

**IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH
MUMBAI**

**BEFORE SHRI M. BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.1772/Mum/2015
(Assessment Year :2010-11)**

M/s. Siemens Power Engineering Pvt. Ltd., (now merged with M/s. Siemens Limited) 130, Pandurang Budhkar Marg Worli, Mumbai – 400 019	Vs.	Assistant Commissioner of Income Tax – Circle – 8(2)(1), Aayakar Bhavan Room No.624, 6 th Floor M.K.Road, Mumbai – 400 020
PAN/GIR No.AACCS5323F		
(Appellant)	..	(Respondent)

Assessee by	Shri Nitesh Joshi
Revenue by	Shri Anand Mohan
Date of Hearing	26/07/2019
Date of Pronouncement	15/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1772/Mum/2015 for A.Y.2010-11 preferred by the assessee against the final assessment order passed by the Id. Assessing Officer dated 28/01/2015 u/s.143(3) r.w.s.144C(13) of the Income Tax Act, (hereinafter referred to as Act) pursuant to the directions of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 27/11/2014 for the A.Y.2010-11.

2. The assessee has raised the following grounds of appeal:-

"1. On the facts and in law, the Learned Assistant Commissioner of Income Tax, Circle-8(2)(1), Mumbai ("Ld. AO") erred in passing the impugned assessment order dated 28 January 2015 pursuant to the directions of the Hon'ble Dispute Resolution Panel ("Hon'ble DRP") and computing the total income of the Appellant for Assessment Year ("AY") 2010-11 at Rs. 35,60,31,878 as against the returned income of Rs. 24,07,36,549.

2. On the facts and in law, the Ld. AO erred in proposing and the Hon'ble DRP further erred in confirming the addition of Rs. 11,52,95,329 to the Appellant's returned income of Rs. 24,07,36,549.

3. On facts and in law, the Ld. AO erred in making a mistake apparent from record by not granting the working capital adjustment already given to the Appellant by the Ld. TPO in the order dated 29 January 2014 passed u/s 92CA (3) of the Income-tax Act, 1961 ('the Act'). The application filed for rectification u/s 154 of the Act by the Appellant before the Ld, AO is pending disposal.

4. On facts and in law, Ld. AO/ Ld. TPO and the Hon'ble DRP erred in rejecting the economic analysis and filters applied by the Appellant in the Transfer Pricing documentation maintained by the Appellant under section 92D of the Act read with Rule 10D of the Income-tax Rule, 1962 ('the Rules') without providing any cogent reason and arbitrarily applying additional filters.

5. On facts and in law, the Ld. TPO/ Ld. AO and the Hon'ble DRP violated the provisions of Rule 10B(2) of the Rules by arbitrarily rejecting the companies, namely Tata Elxsi Ltd., Varna Industries Limited, Chakkilam Infotech Limited, Akshay Software Technologies Limited and CSS Tech Energy Limited selected by the Appellant in the TP documentation/ fresh search which are functionally comparable to the Appellant.

6. On facts and in law, the Ld. AO/ Ld. TPO erred in first proposing and then arbitrarily rejecting the application of filter for eliminating companies having export turnover to total income less than 50% with a single-minded intention of including the additional comparable companies, which otherwise were failing this filter. The Hon'ble DRP further erred in ignoring the objections raised by the Appellant in this regard.

7. On facts and in law, the Ld. AO/ Ld. TPO and the Hon'ble DRP erred in not appreciating the provisions of Rule 10B(2) of the Rules by arbitrarily introducing companies, namely Engineers India Limited, IBI Chematur (Engineering & Consultancy) Ltd., Mahindra Consulting Engineers

Limited, Rites Limited, Dalkia Energy Services Ltd. and T C E Consulting Engineers Limited as comparables to the Appellant, disregarding the fact that the functional profiles of the said companies are entirely different from that of the Appellant.

8. *On the facts and in law, the Ld. AO/ Ld. TPO and the Hon'ble DRP erred in holding Engineers India Ltd. and IBI Chematur (Engineering & Consultancy) Ltd. as comparables to the Appellant, whereas the same have been rejected as a comparable by the Ld. TPO in Assessee's own case for immediately succeeding assessment year (i.e. AY 201 1-12).*

9. *On facts and in law, the Ld. AO/ Ld. TPO and Hon'ble DRP erred in treating foreign exchange gain as non-operating in nature while computing the operating profit margin of the Appellant and of the comparable companies placing undue reliance on the Safe Harbor rules and without providing any germane reason.*

10. *The Ld.AO/ Ld. TPO and Hon'ble DRP grossly erred in not allowing the risk adjustment in accordance with the provisions of Rule 10B(3) of the Rules to account for the differences in the risk profile of the Appellant and the comparable companies.*

11. *On facts and in law, the Ld. AO / Ld. TPO and Hon'ble DRP erred in disregarding prior years' data used by the Appellant to benchmark the international transactions in its Transfer Pricing documentation for the year and holding that current year (i.e. Financial Year 2009-10) data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation, and grossly misinterpreting the requirement of "contemporaneous" data in the Rule 10B(4) of the Rules, 1962 to necessarily imply current year data, thereby breaching the principles of natural justice and "impossibility of performance.*

12. *On facts and in law, the Appellant submits that the impugned assessment order passed by the learned AO is bad in law as Siemens Power Engineering Limited has ceased to exist on the date of the impugned order on account of its merger with Siemens Limited with effect from 1 January 2012, thereby the entire assessment proceedings be regarded to be void ab initio."*

We find that adjudication of Ground No.12 is very crucial as it goes to the root of the matter as it would have a strong bearing on adjudication

of other grounds raised before us. Accordingly, we proceed to adjudicate the ground No.12 above being the preliminary legal issue.

3. We have heard the rival submissions. We find that Permanent Account No. (PAN) of Siemens Power Engineering Pvt. Ltd., (SPEPL) is AACCS5323F. We find that the following sequence of events would explain the entire facts of this issue in dispute properly:-

Sr. No.	Date	Particulars
1	Blank	Date of passing of directions u/s.144C (5) of the Act by the Id. DRP-Mumbai for A.Y.2011-12
2	29/9/2010	Date of signing of audited financial statements at Gurgaon for the Financial year ending 31/03/2010 relevant to A.Y.2010-11. It is pertinent to note that SPEPL is incorporated in Gurgaon
3	30/9/2010	Date of Accountancy Report in form 3CEB for A.Y.2010-11
4	01/10/2010	Return of income (original) filed by the assessee online on 01/10/2010 in the name of Siemens Power Engineering Pvt. Ltd., (SPEPL) together with original Form 3CEB
5	21/9/2011	Date of issue of notice u/s.143(2) which was served on 28/09/2011 in the name of SPEPL
6	1/10/2011	Appointed date as approved by the Hon'ble Bombay High Court and Hon'ble Punjab and Haryana High Court
7	1/1/2012	Effective date as approved by the Hon'ble Bombay High Court and Hon'ble Punjab and Haryana High Court
8	2/11/2012	Date of approval of merger by Hon'ble Bombay High Court of SPEPL with Siemens Ltd(SL)
9	23/11/2012	Date of approval of merger of Hon'ble Punjab and Haryana High Court of SPEPL with SL
10		
11	8/2/2013	Reference was made by the Id. DCIT, Circle-2, Gurgaon to Id. Transfer Pricing Officer - II(1) Circle II(2), New Delhi
12	12/4/2013	Letter addressed by the Siemens Ltd., (successor of SPEPL) to JDIT TPO - II(2), New Delhi in connection with transfer pricing assessment proceedings for A.Y.2010-11 furnishing the requisite details that were called for by the Id. TPO

13	14/5/2013	Letter written by the assessee in the name of Siemens Ltd., (successor in interest to SPEPL) addressed to Commissioner of Income Tax, Gurgaon, intimating the fact of merger of SPEPL with SL and request to transfer the jurisdiction of SPEPL to the jurisdiction of SL. In the said letter, PAN of Siemens Ltd., (SL) was mentioned as AAACS0764L falling under the jurisdiction of Commissioner of Income Tax Range-7, Mumbai through the Additional commissioner of income Tax, Range-7(2), Mumbai through the Dy. Commissioner of Income Tax, Range - 7(2), Mumbai. It was requested by the assessee in the said letter to transfer the pending matters relating to the assessee to the above mentioned jurisdiction of Siemens Ltd., This letter is enclosed in pages 504 and 505 of the paper book. Copy of this letter was also marked to the following persons:- (a) DCIT Circle-2, Gurgaon (b) Chief Commissioner of Income Tax-Range (II), Mumbai (c) Commissioner of Income Tax - 7, Mumbai (d) Additional Commissioner of Income Tax - Range - 7(2), Mumbai (e) DCIT, Range-7(2), Mumbai
14	6/8/2013	Letter written by the authorised representative of the assessee to JDIT TPO-II(2), New Delhi in the name of Siemens Ltd., (successor of SPEPL) with PAN No.AACCS5323F in connection with transfer pricing assessment proceedings for A.Y.2010-11
15	07/08/2013	Date of issue of notice u/s.143(2) for A.Y.2012-13 in the name of SPEPL at Gurgaon address which was served on assessee on 14/08/2013
16	21/8/2013	Letter filed by the assessee to ACIT, Circle-2, Gurgaon intimating the fact that SPEPL is merged with Siemens Ltd., (SL) w.e.f. 01/10/2011.
17	21/8/2013	Letter written by the assessee i.e. SPEPL (successor in interest to Siemens Ltd.,) to ACIT - Circle-2, Gurgaon clearly intimating the name of the assessee as SPEPL (now amalgamated with Siemens Ltd.) w.e.f. 01/10/2011. In the said letter, it was also requested to issue fresh notice in the name of the successor company.
18	17/12/2013	Letter written by the authorised representative of the assessee to JDIT-TPO-II(2), New Delhi by mentioning the name of the assessee as SPEPL (now merged with Siemens Ltd., with PAN No.AACCS6323F) in connection with transfer pricing assessment proceedings for the AY.2010-11
19	29/1/2014	Date of Passing the order in the name of SPEPL u/s.92CA(3) of the Act by the Id. TPO JDIT, TPO-II(2), New Delhi
20	18/2/2014	Date of passing of draft assessment order in the name of SPEPL by DCIT -Circle-2, Gurgaon
21	12/3/2014	Application u/s.154 of the Act r.w.s. 92CA-5 preferred by the assessee before the Id. TPO.
22	12/3/2014	Later assessee filed objections before the Id. DRP-3, New Delhi in the name of SPEPL (now merged with Siemens Ltd.)
23	12/3/2014	Letter written by assessee SPEPL (now merged with Siemens Ltd.) to Id. DRP, New Delhi in connection with filing of objections before the Id. DRP, New Delhi in the A.Y.2010-11

24	18/3/2014	Date of order u/s.154 of the Act in the name of SPEPL passed by the Additional Director of Income Tax, TPO II (2), New Delhi making some minor changes in the comparables
25	31/3/2014	Date of filing of revised form 3CEB together with date of revised return of income which was signed by the Managing Director, Mr. Sunil Mathur of Siemens Ltd.,
26	28/8/2014	Date of order u/s.127 for transfer of jurisdiction from Circle-2, Gurgaon to Circle-7, Mumbai vide order under CIT/FBD/127/09/2014-15
27	9/9/2014	Notice issued u/s.143(2) of the Act by DCIT Circle-2, Gurgaon in the name of SPEPL for A.Y.2012-13 at Gurgaon address
28	23/9/2014	Letter by the assessee to DCIT, Circle-2, Gurgaon wherein it has been very clearly mentioned by the assessee in reference column to the letter as "M/s. Siemens Ltd.,"(successor of Siemens Power Engineering Pvt. Ltd) with PAN AACCS5323F for A.Y.2012-13. In the said letter, the assessee had also intimated DCIT Circle-2, Gurgaon that it's case has been transferred to Circle-2, Gurgaon to Circle-7(2)(1), Mumbai pursuant to the order passed by the Id. Commissioner of Income Tax-Faridabad u/s.127(2) of the Act in F NoCIT/FBD/127/09/2014-15 dated 28/08/2014. It was also pleaded in the said letter that the relevant records and files for A.Y.2012-13 may kindly be transferred to the Jurisdictional Assessing Officer in Mumbai
29	27/11/2014	Date of Directions of Id. DRP-3, New Delhi u/s.144C(5) of the Act in the name of SPEPL for A.Y.2010-11
30	31/12/2014	Date of order u/s.92CA(3) of the Act by TPO Mumbai in the name of SPEPL (merged with Siemens Ltd.) for A.Y.2011-12
31	8/1/2015	Date of issue of fresh notice u/s.142(1) of the Act by ACIT Circle-8(2)(1), Mumbai to the assessee which was duly served for the A.Y.2010-11
32	28/1/2015	Date of final assessment order passed by ACIT Circle-8(2)(1), Mumbai u/s.143(3) r.w.s. 144C(13) of the Act in the name of SPEPL
33	26/3/2015	Notice issued by Joint Commissioner of Income Tax Transfer Pricing - 4(1) Mumbai, issuing notice u/s.92CA(2) of the Act for A.Y.2012-13 to the assessee in the name of SPEPL at Mumbai address
34	28/3/2015	Date of passing of draft assessment order by the DCIT 8(2)(1) Mumbai for A.Y.2012-13 u/s.143(3) r.w.s. 144C(1) of the Act in the name of M/s. Siemens Ltd., (successor in interest to SPEPL)
35	10/7/2015	Another hearing notice issued by JCIT, TP-4(1), Mumbai for A.Y.2012-13 to the assessee in the name of SPEPL at Mumbai address
36	27/7/2015	Letter by the authorised representative of assessee addressed to JCIT TP-4(1), Mumbai for A.Y.2012-13 clearly mentioning the name of the assessee as "Siemens Ltd."(as the successor in interest to SPEPL). In the said letter it was specifically submitted that SPEPL was amalgamated with SL w.e.f. 01/10/2011. Pursuant to the said merger, the company prepared revised financial statements and revised. Accountant's reports in the Form No.3CEB for the period 01/04/2011 to 30/09/2011, among other details

37	20/10/2015	Letter addressed by the DCIT Circle - 8(2)(1), Mumbai for A.Y.2012-13 to the assessee in the name of SPEPL at Mumbai address calling for various details
38	8/1/2016	Date of order u/s.92CA(3) of the Act passed by JCIT TP-4(1), Mumbai for A.Y.2012-13 in the name of SPEPL (merged with Siemens Ltd.)
39	28/4/2016	Date of filing of objections before the Id. DRP, Mumbai by the assessee in the name of Siemens Ltd.(Successor in interest to SPEPL) for the A.Y.2012-13
40	19/8/2016	Hearing notice issued by DRP-Mumbai for A.Y.2012-13 in the name of Siemens Ltd.,
41	29/11/2016	Date of Directions u/s.144C (5) by DRP-Mumbai for A.Y.2012-13 in the name of SPEPL (through their successors Siemens Ltd.,)
42	31/01/2017	Date of passing of assessment order for A.Y.2012-13 by the DCIT-8(2)(1), Mumbai in the name of Siemens Ltd., (successor in interest to SPEPL)

3.1. From the aforesaid narration of facts, which is not in dispute before us, we find the following:-

- a) The order u/s.127 of the Act was passed by the Commissioner of Income Tax, Faridabad on 28/08/2014 transferring the jurisdiction of the case of the assessee (SPEPL) from Gurgaon to Mumbai.
- b) We find that the Id. TPO had passed an order for the A.Y.2010-11 in the name of SPEPL on 29/01/2014.
- c) We find that the draft assessment order was passed by the Id. AO on 18/02/2014 in the name of SPEPL.
- d) We find that the Hon'ble DRP had issued directions to the Id. AO/Id.TPO vide its directions dated 27/11/2014 in the name of SPEPL.
- e) We find that the final assessment order pursuant to the directions of the Id. DRP was passed by the Id. AO on 28/01/2015 in the name of SPEPL.

3.2. From the aforesaid facts, it could be safely concluded that the entire proceedings were made in the name of SPEPL, which is a non-

existent entity, as SPEPL stood amalgamated with Siemens Ltd. (SL) with appointed date of 01/10/2011. This scheme of merger was duly approved by Hon'ble Bombay High Court vide its order dated 02/11/2012 and Hon'ble Punjab and Haryana High Court vide its order dated 23/11/2012. All these facts of merger together with the relevant documents of approval by the Hon'ble High Courts were duly placed before the lower authorities and despite the same, the orders were passed in the name of SPEPL, which is a non-existent entity.

3.3. The Id. DR placed reliance on the decision of Hyderabad Tribunal in the case of Cyient Ltd. vs. DCIT in ITA Nos. 1052 to 1054/HYD/2016 dated 29/12/2017 and the decision of Bangalore Tribunal in the case of Corio India Infotech Services P. Ltd. vs DCIT in IT(TP) No.1221/BANG/2011 dated 23/08/2017 in support of his contentions. Per contra, the Id. AR placed reliance on the co-ordinate Bench decision of this Tribunal in group company case of Siemens Technology Services Private Limited vs. ACIT in ITA No.6313/Mum/2012 dated 16/11/2016; in another group company case in the case of Siemens Ltd. vs. ACIT in ITA No.3296/Mum/2015 dated 01/03/2019; decision of Hon'ble Jurisdictional High Court in the case of Jitendra Chandralal Navlani & Anr. Vs. Union of India in WP No.1069 of 2016 dated 08/06/2016 and also on the decision of Hon'ble Delhi High Court in the case of Spice Infotainment vs CIT in IT Appeal Nos. 475 & 476 of 2011 dated 03/08/2011. We find that this issue is now squarely settled in favour of the assessee by the recent decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. reported in 416 ITR 613 (SC) wherein it was held as under:-

“31. 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 292B. A close reading of the order of this Court dated 6 April 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 292B. Thus, there is no conflict between the decisions in **Spice Entertainment** (supra) on the one hand and **Skylight Hospitality LLP** (supra) on the other hand.

It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows:

"292B. 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 292B.

In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

"170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this

section referred to as the successor) who continues to carry on that business or profession,—

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of 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, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the 99[Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section. Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession"

Now, in the present case, learned Counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144C read with clause (b) of sub section 15. Moreover, it has been urged that in consequence, the final assessment order dated 31 October 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.

32. On behalf of the Revenue, reliance has been placed on the decision of this Court in *CIT v. Jai Prakash Singh* [1996] 85 Taxman 407/219 ITR 737. That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in *Chatturam v. CIT* [1947] 15 ITR 302 (FC) holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice : the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in *Maharaja of Patiala v. CIT* [1943] 11 ITR 202 (Bom.) ("**Maharaja of Patiala**"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness...late Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in **Jai Prakash Singh** (supra) held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. **Jai Prakash Singh** (supra) and the two decisions that it placed reliance upon were evidently based upon the specific facts. **Jai Prakash Singh** (supra) involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the assessing officer. Similarly, the

decision in **Maharaja of Patiala** (*supra*) was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity.

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 Enfotainment** (*supra*) on 2 November 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** (*supra*).

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.

35. For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.”

3.4. Since the issue is decided by the Hon'ble Apex Court there is no need to adjudicate the various case laws of Hon'ble High Courts and Tribunals relied upon by both sides.

3.5. In view of our observations in the facts and circumstances of the case and respectfully following the decision of Hon'ble Supreme Court *supra*, we hold that assessment made for the A.Y.2010-11 in the name of

non-existent entity is void abinitio and deserves to be quashed as it is passed in the name of non-existent entity. Accordingly, the ground No.12 raised by the assessee is allowed.

3.6. Since ground No.12 raised by the assessee on legal issue is decided in favour of the assessee, the adjudication of other grounds becomes infructuous.

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

Order pronounced in the open court on this 15/10/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

15/10/2019

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai