

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

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

ITA No.2372/Bang/2019
Assessment Year : 2008-09

M/s. Infosys BPM Limited (formerly known as Infosys BPO Limited, Successor to PAN Financial Shared Services India Private Limited), 26/3, 26/4, 26/6, Electronic City, Hosur Road, Bengaluru – 560 100. PAN : AACCP 4478 N	Vs.	The Joint Commissioner of Income Tax, Special Range – 3, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Padam Chand Khincha, CA
Respondent by	:	Shri. Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	14.09.2021
Date of Pronouncement	:	16.09.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the order dated 29.09.2019 of CIT(A)-3, Bengaluru, relating to AY 2008-09.

2. Grounds 2 and 3 raised by the assessee is with regard the validity of the order passed by the AO on the ground that the assessee ceased to exist as on the date on which the order of the assessment was passed on merger with M/s. Infosys BPM Ltd., and consequently the order passed in the name of a company which seized to exist was invalid. These grounds reads as follows:

2. Assessment order passed was without jurisdiction

- 2.1. *The learned ACIT, Circle — III(1), Chennai ["the learned AO for short hereinafter"] erred in passing the assessment order without jurisdiction and the learned CIT (A) has erred in confirming the said assessment order.*
 - 2.2. *The learned CIT(A) has erred in not appreciating that M/s PAN Financial Shared Services India Private Ltd having been merged with M/s Infosys BPO Limited, the registered office of the latter Company being situated in Bangalore, the order passed in Chennai against PAN Financial Shared Services India P Ltd is without jurisdiction, bad in law and liable to be quashed.*
- 3. Assessment order passed against merged Company is invalid and bad in law**
- 3.1. *The learned AO has erred in passing the assessment order against a non existent, dissolved and merged Company and the learned CIT(A) has erred in confirming the same.*
 - 3.2. *On the facts and in circumstances of the case and law applicable, the assessment made and the order passed on a non existing Company (PAN Financial Shared Services India P Ltd) is null and void, bad in law and is liable to be quashed.*

3. The facts with regard to aforesaid grounds are that Infosys BPO Limited is an Indian Company engaged in the business of business process outsourcing. A company by name P-Financial Services Holding B.V was a limited liability Company incorporated under the Dutch laws and a wholly owned subsidiary of Infosys BPO Limited. P-Financial services Holding B.V held 100% shares in three Companies viz., (a.) Infosys BPO (Poland) Sp.Z.o.o (b) Infosys BPO (Thailand) Ltd and (c) PAN Financial Shared Services India P Ltd. PAN Financial Shared Services India P Ltd was incorporated on 5th July 2007 in the state of Tamil Nadu. On July 25, 2007 Koninklijke Philips Electronics N.V ("KPENV") entered into a sale and purchase agreement with Infosys BPO Limited under which KPENV agreed through P-Financial Services Holding B.V to outsource and dispose of its shared service centres for finance, accounting and procurement business. In the framework of the above agreement, it was

decided to transfer the 'shared service centre for finance, accounting and procurement business in India' ['undertaking] owned by Philips Electronics India Ltd to PAN Financial Shared Services India P Ltd. A Business Transfer Agreement dated September 27, 2007 was entered into between Philips Electronics India Ltd and PAN Financial Shared Services India P Ltd. It was provided in the said agreement that Philips Electronics India Ltd shall transfer the shared service centre for finance, accounting and procurement business to PAN Financial Shared Services India P Ltd with effect from September 30, 2007. PAN Financial Shared Services India P Ltd thus became the owner of the 'undertaking' with effect from September 30, 2007.

4. The return of income for AY 2008-09 was filed by PAN Financial Shared Services India P Ltd on 24.09.2008 declaring loss of Rs. 5,16,35,185/- Infosys BPO Limited entered into Share Purchase agreement with P-Financial Services Holding BV by which the entire shares held by P-Financial Services Holding B.V in three Companies viz., (a) Infosys BPO (Poland) Sp.Z.o.o (b) Infosys BPO (Thailand) Ltd and (c) PAN Financial Shared Services India P Ltd were transferred to Infosys BPO Limited on December 31, 2008. As a result of the said transfer, the three subsidiaries mentioned above which were hitherto step down subsidiaries of Infosys BPO Limited became direct subsidiaries of Infosys BPO Limited. P-Financial Services Holding B.V was liquidated in accordance with Dutch laws with effect from December 31, 2008.

5. A scheme of amalgamation under section 391 and 394 of the Companies Act, 1956 was filed in the High Court of Madras and High Court of Karnataka for merger of PAN Financial Shared Services India P Ltd with Infosys BPO Limited. The High Court of Madras vide order

dated 12.02.2009 and the High Court of Karnataka vide order dated 16.03.2009 approved the scheme of amalgamation with effect from the appointed date i.e., April 1, 2008. PAN Financial Shared Services India P Ltd was accordingly dissolved without being wound up in accordance with the scheme of amalgamation and the orders of the High Court of Madras and Karnataka. Infosys BPO Limited is thus a successor to PAN Financial Shared Services India P Ltd.

6. On 27.9.2010, the AO passed an order of assessment for AY 2008-09 u/s.143(3) of the Act, in the name of M/S.PAN Financial Shared Services India Private Ltd. The dates of hearing as noted in the order of assessment shows that hearing in the assessment proceedings for AY 2008-09 was held on 11.8.2010, 21.09.2010 and 27.09.2010. The AO was not appraised of the factum of amalgamation and the fact that the Assessee ceased to exist on amalgamation with M/S.Infosys BPO Ltd. (now known as Infosys BMP Ltd.).

7. The Assessee filed appeal against the various additions made in the order of assessment dated 27.9.2010. In the proceedings before the CIT(A) the a letter dated April 16, 2009 was filed by Infosys BPO Limited before the Commissioner of Income tax, Circle VI, Chennai informing about the merger of PAN Financial Shared Services India P Ltd with Infosys BPO Ltd. Copies of the orders of High Court of Karnataka and Madras was attached to the said letter. The Commissioner of Income tax, Circle VI, Chennai was also informed that all communications and correspondence in future be issued and served on Infosys BPO Limited at its registered office at Bangalore. It was submitted on behalf of the Assessee that during the course of assessment, all details and letters were submitted by the Assessee i.e., Infosys BPO Limited on its

letterhead. The hearing was attended by the employees of the Infosys BPO Ltd. Thus, the AO was aware of the fact that PAN Financial Shared Services India P Ltd had already been amalgamated with the appellant vide High Court orders dated 12.2.2009 and 16.3.2009. However, the AO proceeded with the assessment and passing the assessment order u/s 143(3). As PAN Financial Shared Services India P Ltd was dissolved without being wound up in accordance with the scheme of amalgamation and the orders of the High Court of Madras and Karnataka and as this fact was also made known to CIT, Computer operations, Chennai and the learned learned ACIT, Company Circle III(1), Chennai, the said officer or the concerned CIT should have transferred the Jurisdiction and the pending proceedings to the assessing officer of Infosys BPO Limited in Bangalore. The assessment order passed by the AO on a dissolved Company is therefore without Jurisdiction, bad in law and liable to be quashed.

8. The CIT(A) refused to accept the contention of the assessee on the ground that the erstwhile entity or the merged entity did not inform the AO about the factum of the erstwhile company having been seized to exist and having been merged with the assessee in this assessee. The following were the conclusions of the CIT(A) in this regard:

“4.3 *The submissions of the appellant and report of the AO have duly been considered. The contention of the AO is that during the pendency of assessment proceedings the appellant had never informed the Assessing Officer about the merger of PANF with M/s Infosys BPO Ltd. The AO has informed that no such intimation was given by the appellant till the passing of the assessment order under Section 143(3) of the Act.*

4.4 *The appellant has also not been able to provide any document to show that the AO was given any intimation regarding such*

*merger before the assessment proceedings were concluded. The only argument of the appellant is that it had filed a letter with CIT, Circle — 6, Chennai informing him about the merger of the above entity with M/s Infosys BPO Ltd. **However informing the CIT about the merger cannot be equated with informing the AO holding jurisdiction over the appellant. No reasons have been furnished by the appellant for not intimating the same to AO. It is noted that the AO was informed about the merger only subsequently i.e. much after the assessment order was passed by the AO on 27.09.2010. This was done by the appellant vide letter dated February 4, 2011 and thereafter vide letter dated 23.08.2011, wherein the AO was requested to transfer the records from Chennai to Bangalore as PANF had got merged with M/s Infosys BPO Ltd.** So there is merit in the submission of the AO that since the appellant itself had failed to inform the AO about the merger, it cannot plead now that the order had been passed wrongly in name of a non-existent entity.*

9. Aggrieved by the aforesaid order of the CIT(A), the assessee has raised ground Nos.2 and 3 before the Tribunal. Learned Counsel for the assessee placed reliance 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) wherein the Hon'ble Supreme Court. In the aforesaid case, the facts were that the income which is sought to be subjected to the charge of tax for assessment year 2012-13 was the income of the erstwhile entity (SPIL) prior to amalgamation. Under an approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities. The consequence of the scheme of amalgamation approved under section 394 of the Companies Act, 1956 was that the amalgamating company ceased to exist. Upon the amalgamating company ceasing to exist, it cannot be regarded as a person under section 2(31) against whom assessment proceedings can be initiated or an order of assessment passed. A notice under section 143 (2) was issued on 26-9-2013 to the amalgamating company, SPIL, which was

followed by a notice to it under section 142(1). Prior to the date on which the jurisdictional notice under section 143 (2) was issued, the scheme of amalgamation had been approved on 29-1-2013 by the High Court of Delhi under the Companies Act, 1956 with effect from 1-4-2012. The Assessing Officer assumed jurisdiction to make an assessment in pursuance of the notice under section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2-4-2013, the amalgamated company MSIL had addressed a communication to the Assessing Officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio. 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. 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.

10. The learned Counsel therefore submitted that the Assessment Order passed in the name of a non-existent entity is Null in the eyes of law and has to be annulled. Learned DR however pointed out that in the decision rendered by the Hon'ble Supreme Court in the case of Maruti Suzuki (supra), the AO was informed of the amalgamation and the fact that the

company which was sought to be assessed had ceased to exist whereas in the present case, the Assessment Order was passed on 27.09.2010 on which date there was no intimation by the assessee with regard to factum of amalgamation. He, therefore, submitted that the decision rendered by the Hon'ble Supreme Court will not be applicable to the facts of the present case.

11. The Learned Counsel for the assessee on the other hand placed reliance on decision of the Hon'ble Delhi High Court in the case of Savita Kapila Vs. ACIT [2020] 426 ITR 502 (Del) wherein the Hon'ble High Court held that there was no obligation on the part of an assessee to intimate the Department regarding merger. He also pointed out that in the submissions made before the CIT(A), a reference was made to the factum of amalgamation. It was also submitted that the assessment records of the assessee were transferred from Chennai to Bengaluru and in this regard, the AO must have had the knowledge of the factum of amalgamation.

12. We have considered the rival submissions. It is noted that, this identical legal issue came up for consideration before the Hon'ble Delhi High Court in the case of Savita Kapila Vs ACIT (426 ITR 502) wherein the question before the High Court was, whether the issuance of notice u/s 148 of the Act in the name of a non-existent existent person was bad in law or was it a curable defect u/s 292B of the Act. In this judgment, the High Court after taking due note of the judgments rendered ended by the Hon'ble Apex Court in the cases of Skylight Hospitality Ltd. Vs. Asst. CIT (2018) 90 taxmann.com 413 (SC) and CIT Vs Maruti Suzuki India Limited (supra),, answered the aforesaid question in favour of the assessee. The facts as noted by the High Court were that an information was received by the Assessing Officer that in Financial Year 2011 2011-12, the assessee by

name ShriMohinder Paul Kapila had cash deposits of Rupees Ten Lakhs (Rs. 10,00,000/-) in his bank account, time deposits of Rupees Eleven Lakhs Five Thousand Five Hundred Eighty Six (Rs. 11,05,586/-) and receipts of Rupees Twenty Five Thousand Four Hundred Fourteen (Rs. 25,414/-) as per Form 26AS. It was noticed that no return had been filed and the source of the aforesaid deposits and receipts remained unexplained and had escaped assessment. Accordingly, the case of Mr. Mohinder Paul Kapila was selected under section 147/148 of the Act 1961, after recording of reasons and approval of PCIT PCIT-15, Delhi on 28th March, 2019. However, late ShriMohinder Paul Kapila (hereinafter referred to as "deceased assessee") had already expired on 21st December, 2018. The deceased assessee is survived by two sons and two daughters. Notice dated 31st March, 2019 under section 148 of the Act 1961 for A.Y. 2012-2013 was issued, i.e. on the last date of limitation, in the name of deceased assessee ShriMohinder Paul Kapila with PAN: ASXPK1666P and sent at his last known address known to the Income-tax Department i.e. Flat No. 286, 1st Floor, D Flats, Sector 9, Pkt 1, Dwarka, New Delhi 110075. The impugned notice could not and was never served upon Late ShriMohinder Paul Kapila. Thereafter ACIT, Circle 43(1), Delhi (hereinafter referred to as "Assessing Officer") issued notices dated 22nd August, 2019, 27th August, 2019 & 18th September, 2019 to the deceased assessee. The said notices were also neither served upon the assessee nor upon any of his legal heirs. It was contended on behalf of the revenue, similar to the contention of the learned DR in this case, that Courts had quashed notices sent to non-existent entities, as in all such cases the information of such non-existence was available with the Assessing Officer prior to the issuance of notice. The Hon'ble High Court however answered the question in favour of the assessee, by observing as under:

32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In *Alamelu Veerappan (supra)* it has been held "nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration."

33. The judgment in *Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra)* offers no assistance to the respondents. In *Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra)* the Supreme Court was dealing with Section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under section 143(2) of the Act, 1961 was issued to a non-existing company. In that case, the Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income-tax Department about the death of the assessee or to surrender the PAN of the deceased assessee.

35. This Court is of the opinion that issuance of notice upon a dead person and non service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case.

13. In view of the above ratio decidendi of the Hon'ble Apex Court in the case of *Maruti Suzuki (supra)*, the assessee succeeds on this legal issue. We hold that the order of assessment framed in the name of a non-existent entity after it ceased to be a subsisting entity, was ab-initio

void and therefore, null in the eyes of law. On similar facts and circumstances of the case and law applicable, the ITAT, Bangalore bench in ACIT v iGate Infrastructure Management Services Ltd ITA No. 1128/Bang/2015 dt. 4.12.2015 held that assessment order passed by the Income tax authorities in Delhi, after change in registered office of the company from Delhi to Bangalore, is without jurisdiction and bad in law. In view of the above, in the event of amalgamation of companies,

- (i) the income of the amalgamating company upto the date of amalgamation should be assessed in the hands of the amalgamating company (predecessor), if the amalgamating company is in existence at the time of initiation of assessment proceedings.
- (ii) If the amalgamating company is not in existence at the time of initiation of assessment proceedings, the income of the amalgamating company upto the date of amalgamation should be assessed in the hands of the amalgamated company (successor) under the caption "successor of predecessor" in like manner and to the same extent as it would have been made on the predecessor.

The effect / consequence of the above position of law is that the assessment made and the order passed on the amalgamating company i.e., predecessor when the said company is dissolved / not in existence is

a nullity. We therefore hold that the impugned assessment order is non-est and ab initio void and, therefore is hereby annulled.

14. In view of the above conclusion on Gr.No.2 & 3, the other grounds of appeal raised by the Assessee does not require any adjudication.

15. In the result, the appeal is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 16.09.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.