

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.1073/Del./2016  
Assessment Year: 2012-13

Haryana Gramin Bank, (Now Sarva Haryana Gramin Bank) H.O Near Bajrang Bhawan, Delhi Road, Rohtak	<b>Vs.</b>	DCIT, Rohtak Circle, Rohtak
<b>PAN:AAALH0138G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Vivek Gupta, CA
Department by	Shri Munesh Kumar, CIT(DR)

Date of hearing	28.08.2020
Date of pronouncement	28.08.2020

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against order dated 21/12/2015 passed by the learned CIT(Appeals), Rohatak [in short 'the Ld. CIT(A)'] for assessment year 2012-13 raising following grounds:

1. *That on the facts and circumstances of the case and provisions of the law, the order u/s 143(3) dated 30/01/2015 of the Ld. AO being passed in the name of the non-existence assessee, is void ab initio and therefore the same needs to be quashed.*

*a) That without prejudice to ground no. 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld. CIT(A) erred in making/confirming the disallowance of*

*Rs.5,12,33,440/- u/s 14A read with Rule 8D of the IT Act against the exempted income of dividend of Rs.41,19,539/- only.*

*b) That would prejudice to ground no. 2(a), above, the Ld. AO as well as Ld. CIT(A) is not justified in making/confirming the disallowance u/s 14A read with Rule 8D of IT Act in excess of the exempted income of dividend which is only of Rs.41,19,539/-*

3. *That would prejudice to ground no. 1 above and on the facts and circumstances of the case and provision of the law, the Ld. AO as well as Ld.CIT(A) erred in making/confirming the addition of Rs.5,48,88,600/- towards interest on NPAs on accrual basis by totally disregarding the specific section 43D of the IT Act applicable to banking industry in this regard.*
4. *That without prejudice to ground no. 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld. CIT(A) erred in making/confirming the disallowance of Rs.1,53,54,015/- in respect of amortization of premium paid at the time of purchase of securities over the remaining period of securities.*
5. *That without prejudice to ground no. 1 above and on the facts and circumstances of the case and provisions of the law, the Ld. AO as well as Ld.CIT(A) erred in making/confirming the disallowance of Rs.20,39,000/- towards provision for fraud cases which occurred during the course of banking business of the bank.*
6. *That without prejudice to ground no. 1 above and on the facts and circumstances of the case and provision of the law, the Ld. AO as well as Ld. CIT(A) erred in making/confirming the addition of Rs.7,700/- towards locker rent on accrual basis by totally disregarding the accounting policy of the bank on cash basis in this regard which has been followed consistently by the bank and also accepted by the Income Tax Department itself in past.*

2. Briefly stated facts of the case are that the erstwhile entity of the assessee, namely, the 'Haryana Gramin Bank', filed return of income on 26/09/2012 declaring total income of Rs.82,75,46,560/-. The return of income filed by the assessee was selected for scrutiny assessment and notice under section 143(2) of the Income Tax Act, 1961 (in short 'the Act') was issued and complied with. In the course of assessment proceeding, the learned Authorized Representative of the assessee filed a letter

dated 20/11/2014 before the Assessing Officer, wherein in para 6, he submitted that M/s Haryana Gramin Bank got amalgamated with 'M/s Sarva Haryana Gramin Bank' as on 29/11/2013 vide Gazette notification No. 2686 of Govt. of India and M/s. Haryana Gramin Bank was no longer in existence. Despite this information on the record of the Assessing Officer, he passed the scrutiny assessment order u/s 143(3) on 30/01/2015 on M/s. Haryana Gramin Bank (erstwhile entity) after making certain addition/disallowance to the returned income. Aggrieved, the assessee filed appeal before the Ld. CIT(A) challenging that assessment has been made on non-existent entity. The assessee also challenged addition/disallowance on merit. The Ld. CIT(A) dismissed the appeal of the assessee on legal ground (i.e. assessment made on nonexistence entity) and also dismissed the appeal on merit on addition/disallowances. Aggrieved, the assessee filed appeal before the Tribunal raising the grounds as reproduced above. The appeal filed by the assessee was dismissed on 20/05/2019 due to non-prosecution by the assessee, however, later on recalled for hearing.

3. In ground No. 1, the assessee has challenged legality of the assessment made on non-existence entity.

4. We have heard rival submission of the parties on the issue in dispute. The learned Counsel of the assessee has filed a paper-book containing pages 1 to 118. He referred to page 7-9 of the paper-book, which is a copy of letter dated 20/11/2014 filed with the learned Assessing Officer. The para-6 of the said letter, wherein the assessee intimated that the erstwhile entity, M/s 'Haryana Gramin Bank' was no longer in existence, is reproduced as under:

“6. That the assessee bank M/s. Haryana Gramin Bank got amalgamated with M/s. Sarva Haryana Gramin bank as on 29.11.2013 vide Gazette Notification no. 2686 of Govt. of India. Now, the assessee, namely, M/s. Haryana Gramin Bank is not in existence. (copy of Gazette Notification attached herewith).”

4.1 The learned Counsel also referred to copy of Gazette notification of Ministry of the Finance dated 29/11/2013 notifying amalgamation of M/s Haryana Gramin Bank with M/s Sarva Haryana Gramin bank, which was effective from the date of the publication of the notification.

4.2 Despite this information provided by CA, Sh. Naveen Kumar Goyal, the Assessing Officer proceeded to make the assessment under section 143(3) of the Act on the erstwhile entity M/s Haryana Gramin Bank.

4.3 Before the Ld. CIT(A), the assessee referred to section 170(2) of the Act and submitted that where the predecessor cannot be found in the assessment of the income of the previous year in which succession took place after the date of the succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor. The assessee also relied on the following decision in support of its claim that assessment made on the non-existent entity is null and void and liable to be quashed:

“1. The Supreme Court in *Saraswati Industrial Syndicate Ltd. V.s CIT*, reported in **1991 AIR 70, 1990 SCR Supl. (1) 332**, held **that** “after the amalgamation of the two companies the transferor company ceased to have any entity and amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.”

2. Delhi High Court in *52 taxmann.com 356 [2014]* held that it (becomes) incumbent upon the Income Tax Authorities to substitute

*the successor in place of the said 'dead person'. Such a defect cannot be treated as procedural defect.... Once it is found that assessment is framed in the name of non-existing entity it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of section 292 of the Act."*

3. *Karnatka High Court in 57 taxmann.com 159 [2015] held that "Assessment in name of company which had been amalgamated with otyher company would be null and void and framing of assessment in name of non-existent entity is not a procedural irregularity which can be cured under section 292B."*

4. *Delhi High Court again in 57 taxmann. 163 [2015] held that "since assessee had amalgamated with transferee-company, notice ought to have been sent to latter, and since such notice had not been issued to transferee-company, entire proceedings were a nullity."*

4.4 The Ld. CIT(A) dismissed the ground of the assessee holding that the amalgamation happened only on 29/11/2013 , which pertains to financial year 2013-14 relevant to assessment at 2014-15, whereas the assessment order and the appeal relates to assessment year 2012-13, thus, the issue of the impact of the amalgamation does not arise.

4.5 In our opinion, this finding of the Ld. CIT(A) is contrary to the law. If an individual dies during the assessment proceeding, the onus is on the representatives to bring his legal heir on record so that assessment proceeding thereafter could be continued on legal heir and the authorized representative should also be authorized thereafter by the legal representative to appear in the assessment proceedings. A dead person cannot be represented by the Authorized Representative in proceedings subsequent to his death, though he was authorized for appearing in the assessment proceeding prior to his death. Similarly, when one (first) entity gets amalgamated with another (second) entity, the erstwhile entity (first entity) does not exist from the effective date of the amalgamation. It is not that amalgamation will be effective in relation to the assessment year when it came into effect, but the

pending proceedings of earlier assessment years also cannot be carried on such non-existence person and once it is brought to the notice of the Assessing Officer the fact of non-existence of the erstwhile entity and merger of the erstwhile entity with the new entity, the Assessing Officer is required to take the successor entity on record and the authorized representative appearing also is required to file the power of attorney duly authorized by the amalgamated entity i.e. new entity. The Counsel of the assessee has relied on the decision of the Hon'ble Supreme Court in the case of PCIT Vs Maruti Suzuki India Ltd (2019) 107 taxmann.com 375 (SC). The relevant facts of the case reproduced by the Hon'ble Supreme Court are extracted as under:

*“5 The assessee is a joint venture between Suzuki Motor Corporation and MSIL. The shareholding of the two companies in the assessee was 70 per cent and 30 per cent. The assessee was known upon incorporation as Suzuki Metal India Limited. Subsequently, with effect from 8 June 2005, its name was changed to SPIL.*

*6 On 28 November 2012, the assessee filed its return of income declaring an income of Rs. 212,51,51,156/-. The return of income was filed in the name of SPIL (no amalgamation having taken place on the relevant date).*

*7 On 29 January 2013, a scheme for amalgamation of SPIL and MSIL was approved by the High Court with effect from 1 April 2012. The terms of the approved scheme provided that all liabilities and duties of the transferor company shall stand transferred to the transferee company without any further act or deed. On the scheme coming into effect, the transferor was to stand dissolved without winding up. The scheme stipulated that the order of amalgamation will not be construed as an order granting exemptions from the payment of stamp duty or taxes or any other charges, if payable, in accordance with law.*

*8 On 2 April 2013, MSIL intimated the assessing officer of the amalgamation. The case was selected for scrutiny by the issuance of a notice under [Section 143\(2\)](#) on 26 September 2013, followed by a notice under [Section 142\(1\)](#) to the amalgamating company.*

9 On 22 January 2016, the Transfer Pricing Officer<sup>8</sup> passed an order under [Section 92CA](#) (3) determining the Arm's Length Price of royalty at 3 per cent and making an adjustment of Rs. 78.97 crores in respect of royalty paid by the assessee for the relevant previous year.

10 On 11 March 2016, a draft assessment order was passed in the name of Suzuki Powertrain India Limited" (amalgamated with Maruti Suzuki India Limited). The draft assessment order sought to increase the total income of the assessee by Rs. 78.97 crores in accordance with the order of the TPO in order to ensure that the 8 "TPO" international transactions with regard to the payment of royalty to the Associated Enterprises is at Arm's Length.

11 MSIL participated in the assessment proceedings of the erstwhile amalgamating entity, SPIL, through its authorized representatives and officers. This is evident from the copies of the order sheets of the assessment proceedings before the assessing officer for AY 2012-13. Post amalgamation, on 30 September 2013, the Chartered Accountants addressed a communication to the Commissioner of Income Tax, Circle 9(1), pursuant to the notice under [Section 143\(2\)](#) for an adjournment of the assessment proceedings for AY 2012-13 until the assessment proceedings for AY 2010-11 and AY 2011-12 were completed. On 27 October 2014, the Deputy Commissioner of Income Tax Circle 9 (1) addressed a communication to the Principal Officer, SPIL seeking a response to a detailed questionnaire. Thereafter, on 4 September 2015, the Deputy Commissioner of Income Tax Circle 16(1) called for disclosure of information in the course of the assessment for AY 2012-13. The communication was addressed to:

"The Principal Officer  
M/s Suzuki Power Train India Limited  
(Now known as M/s Maruti Suzuki India Limited)."

12 On 8 October 2015, a communication was addressed by the DGM (Finance) for MSIL in response to the notice under Section 142 (1) adverting to the case of SPIL for AY 2012-13.

13 On 12 April 2016, MSIL filed its appeal before the Dispute Resolution Panel<sup>9</sup> as successor in interest of the erstwhile SPIL, since amalgamated. Form 35A was verified by Mr Kenichi Ayukawa, Managing Director & CEO of MSIL. The grounds of appeal before the DRP did not allude to the objection that the draft assessment order was passed in the name of SPIL (amalgamated with MSIL) or that this defect would render the assessment proceedings invalid.

14 On 14 October 2016, the DRP issued its order in the name of MSIL (as successor in interest of erstwhile SPIL since amalgamated).

15 The final assessment order was passed on 31 October 2016 in the name of SPIL (amalgamated with MSIL) making an addition of Rs. 78.97 crores to the total income of the assessee. While preferring an appeal before the Tribunal, the assessee raised the objection that the assessment proceedings were continued in the name of the non-existent or merged entity SPIL and that the final assessment order which was also issued in the name of a non-existent entity, would be invalid.

16 By its decision dated 6 April 2017, the Tribunal set aside the final assessment order on the ground that it was void ab initio, having been passed in the name of a non-existent entity by the assessing officer. The decision of the Tribunal was affirmed in an appeal under [Section 260A](#) by the Delhi High Court on 9 January 2018 following its earlier decision in the case of the assessee for AY 2011-12. That has given rise to the present appeal.”

4.6 After hearing arguments of the both parties and analysis of the various decisions of the issue in dispute, the Hon'ble Supreme Court concluded as under:

“33 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 2 November 2017. The decision in *Spice Entertainment* 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 Entertainment*.

34 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 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 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.”

4.7 The issue in dispute in the instant case being squarely covered by the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd (supra), we set aside the order of the Ld. CIT(A) on the issue in dispute and hold that assessment made on non-existent entity is *void ab initio* and hence same is quashed. The Ground No. 1 of the appeal of the assessee is accordingly allowed.

4.8 Since we have already quashed the assessment, the other grounds raised by the assessee on merit are rendered only academic, accordingly we are not adjudicating upon the same.

5. In the result, the appeal of the assessee is allowed.

***Order pronounced in the open court on 28<sup>th</sup> August, 2020.***

***Sd/-***  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 28<sup>th</sup> August, 2020.

RK/-(D.T.D.S)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi