

IN THE INCOME TAX APPELLATE TRIBUNAL
“A ” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

IT(TP)A No.1068/BANG/13
Assessment year : 2004-05

Blue Yonder India Private Ltd., [Formerly JDA Software Pvt., Ltd. – for the merged entity JDA Software India Pvt. Ltd. – erstwhile i2 Technologies India Pvt. Ltd.), Tower A, Mantri Comercio, Next to Sakra World Hospital, Outer Ring Road, Bellandur, Bangalore-560 103 PAN: AAACI 7334Q	Vs.	The Deputy Commissioner of Income-tax, Circle-11(4), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ajit Tolani, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	04.11.2020
Date of Pronouncement	:	11.11.2020

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 03.05.2013 passed by the CIT(Appeals)–IV, Bangalore, in relation to Assessment Year 2004-05.

2. The Assessee has filed an application dated 27.01.2020 for admission of the following additional ground of appeal:-

“That since order of assessment dated 29.12.2006 in the name of M/s. i2 Technologies Software Pvt. Ltd. u/s. 143(3) of the Act is in the name of non existent entity therefore the same is without jurisdiction and deserves to be quashed as such.”

3. It is the plea of the assessee that the assessment order dated 29.12.2006 passed under section 143(3) of the Income-tax Act, 1961 [the Act] being passed in the name of i2 Technologies Software (P) Ltd., an entity which was not in existence on the date of passing the above mentioned order on account of its amalgamation with i2 Technologies India Pvt. Ltd. It is the plea of the Assessee that under section 391 to 394 of the Companies Act, 1956, i2 Technologies Software Pvt. Ltd., was amalgamated with i2 Technologies India Pvt., Ltd. under a scheme of Amalgamation which was approved by the Hon'ble High Court of Karnataka vide its order dated 18.03.2004 and the appointed date being fixed as 01 April 2003. Pursuant to the scheme, the entire business and undertaking of i2 Technologies Software Pvt. Ltd. was transferred on a going concern basis to i2 Technologies India Pvt. Ltd. The intimation of amalgamation was made to the Assessing Officer (AO) in the revised Return of Income (ROI) filed by the Assessee on 27.06.06 wherein the income of i2 Technologies Software Pvt. Ltd. and i2 Technologies India Pvt., Ltd., were merged. In the original ROI filed on 22.07.2005 the income of i2 Technologies Software Pvt. Ltd. alone had been declared. It is the plea of the Assessee that the order of assessment passed in the name of an entity that ceased to exist on the date when it is passed is void-ab-initio, illegal and bad in law and deserves to be quashed as such orders are passed in the name of i2 Technologies Software Pvt. Ltd., an entity which was not in existence on the date when the order of assessment dated 29.12.2006 was passed. It is the plea of the Assessee that the additional ground now sought to be raised is purely a legal ground and that the facts necessary to

adjudicate the additional ground is already available on record and hence the additional ground should be admitted in the interest of justice.

4. The learned counsel for the Assessee while reiterating plea as set forth in the application for admission of additional ground has further placed reliance on the following judicial pronouncements in support of the plea for admission of additional ground.

- **CIT vs. S. Nelliappan [66 ITR 722 (SC)]** wherein it was held that Tribunal may give leave to the assessee to urge grounds not set forth in the memorandum of appeal, and in deciding the appeal the Tribunal is not restricted to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal.
- **Ahmedabad Electricity Co. Ltd. and Godavari Sugar Mills Ltd. vs. CIT [199 ITR 351 (Bom)]** wherein it was held that there is nothing in section 254(1) of the Income Tax Act which limits the jurisdiction of the Appellate Tribunal in any manner. The phrase "pass such order thereon" found in Sec. 254(1) of the Act does not in any way restrict the jurisdiction of the Tribunal but, on the contrary, confers the widest possible jurisdiction of the appellate Tribunal including jurisdiction to permit any additional ground of appeal if, in its discretion, and for good reason, it thinks it necessary or permissible to do so."
- **National Thermal Power Co. Ltd. vs. CIT 229 ITR 383 (SC)** wherein it was held that the view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income Tax (Appeals) takes too narrow view of the powers of the Appellate Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

5. We have considered the prayer for admission of additional ground of appeal and are of the view that the additional grounds of appeal deserve to be admitted for adjudication as the facts for adjudication of additional

grounds of appeal are already available on record. The judicial precedents cited by the learned counsel for the Assessee supports the plea of the Assessee for admission of additional ground of appeal. We therefore admit the additional ground for adjudication.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. We shall take up for consideration the Additional Ground admitted for adjudication since in the said ground the issue raised is regarding the validity of an assessment in the name of a company that has ceased to exist. The learned counsel for the Assessee in support of the aforesaid ground of appeal brought to our notice the following sequence of events:-

- (i) On 22.06.2005 i2 Technologies Software Pvt. Ltd. amalgamated with i2 Technologies (India) Pvt. Ltd., pursuant to Hon'ble Karnataka High Court order dated 22.6.2005. Upon such merger, I2 Technologies Software Pvt. Ltd. ceased to exist as a legal entity.
- (ii) The Assessee filed return of income on 22.07.2005 in the name of M/s i2 Technologies Software Pvt. Ltd.
- (iii) I2 Technologies Ltd. changed its name to M/s JDA Software Pvt. Ltd. and subsequently to M/s Blue Yonder India (Pvt) Ltd.

8. Based on the above sequence of dates and events, the learned counsel for the Assessee submitted that the order of assessment passed on 29.12.2006 in the name of i2 Technologies Software Pvt. Ltd. rendered the order of assessment null and void and the same should be annulled by relying upon the decisions rendered by Hon'ble Supreme Court in case of *Pr.CIT vs Maruti Suzuki India Limited (Civil Appeal No. 5409 of 2019) (SLP No. 4298 of 2019) Judgement dated 25.7.2019*).

9. The Ld. DR for the revenue relied on the order of the AO who held that revised ROI filed by i2 Technologies (India) Pvt. Ltd., the merged entity, was invalid because it was filed beyond the time permitted u/s. 139(4) or 139(5) of the Act. She contended that notice issued in the name of erstwhile private limited company, despite company ceasing to exist, would not invalidate the assessment proceedings as the same was not a jurisdictional error but an irregularity and procedural / technical lapse which could be cured under section 292B of the Act.

10. We have carefully considered the rival submissions. The issue that arises for consideration is as to, whether assessment order passed by the AO against non-existent company is sustainable in the eyes of law?

11. As per the Scheme of Arrangement which was approved by the Hon'ble High Court of Karnataka, i2 Technologies Software Pvt. Ltd. ceased to exist as a company on its dissolution without winding up prior to 29.12.2006 when the order of assessment u/s 143(3) of the Act was passed by the AO.

12. The following chart will explain the facts of the Assessee's case and the facts of the case decided by the Hon'ble Supreme Court in the case of *M/s.Maruti Suzuki India Limited (supra)*:

Facts in the case of Maruti Suzuki India Ltd.	Facts in the case of Assessee
<ul style="list-style-type: none"> • Suzuki Powertrain India Limited (SPIL or amalgamating company) had amalgamated with Maruti Suzuki India Limited (MSIL or amalgamated company) by a scheme of amalgamation approved by the High Court (HC) on January 29, 2013, with effect from fiscal year commencing on April 1, 2012. • The scheme provided that all the assets, liabilities and duties of the amalgamating company be transferred to the MSIL and that the SPIL would stand dissolved without winding up. • On April 2, 2013 - the Assessee informed the AO that SPIL has amalgamated with MSIL. • On September 26, 2013 , the AO issued notice u/s.143(2) for AY 2011-12. • On September 4, 2015, the AO issued letters to the Assessee with the following description:- <i>“The Principal Officer M/s Suzuki Powertrain India Limited (Now known as M/s Maruti Suzuki India Limited)”</i> • On March 11, 2016, the AO passed draft assessment order in the name of SPIL. 	<ul style="list-style-type: none"> • The Assessee filed return of income on 22.06.2005 in the name of M/s i2 Technologies Software Pvt. Ltd. • On 22.06.2005, i2 Technologies Software Pvt. Ltd. merged with i2 Technologies India Pvt. Ltd. and became one entity. I2 Technologies Software Pvt. Ltd. ceased to exist as an entity as it was dissolved without process of winding up. • On 27.06.2005, i2 Technologies India Pvt. Ltd. files a revised ROI declaring consolidated income of merged entities. • On 29.12.2006 the AO passed order of assessment in the name of i2 Technologies Software Pvt. Ltd.

<ul style="list-style-type: none"> • On April 12, 2016, the Assessee filed objections against the proposed additions in the draft assessment order before the Dispute Resolution Panel (DRP). The objections were filed by MSIL as successor in interest of erstwhile SPIL. • On October 14, 2016, DRP gave its directions to the AO on the objections to the draft assessment order of the AO. • On October 31, 2016, the AO passed the final order in the name of SPIL (amalgamated with MSIL). • The Tribunal by its order dated April 6, 2017, held that the assessment order was invalid on the ground that it was void ab initio having been passed in the name of a non-existent entity by the TO. The Hon'ble Delhi High Court affirmed the order of the Tribunal. The Assessee filed appeal before the Hon'ble Supreme Court. 	
<p><u>Decision of the Hon'ble Supreme Court:</u></p> <p>While upholding HC's decision, SC held that the assessment done in the name of amalgamating company was void ab initio. The Hon'ble Supreme Court held that when once the scheme of amalgamation is approved the amalgamating company ceases to</p>	

<p>exist and therefore cannot be regarded as “person” u/s.2(31) of the Act against whom assessment proceedings can be initiated or an order can be passed. Prior to the AO assuming jurisdiction by issuing notice u/s.143(2) of the Act, the Scheme of Amalgamation had already been approved and the AO was duly informed about the factum of the Assessee no longer being in existence. Therefore notice issued under section 143(2) of the Act in the name of amalgamating company, a non-existent entity, was invalid and thereby the initiation of assessment proceedings was void ab initio. The fact that the amalgamated company participated in the assessment proceedings would not operate as estoppel.</p>	
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13. The facts of the Assessee’s case is identical to the facts of the case decided by the Hon’ble Supreme Court in the case of *M/s.Maruti Suzuki India Ltd.(supra)*. Since the assessee company ceased to be in existence as on the date when the AO passed the order of assessment, assessment so framed is not sustainable in the eyes of law, being a nullity.

14. Since the assessee company ceased to be in existence as on the date when the AO passed the order of assessment, assessment so framed is not sustainable in the eyes of law, being a nullity. The order of assessment is liable to be annulled and is hereby annulled.

15. In view of the decision on the additional ground of appeal holding the assessment order to be invalid and consequent annulment of the same, we do not deem it necessary to decide any other issue on merits raised in this appeal.

16. In the result, the appeal by the Assessee is allowed.

Pronounced in the open court on this 11th day of November, 2020.

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 11th November, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.