax Business Application (ITBA) system/portal resulting in the final assessment order passed in the name of BICIPL. He submitted that the TPO and DRP orders were passed in the name of the new amalgamated entity i.e., BIPL. It is his case that at the manual proceedings no issue was raised by the assessee with regard to these two orders. The assessee only raised the so called problem in the case of the draft assessment order even though, the details of the earlier as well as the current entities were clearly mentioned and the final assessment order was accompanied by the DRP directions passed through the ITBA system/portal.

7. It is his case that, the Tribunal had been duly informed that the present issue arose primarily because the return of the income was filed by the assessee in the ITBA system with the old Permanent Account Number (PAN). The notice under section 143(2) of the Act for scrutiny was issued with the old PAN and the subsequent orders and proceedings were also continued with the old PAN. Therefore, the subsequent orders i.e., the draft assessment order and the final assessment order had to be passed in the name of the both the amalgamating/amalgamated entity(ies) because of the limitation in the ITBA system. This issue he stated had cropped up for the reason that once the proceedings are initiated on the system in the name of an assessee, the said name would automatically appear whenever, any work on that case is carried out through the ITBA/system. Therefore, the passing

of the orders in the name of the predecessor entity was a mere procedural irregularity due to the limitation in the ITBA system/portal. It is his case that since only the name of the old entity had been mentioned in the final assessment order the same had been automatically picked up by the ITBA system/portal.

8. Mr. Panda has stated that in ***Maruti Suzuki (supra)*** the Supreme Court had held that the jurisdictional notice for scrutiny assessment was issued in the name of the non-existent company and as the jurisdictional notice was non-compliant, therefore the resultant assessment order was issued in the name of this non-existent company and the same was held to be illegal. He has also referred to the judgment in the case of ***Sony Mobile Communication India Pvt. Ltd. (supra)*** to argue that where the jurisdictional notice under Section 143(2) of the Act was issued prior to the amalgamation, the Coordinate Bench of this Court framed the question as to whether the notice under Section 143(2) of the Act having been issued in the name of the erstwhile company would entail the assessment order being legal and valid against the amalgamated company. The Coordinate Bench of this Court had answered this question against the Revenue.

9. Mr. Panda's submission is that neither in ***Maruti Suzuki (supra)*** nor in ***Sony Mobile (supra)*** the courts examined whether there was a complete course correction by the AO, once the information about amalgamation had been received. According to him the statutory notices including jurisdictional notices under Sections 143(2) and 144C(1) of the Act, and the DRP directions under Section 144C(5) of the Act are in the correct name and thereby there is substantial compliance. However, only on account of a

technical limitation in the ITBA portal the final assessment order has been passed in the name of the non-existent entity. Mr. Panda has argued, such a lapse which is the result of a technical glitch, would be a mistake for the purposes of Section 292B of the Act and can be corrected by the Revenue by taking recourse to the powers available in Section 292B of the Act.

10. He stated that the final assessment order was inadvertently passed in the name of the old company due to the limitations in the ITBA portal which were beyond the control of the AO. As the notice under Section 143(2) of the Act was issued in the name and PAN of the old company, the ITBA system automatically took the details of the old company when the final assessment order was issued. It is his case that the ITAT failed to appreciate that the reason for the mistake/defect was beyond the control of the AO, as according to him, it was due to the automated system i.e., the ITBA portal due to which the subsequent orders, which are the draft assessment order and the final assessment order were passed with the details of the old company. It is therefore, a mere procedural irregularity that the order passed is in the name of the predecessor entity due to the limitation of the system which the Revenue uses. In this regard, Mr. Panda has referred to a Judgment of a Coordinate Bench of this Court in the case of ***Sky Light Hospitality LLP v. CIT, (2018) 405 ITR 296*** to argue that in the said case the notice under Section 147/148 of the Act was issued in the name of the company "M/s. Sky Light Hospitality Pvt. Ltd." instead of "Sky Light Hospitality LLP" and the Court had held the same to be valid, as human errors and mistakes ought not to nullify the proceedings which are otherwise valid. Mr. Panda also highlighted the fact that the said judgment was

challenged through an SLP before the Supreme Court, which rejected the same while noting that the same was a mere clerical error which could be corrected under Section 292B of the Act. He has also stated that the Supreme Court in ***Maruti Suzuki (supra)*** did not overrule ***Sky Light Hospitality (supra)***.

11. Mr. Panda has also stated that the Supreme Court after ***Maruti Suzuki (supra)*** had held in the case of ***PCIT v. Mahagun Realtors (Private) Limited, (2022) 19 SCC 1*** that the assessment order was valid even though it was issued in the name of a non-existent entity in light of the specific facts of that case. He stated that ***Maruti Suzuki (supra)*** therefore, does not lay down an absolute rule that in all cases where the final assessment order is in the name of non-existent entity, the said order is automatically deemed to be void *ab initio*. He has also relied on the judgment in the case of ***Secunderabad Club v. CIT, (2023) 457 ITR 263*** to state that a decision is an authority only for what it specifically decides and not what can be logically deduced therefrom. Hence the decisions in the cases of ***Maruti Suzuki (supra)*** and ***Sony Mobile (supra)*** cannot be applied to the facts of this case as the same are distinguishable and the proposed questions of law ought to be decided in light of the existing language under Section 292B of the Act.

12. As per Mr. Panda it is a settled law that the phrase 'substantial questions of law' means not only the substantial questions of law of general importance but substantial questions of law arising in a case between the parties and therefore, it must have a material bearing on the decision of the case and on the rights of the parties before being answered and in this regard

reliance has been placed on the judgment in the cases of ***SBI v. S.N. Goyal, (2008) 8 SCC 92*** and ***Nazir Mohamed v. J. Kamala, (2020) 19 SCC 57***. He seeks the admission of the appeal and the setting aside of the order of the ITAT.

13. Mr. Sachit Jolly, learned Senior Counsel appearing along with Ms. Sherry Goyal on behalf of the respondents states that the ITAT has rightly set aside and quashed the final assessment order dated 30.03.2021 on the ground that the said order has been passed in the name and PAN of BICIPL which is the amalgamating entity and not the respondent herein which is BIPL i.e., the amalgamated entity. It is their case that BICIPL has filed its return of income declaring their total income of Rs.60,50,17,000/- for the AY 2016-17 and it was thereafter on 21.07.2017 that the notice under Section 143(2) of the Act was served upon BICIPL for initiation of scrutiny assessment. He stated that on 27.02.2018 BICIPL merged with BIPL i.e., respondent herein, as per the scheme of merger from the appointed date being 01.04.2017. As per him, the draft assessment order under Section 144C of the Act was issued in the name of the amalgamating entity although, the name of the amalgamated entity i.e., BIPL was also mentioned in the assessment order. Being aggrieved by the draft assessment order the respondent filed its objections before the DRP on 21.01.2020 and the DRP issued directions in the name and PAN of the amalgamated entity i.e., BIPL on 19.10.2020. It was thereafter, that the AO passed the final assessment order for AY 2016-17 in the name of the amalgamating entity i.e., BICIPL on 30.03.2021. The appeal thereto was filed before the ITAT and the said final assessment order and the assessment proceedings were quashed vide

impugned judgment dated 27.03.2024.

14. Mr. Jolly has argued that the impugned order has rightly and extensively referred to the judgments in the cases of ***Maruti Suzuki (supra)***, ***Mahagun Realtors (supra)*** and ***Sony Mobile (supra)***. According to him, the issue whether an assessment order passed in the name of a non-existent entity is void or a mere procedural irregularity, has been settled in favour of the respondent in terms of the aforementioned judgments. It is contended by Mr. Jolly that the Revenue seeks to distinguish the judgment in the case of ***Maruti Suzuki (supra)*** on the ground that in the said case the primary issue was with respect to the issuance of jurisdictional notice under Section 143(2) of the Act to a non-existent entity and not whether assessment framed in the name and PAN of a non-existent entity is valid or not and hence not applicable, is misconceived. He stated, this aspect was dealt with in the decision in the case of ***Sony Mobile (supra)***. It is his case that the same arguments had been raised by the counsel for Revenue in the case of ***Sony Mobile (supra)*** and the Coordinate Bench of this Court had rightly dismissed the appeal of the Revenue on the ground that the said issue does not dilute the binding effect of the decision of the Supreme Court in ***Maruti Suzuki (supra)***.

15. Mr. Jolly has referred to paragraphs 18 and 19 in the decision of ***Sony Mobile (supra)*** wherein the decisions of the Supreme Court in ***Mahagun Realtors (supra)*** as well as the judgment in the case of ***Sky Light Hospitality (supra)*** have been distinguished. Therefore, according to Mr. Jolly, the decision in ***Sony Mobile (supra)*** is a complete rebuttal to the submissions as advanced by Mr. Panda that the decision in the case of

Maruti Suzuki (supra) is distinguishable on facts. Further, he stated that the decision in ***Sky Light Hospitality (supra)*** had already noted the earlier decisions in ***Spice Entertainment Ltd. v. Commissioner of Service Tax, (2012) 247 CTR 500, Commissioner of Income Tax v. Dimension Apparels Private Limited, (2015) 370 ITR 288 (Del)*** and ***Commissioner of Income Tax v. Intel Technology India (P.) Ltd., (2016) 380 /TR 272 (Kar)*** and held that the said decisions dealt with the cases of issuance of assessment orders in the name of non-existent entities which was not an issue before the Court in ***Sky Light Hospitality (supra)***. Mr. Jolly also stated that in the case of ***Maruti Suzuki (supra)***, it is held in paragraph 31 that the decision in ***Sky Light Hospitality (supra)*** is not applicable in the case of assessment having not been framed in the case of a non-assessee.

16. On the issue of the ITBA portal having a technical / procedural glitch, Mr. Jolly stated that the argument raised on behalf of the Revenue, that the AO was prohibited from issuing the final assessment order in the name and PAN of the amalgamated entity and therefore, this defect is curable under Section 292B of the Act is misconceived as in the case of ***Spice Entertainment (supra)*** such an argument was rejected by holding that the assessment order in the name of non-existent entity does not translate to a curable defect under Section 292B of the Act. The reason or cause for issuing an order in the name of a non-existent entity is immaterial in view of the determinative finding of this Court in ***Spice Entertainment (supra).*** He stated that this finding is also supported by the Supreme Court in ***Maruti Suzuki (supra)*** to hold that the issuance of an assessment order in the name of a non-existent entity is null and void since it is a non-curable defect.

17. As per Mr. Jolly, the Revenue has taken a stand that there was an operational error or a system glitch in the ITBA portal and therefore, this omission may be treated as a curable defect, ought not to be considered by this Court as the Revenue creates its own system which must comply with the provisions of the Act and not the other way around. According to him, it is not for the Revenue to argue that its systems are inconsistent with the provisions of the Act.

18. It is the case of Mr. Jolly that the definition of amalgamation was brought first in the Act in the year 1967 and consequential amendments were made in Section 47 of the Act and elsewhere, to give effect to the scheme of amalgamation for the purposes of the Act. Mr. Jolly has stated that inability of the Revenue to create/modify systems 60 years after the amendment cannot and should not be condoned by this Court that too in an appeal under Section 260 of the Act. In this regard, he has relied upon the judgment of Bombay High Court in the case of ***City Corporation Limited v. Assistant Commissioner Of Income Tax Circle, 1 (1), Pune, 2025 SCC OnLine Bom 180*** to state that the submissions of the Revenue on this count is devoid of merits. He stated that the submissions that there was a technical glitch or a fault in the system which prohibited the Revenue from passing an assessment order in the name of the amalgamated entity is belied by their own conduct since immediately preceding AY 2015-16, the final assessment order was passed in the name and PAN of the amalgamated entity. The order for AY 2015-16 was passed on 29.10.2019, whereas the final assessment order in this case was passed on 30.03.2021, i.e. two years after the order of AY 2015-16 and hence, the submission of the Revenue on this

count ought to be rejected even by their own conduct. As per Mr. Jolly the argument of ITBA portal suffering from system glitches cannot be a ground for justifying the violations of the provisions of the Act, hence, this appeal ought to be dismissed.

19. Mr. Panda in his rejoinder submissions stated that the issue regarding the issuance of the final assessment in the name of BICIPL is an error which is covered under the provisions of Section 292B and can be subject to rectification.

20. Mr. Panda while referring to the facts of this present appeal stated that the decision in the cases of ***Maruti Suzuki (supra)*** and ***Sony Mobile (supra)*** are not applicable in the facts of the instant case and has proposed the following substantial questions of law which according to him need to be decided in the favour of the appellant. The same are as under:-

> *"a. Whether in the facts and circumstances of the case, and in law, the conclusion reached by the Hon'ble ITAT is perverse, having failed to consider undisputed facts in light of which it was apparent that this was glitch on the ITBA portal due to which the final assessment order stands passed in the name of a non-existent entity?*
>
> *b. Whether the controversy at hand involves a procedural mistake that was curable in terms of Section 292B of the Income Tax Act, 1961 and the failure of the Hon'ble ITAT to appreciate the same renders the impugned judgment unsustainable in law?*
>
> *c. Whether the Hon'ble ITAT failed to appreciate that in light of the undisputed facts on the record the finding that is a void assessment is unsustainable in law, since no jurisdictional error had taken place and it is apparent from undisputed facts that the AO was seeking to assess the Respondent, and it is only a*

technical glitch on the ITBA beyond his control that led to the final assessment order being passed against the non-existent entity?

d. Whether the Hon'ble ITAT has failed to appreciate that in the immediately preceding year, it has treated the draft assessment order as the core components of the assessment and the main order from the perspective of the department, and once the decision was rendered in the case of the Respondent, it cannot change the position in the instant year especially when the draft assessment order in the present case contains name of both the entities, and the draft order thus cannot be treated as null and void even by Hon'ble Tribunal considering decision of previous assessment year?

e. Whether the Hon'ble ITAT has erred in not appreciating the fact the Hon'ble Apex Court and the Hon'ble Delhi High Court in several cases has held that if not serious prejudice is caused to the assessee, then the technical/procedural aspects should not come in the way of the courts while doing substantive justice. In the instant case, no prejudice at all is caused to the assessee by way of names of amalgamated entities in both the draft order and the final assessment order?

f. Whether the Hon'ble ITAT has erred in not considering the fact that the case of the assessee company is covered by the pronouncement of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax (Central)-2 v. Mahagun Realtors (P) Ltd. 2022 SCC OnLine SC 407?

g. Whether on facts and circumstances of the case and law, the order of the ITAT is perverse in nature?"

ANALYSIS

21. Having heard the learned counsel for the parties and perused the record, the short issue that arises for consideration before this Court is whether the final assessment order dated 30.03.2021 issued in the name of

the non-entity i.e., BICIPL (amalgamating entity) is valid and therefore the assessment can be continued viz. BIPL (the amalgamated entity). Suffice to state that the ITAT has set aside the order dated 30.03.2021.

22. The series of events leading upto the present controversy is referred to below:

29.11.2016	BICIPL filed its return of income declaring total income of Rs.60,55,17,000/- for AY 2016-17.
21.07.2017	Notice under section 143(2) of the Act was served upon BICIPL initiating scrutiny assessment. The notice was issued in the correct name i.e., the predecessor entity as no amalgamation had taken place.
27.02.2018	BICIPL got merged with BIPL i.e., Respondent as per the scheme of merger dated 27.02.2018 from the appointed date of 01.04.2017.
10.04.2018	Respondent issued a letter informing the Revenue about the fact of amalgamation of BICIPL with BIPL.
31.10.2019	TPO Order under Section 92CA issued in the name of the amalgamated entity i.e., BIPL.
21.12.2019	Draft assessment under Section 144C of the Act was issued in the name and PAN of BICIPL, although name of BIPL was also mentioned in the assessment order.
19.10.2020	The DRP issued directions in the name and PAN of BIPL.
25.03.2021	Orders giving effect to DRP directions were issued in the name i.e., BIPL.

30.03.2021	The AO passed the final assessment order for AY 2016-17 in the name and PAN of erstwhile entity i.e., BICIPL.

23. At the outset, we intend to refer to the judgments relied upon by Mr. Panda. Mr. Panda has drawn our attention to ***Sky Light Hospitality (supra)***. In the said case, the Court held that there is no substantial and affirmative material and evidence on record to show that issuance of notice in the name of M/s. Skylight Hospitality Pvt. Ltd was a mistake. The error was that notice did not record the conversion of M/s. Skylight Hospitality Pvt. Ltd. into M/s. Skylight Hospitality LLP. It was also noted that the notice under Section 147/148 of the Act was not in conformity with the file notings.

24. The Court insofar as the plea relating to Section 292B, has held that the same is to ensure that the technical errors on the ground of mistakes, difficulties or omission should not invalidate the assessment proceedings when no confusion or prejudice is caused due to non observation of technical formalities.

25. Mr. Panda has also relied upon ***Mahagun Realtors (supra)*** wherein the Supreme Court was concerned with facts where the amalgamating company Mahagun Realtors Pvt. Ltd (MRPL), amalgamated with Mahagun India Pvt. Ltd. (MIPL). Survey proceedings were conducted in respect of MRPL on 20.03.2007. The Revenue issued notice on 02.03.2009 to MIPL to file return of income for the AY 2006-07. On failure by the assessee to file return of income, the AO issued show cause notice on 18.05.2009. A reply to the show cause notice was filed on 23.05.2009 stating that no proceeding

ought to be initiated and return of income will be filed by 30.06.2009. On 13.08.2010, the Revenue issued notice under Section 143(2) of the Act to which adjournment was sought through letter dated 27.08.2010. In the Return of Income, the PAN disclosed was of the amalgamating company i.e., MRPL. The assessee had informed that its date of incorporation was 29.09.2004. It was held that even if the amalgamated entity participated in the assessment proceedings, the same would not be considered as an estoppel against law, since the amalgamating entity loses its identity and ceases to have its business. Although, the rights and liabilities have to be determined as per the scheme of amalgamation.

26. On a specific query concerning business reorganisation therein, the reply was that the same was "*not applicable"*. It was in the aforesaid background, that the assessment order was passed by the AO wherein the assessee, Mahagun Realtors Pvt. Ltd. (MRPL) was stated to be represented by Mahagun India Pvt. Ltd. (MIPL). The issue was whether the assessment order could be passed in the name of both the amalgamating and amalgamated companies. The Supreme Court has opined that post amalgamation the amalgamating company ceased to exist, even then the successor entity (MIPL) continued to represent MRPL. The Supreme Court in Paragraphs 19, 34 to 36 and 41 to 44 held as under:-

> *"19. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues — enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence i.e. the transferee*

company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease — depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

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34. 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 to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of the present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.

35.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 Assessment Year 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The ROI for the Assessment Year 2006-07 first filed by the respondent on 30-6-2006 was in the name of MRPL. MRPL amalgamated with MIPL on 11-5-2007 w.e.f. 1-4-2006. In the present case, the proceedings against MRPL started in 27-8-2008, when search and seizure was first conducted on the Mahagun group of companies. Notices under Section 153-A 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. ***On 28-5-2010, the assessee filed its ROI in the name of MRPL, and in the "Business Reorganisation" column of the form mentioned "not applicable" in amalgamation section. Though the respondent contends that they had***

intimated the authorities by letter dated 22-7-2010, it was for Assessment Year 2007-08 and not for Assessment Year 2006-07. For Assessment Years 2007-08 to 2008-2009, separate proceedings under Section 153-A 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 11-8-2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

36.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.

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

41.1. The original return of MRPL was filed under Section 139(1) on 30-6-2006.

41.2. The order of amalgamation is dated 11-5-2007 but made effective from 1-4-2006. It contains a condition, Clause 2 ["2. That all the liabilities and duties of the transferor companies be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the transferee company."] , whereby MRPL's liabilities devolved on MIPL.

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

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

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

(ii) A statement made on 20-3-2007 by Mr Amit Jain, MRPL's Managing Director, during statutory survey proceedings under Section 133-A, unearthed discrepancies in the books of account, in relation to amounts of money in MRPL's account. The specific amount admitted was Rs 5.072 crores, in the course of the statement recorded.

(iii) The warrant was in the name of MRPL. The Directors of MRPL and MIPL made a combined statement under Section 132 of the Act, on 27-8-2008.

(iv) A total of Rs 30 crores cash, which was seized, was surrendered in relation to MRPL and other transferor companies, as well as MIPL, on 27-8-2008 in the course of the admission, when a statement was recorded under Section 132(4) of the Act, by Mr Amit Jain.

41.5. Upon being issued with a notice to file returns, a return was filed in the name of MRPL on 28-5-2010. Before that, on two dates i.e. 22-7-2010/27-7-2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for Assessment Year 2007-08 (for which separate proceedings had been initiated under Section 153-A) and not for Assessment Year 2006-07.

41.6. The return specifically suppressed and did not disclose the amalgamation (with MIPL) as the response to Query 27(b) was "NA".

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

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

41.9. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending 31-3-2006, in the cross-objection before 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.

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

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

41.12. At no point in time the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities, taken over by MIPL.

41.13. The counter-affidavit filed before this Court—(dated 7-11-2020) 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…".

42. In the light of the facts, what is overwhelmingly evident is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the Revenue of the Directors and Managing Director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before 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.

43. 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 (P) Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.]. 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).*
>
> *44. 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 , which had held that :*
>
> > *"15. ... an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee companies."*
>
> (emphasis supplied)

27. The reliance placed by Mr. Panda on the aforesaid judgment is primarily because of the fact that even if the final assessment order (in the case at hand) is passed in the name of the amalgamating company, the same would still be valid as in the case of ***Mahagun Realtors (supra)***. We are not in agreement with the submission of Mr. Panda as the above judgment has been passed in the facts of that case. In fact, in the judgment of ***Mahagun Realtors (supra)***, the Supreme Court clearly held that the facts in the ***Mahagun Realtors (supra)*** can be distinguished from the facts of ***Maruti Suzuki (supra)*** as can be seen from paragraphs 34, 35 and 36 of the judgment which we have already reproduced above.

28. In fact, unlike the facts in ***Mahagun Realtors (supra)***, the respondent/assessee in the present case had informed the Revenue about the

amalgamation, firstly vide letter dated 10.04.2018, (as noted by the ITAT in paragraph 9 of the impugned order) and also on 25.09.2018, which dates are much before the final assessment order, which was passed on 30.03.2021 in the name of non-entity (BICIPL).

29. The reliance on the case of ***Mahagun Realtors (supra)*** may appear appealing on a first blush however on a deeper consideration the same is distinguishable on facts as the assessee therein had neither given any indication regarding the amalgamation at the time of search and seizure nor represented itself as an amalgamated entity. The judgment in the case of ***Mahagun Realtors (supra)*** must be distinguished from the case at hand as in that case the assessee company even on questioning had concealed the aspect of amalgamation from the authorities. Therefore reliance on this judgment does not aid the case of Mr. Panda.

30. As far as the judgment in the case of ***Sky Light Hospitality (supra)*** is concerned the same has been dealt with by the Supreme Court in a subsequent decision in ***Maruti Suzuki (supra)*** and had held that the judgment in the case of ***Sky Light Hospitality (supra)*** was in the peculiar facts of that case wherein the wrong name in the notice was held to be a clerical error which could be corrected with the aid of Section 292B of the Act. However, in the said judgment i.e., in ***Maruti Suzuki (supra)*** the Supreme Court had held that the AO had been informed of the fact that the amalgamating company had ceased to exist, once the scheme of amalgamation had been approved. In this regard, we refer to the relevant paragraphs in ***Maruti Suzuki (supra)*** as under:

"31. There is no conflict between the decisions of this Court in Spice Enfotainment (dated 2-11-2017) and in Skylight Hospitality LLP v. CIT (dated 6-4-2018).

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

> *"292-B. Return of income, etc., not to be invalid on certain grounds.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income,*

assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292-B.

xxxx xxxx xxxx xxxx

34. Now, in the present case, the learned counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144-C read with clause (b) of sub-section (15). Moreover, it has been urged that in consequence, the final assessment order dated 31-10-2016 was beyond limitation in terms of Section 153(1) read with Section 153(4). For the purposes of the present proceeding, we do not consider it necessary to delve into that aspect of the matter having regard to the reasons which have weighed us in the earlier part of this judgment.

xxxx xxxx xxxx xxxx

36. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2-11-2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the special leave petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment .

37. We find no reason to take a different view. There is a value which the Court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 2012-2013. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

(emphasis supplied)

31. That apart it must be held that the issue regarding applicability of Section 292B of the Act is no longer *res integra* in light of the decision in the case of the ***Spice Entertainment (supra)*** wherein a Coordinate Bench of this Court settled the issue in a case of a company that has undergone amalgamation. The Court held that the provisions of Section 292B of the Act would not cure a jurisdictional defect since an assessment against an amalgamating entity was held to be akin to an assessment against a 'dead person' and hence cannot be seen as a mere procedural irregularity. We may note that an SLP against the judgment in ***Spice Entertainment (supra)*** was dismissed by the Supreme Court vide order dated 02.11.2017 in ***C.I.T. New Delhi v. M/s. Spice Enfotainment Ltd., Civil Appeal No. 285/2014*** wherein the Supreme Court found no reason to interfere with the order of the High Court. In this regard, we refer to the relevant paragraphs of ***Spice Entertainment (supra),*** which reads as under:-

"11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice

had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said "dead person". When notice under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.

xxxx xxxx xxxx xxxx

17. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals.

18. We may, however, point out that the returns were filed by M/s Spice on the day when it was in existence it would be permissible to carry out the assessment on the basis of those returns after taking the proceedings afresh from the stage of issuance of notice under Section 143 (2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time barred."

32. The submission of Mr. Panda regarding applicability of Section 292B of the Act to the facts of this case, in the light of the judgment in the case of ***Spice Entertainment (supra)***, is rejected.

33. Further, it is not disputed that the issue pertains to the AY 2016-17, the return of which was filed by the respondent on 29.11.2016. It is also an admitted position that the merger was approved on 27.02.2018 and the ITAT

had returned a finding of fact that the information about the merger was brought to the notice of the AO vide letter dated 10.04.2018. Even the TPO had passed an order on 31.10.2019 in the name of the amalgamated entity. Interestingly, the draft assessment order dated 21.12.2019 mentions the name of both the amalgamating and the amalgamated entities, although the final assessment order dated 30.03.2021 does not mention the amalgamated entity i.e., BIPL and even the PAN appearing in the final assessment order and the draft assessment order is also of the amalgamating entity. The final assessment order which mentions the credentials of BICIPL is reproduced below:-

1.	PAN	**AACCB3303J**
2.	Name of the assessee	**BOEING INTERNATIONAL CORPORATION INDIA PRIVATE LIMITED**
3.	Address of the assessee	**3rd FLOOR, DLF CENTER , SANSAD MARG, DELHI 999999, Delhi, India**
4.	Assessment Year	**2016-17**
5.	Status	**COMPANY**
6.	Residential Status	**Resident**
7.	Date of filing of Return of Income	**29/11/2016**
8.	Acknowledgement Number of Return of Income	**546321041291116**

9.	Date of processing u/s 143(1)(a) of the Income-tax Act.	**28/03/2018**
10.	Date of service of Notice under section 143(2) of the Income-tax Act	**As per Order Sheet**
11.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	**25/03/2021,26/03/2021**
12.	Order passed under section	**143(3) r.w.s 144C(13) and 144C(13) read with sections 143(3A) & 143(3B) of the Income-tax Act**
13.	Returned Income	**Rs. 60,55,17,000**
14.	Date of Order	**30/03/2021**
15.	DIN	**ITBA/AST/S/143(3)/2020-21/1031913289(1)**

ASSESSMENT ORDER

1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

S. No.	Issues
i.	Whether value of international transactions are correctly shown in Form 3CEB and return of income.
ii.	Whether claim of deduction against business income is admissible.
iii.	Whether value of international transactions in services have been correctly shown in Form 3CEB and return of income.
iv.	Whether value of international transactions in pursuance of a prior agreement have been correctly shown in Form 3CEB and return of income.
v.	Whether deduction claimed on account of other expenses is admissible.

34. On a perusal of the final assessment order, we note that not only does it mention the name of the amalgamating entity, there is no mention in its contents about the amalgamation, or the fact that the said order is being issued in the name of amalgamating entity due to a limitation in the ITBA portal. We find that the AO has not even mentioned in the final assessment order that the amalgamating entity is the predecessor of the amalgamated entity being BIPL.

35. As per Mr. Panda, the whole issue has arisen because of the fact that the return of income was filed by the assessee on the ITBA portal with the old PAN. The return of income for AY 2016-17 was filed by the respondent on 29.11.2016, i.e., at the time when BICIPL was in existence as the merger was approved on 27.02.2018 which was more than a year after the return of income for the AY 2016-17 was filed. Needless to state if an entity submits a return of income for an AY preceding the merger, certainly it cannot be expected from the entity to submit the same with a PAN that would be valid post merger. The scheme of merger was approved on 27.02.2018 and was brought to the notice of the AO vide letter dated 10.04.2018, it was incumbent upon the Revenue to make the necessary changes to the assessment proceedings; and for these reasons we cannot bring ourselves to agree with the submission of Mr. Panda. Apropos, we must remark here that

an assessee cannot be held accountable for the glitches or rather the functioning or malfunctioning of the ITBA portal, which would be the sole responsibility of the appellant/Revenue.

36. Now coming to the decision of a Coordinate Bench of this Court, which was relied on by Mr.Jolly and sought to be distinguished by Mr. Panda, in the case of ***Sony Mobile (supra)*** wherein the Court while referring to the decision in the case of ***Maruti Suzuki (supra)*** had also noted the decision in the case of ***Mahagun Realtors (supra)***. In ***Sony Mobile (supra)*** the assessee had taken an objection before the Tribunal regarding the absence of jurisdiction even when the assessee therein had informed the Revenue regarding the merger, similar to the case in hand. The relevant paragraphs of the judgment in the case of ***Sony Mobile (supra)*** is extracted below:

> *"21. In so far as Mahagun Realtors is concerned, as observed hereinabove, the court, once again, noticed the judgment rendered in Spice Enfotainment. As regards Maruti Suzuki, the court in Mahagun Realtors made the following crucial observations:*
> *"In Bhagwan Dass Chopra v. United Bank of India it was held that in every case of transfer, devolution, merger or scheme of amalgamation, in which rights and liabilities of one company are transferred or devolved upon another company, the successor-in-interest becomes entitled to the liabilities and assets of the transferor company subject to the terms and conditions of contract of transfer or merger, as it were. Later, in Singer India Ltd. v. Chander Mohan Chadha this court held as follows:*
> *'there can be no doubt that when two companies amalgamate and merge into one, the transferor company loses its identity as it ceases to have its business. However, their respective rights*

and liabilities are determined under the scheme of amalgamation, but the corporate identity of transferor company ceases to exist with effect from the date the amalgamation is made effective.'...

In Maruti Suzuki (supra), the scheme of amalgamation was approved on January 29, 2013 with effect from April 1, 2012, the same was intimated to the Assessing Officer on April 2, 2013, and the notice under section 143(2) for the assessment year 2012-13 was issued to the amalgamating company on September 26, 2013. This court in the facts and circumstances observed the following:

'In this case, the notice under section 143(2) under which jurisdiction was assumed by the Assessing Officer was issued to a non- existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in section 292B....

In the present case, despite the fact that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on November 2, 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-12. In doing so, this court has relied on the decision in Spice Entertainment.

We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this court in relation to the respondent for the assessment year 2011-12 must, in our view be adopted in respect of the present

appeal which relates to the assessment year 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.'

The court, undoubtedly noticed Saraswati Industrial Syndicate Ltd. v. CIT. Further, the judgment in Spice (supra) and other line of decisions, culminating in this court's order, approving those judgments, was also noticed. Yet, the legislative change, by way of introduction of section 2(1A), defining 'amalgamation' was not taken into account. Further, the tax treatment in the various provisions of the Act were not brought to the notice of this court, in the previous decisions.

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

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

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

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."

22. As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:

(i) There was no intimation by the assessee regarding amalgamation of the concerned company.

(ii) The return of income was filed by the amalgamating company, and in the "business reorganisation" column, curiously, it had mentioned "not applicable".

(iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.

(iv) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated-company.

(v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile

company, i.e., the amalgamating company was in existence.

23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.

24. As noticed above, even after the Assessing Officer was informed on December 6, 2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued to obtain, even after the Dispute Resolution Panel had made course correction."

(emphasis supplied)

37. We are further fortified in our opinion by a recent judgment of a Coordinate Bench in the case of ***Principal Commissioner of Income Tax v. Vedanta Limited, 2025:DHC:216-DB*** where in a similar factual background concerning assessment of a post-merger entity, it was held that the assessment orders issued in the name of a non-existent entity were invalid in the eyes of law. The relevant paragraphs read as under:-

"14. As is apparent upon a reading of the aforesaid extracts, we had found that the decision of the Supreme Court in Maruti Suzuki had while enunciating the legal position with respect to an order being framed in the name of a non-existent entity had unequivocally held as being a fatal flaw which could neither be corrected nor rectified. It had held in explicit terms that such an order cannot be salvaged by taking recourse to Section 292B of the Act. We had also noticed the peculiar facts which obtained in Sky Light and which alone had led to the Supreme Court upholding the assessment made, albeit in the name of an entity which had ceased to exist.

15. In the facts of the present case, however, we find that there was a valid disclosure made by the respondent-assessee and the AO being duly apprised of the factum of merger. Despite the above, it chose to make the draft assessment order in the name of a party which no longer existed on that date. This was, therefore, not a case where the factum of merger had either been suppressed or where the respondent had held out that Cairn still existed and could be proceeded against. It was the

conduct of the assessee in Sky Light which had convinced the Supreme Court to observe that the mistake would not render the order of assessment invalid and that it could be saved under Section 292B of the Act. The facts of the present case are clearly not akin to what prevailed in Sky Light.

16. Regard must also be had to the fact that Section 154 enables an authority under the Act to rectify and correct an accidental slip or omission. It pertains to a power to rectify a mistake apparent from the record. Section 292B seeks to save orders which may suffer from similar mistakes provided they be otherwise compliant with the letter and spirit of the Act. However, and as the Supreme Court explained in Maruti Suzuki, the making of an order of assessment which is inherently flawed or suffering from a patent illegality, and which would include a case where the order is drawn in the name of a non-existent entity, cannot be saved or rescued.

17. In our considered opinion, the power conferred by Section 154 would stand restricted to an inadvertent or unintentional error. The appellant has woefully failed to establish that the order of assessment as originally framed was intended to be in respect of the affairs of Vedanta, the respondent herein, or made cognizant of the factum of merger. Mr. Rai has also failed to draw our attention to any recital or observation forming part of the order of assessment which may have been representative of a conscious intent of the AO to frame an assessment in the name of the resultant entity and the order drawn in the name of Cairn being an accidental or inadvertent error.

18. We also bear in mind the indubitable fact that the AO proceeded to draw the order of assessment using the expression "formerly known as". The appellant thus failed to acknowledge the merger even at this stage. The usage of the expression "formerly known as" is indicative of them presuming that the amalgamation was akin to a change to the façade of a legal entity as opposed to a fundamental alteration and the merger giving rise to a new being. It was these facts which had weighed upon us when we had amended the question of law on which the appeal was admitted. We thus find no merit in the argument of Mr. Rai that the challenge would be liable to be answered in

light of Sky Light. Bearing in mind the fundamental error which beset the order of the TPO, the said decision would clearly not salvage the inherent and patent error which beset the order passed by the TPO. Absent any intent to assess the resultant entity, the order could neither have been rectified nor would it be saved by Section 292 B of the Act."

(emphasis supplied)

38. Learned counsel for respondent submits that the assessee had informed the Revenue about the factum of amalgamation vide letter dated 10.04.2018 as referred to in the impugned order, though the said letter has not been produced before us. Be that as it may, Mr. Jolly has drawn our attention to the letter dated 25.09.2018 at Annexure A-2 sent by the assessee as a reply to the Notice under Section 142(1) of the Act issued on 10.09.2018, wherein the information regarding amalgamation was given by the amalgamated entity. Still the draft assessment order was passed in the details of both the amalgamating and amalgamated entities; the TPO and DRP directions were issued in the name of amalgamated company, and the final assessment order was passed in the name of the amalgamating company, BICIPL. So all these orders were in different names, despite the Revenue having information about amalgamation.

39. Having considered the principles of law and examined the facts, we are of the view that the argument of the Mr. Jolly that the order of the ITAT ought to be upheld, is appealing. Regarding the issue of glitches in the ITBA portal, the Revenue ought to take this opportunity to improve the system so that such technical problems do not hinder/vitiate the assessment process.

40. After having referred to the law laid down by the Supreme Court and

the Coordinate Benches of this Court in the cases of ***Maruti Suzuki (supra)***, ***Sony Mobile (supra)***, ***Spice Entertainment (supra)*** and ***Vedanta Limited (supra)*** the issue being well settled, the same has to be applied in the facts of this case too. It has been appositely stated that in tax matters there has to be a consistent level of certainty and departing from the same would only give rise to incertitude, which needs to be avoided.

41. Given the facts of this case, as no substantial question of law arises, we do not find any reason to interfere with the impugned order dated 27.03.2024.

42. The appeal is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

MARCH 16, 2026
RT