Tax Alert M&A

Supreme Court upholds validity of assessment order passed in the name of amalgamating company post amalgamation taking into consideration factual aspects

Recently, the Supreme Court, in the case of M/s. Mahagun Realtors Private Limited[1] (MRPL) has upheld the validity of the assessment order in the name of amalgamating entity, although it ceases to exist pursuant to amalgamation. The ruling of the SC in the case of Maruti Suzuki[2] was distinguished on facts as the order, in that case, was passed only in the name of amalgamating company as against in the name of both companies in the current case.

Brief Facts

MRPL (assessee) was amalgamated with Mahagun India Private Limited (MIPL) by order of the High Court dated 10 September 2007 with effect from 1 April 2006. The sequence of events (along with dates) in relation to the proceedings under consideration are under:

- Survey proceedings were conducted on 20 March 2007 and some discrepancies were noticed and consequently, a search and seizure was carried out on 27 August 2008 on MRPL.
- On 2 March 2009, tax authorities issued notice to the assessee to file a return of income for 2006-07 under Section 153A of the Act. On failure by the assessee to file the return of income, the Assessing Officer (AO) issued a show cause notice on 18 May 2009 under Section 276CC of the Act.
- In response to the show cause notice issued, MRPL eventually filed the return of income on 28 May 2010, considering the particulars of MRPL.
- An assessment order was issued on 11 August 2011, which showed the assessee as MRPL represented by MIPL. Certain additions were made in the assessment order.
- Commissioner of Income Tax (Appeals) [CIT(A)] granted partial relief. The ITAT accepted the objection filed by the assessee before that the proceedings were invalid on the ground of their non-existence at the time of making the assessment.
- On further appeal, the Delhi High Court also ruled in the assessee's favor by relying on the Supreme Court ruling in the case of Maruti Suzuki India Limited.
- Tax authorities had appealed against this judgment before Supreme Court.

Issues for Consideration before Supreme Court

Whether conducting the assessment proceeding in the name of the amalgamating company post amalgamation valid?

Assessee's Contentions

- The assessee submitted that on the sanction of the amalgamation scheme, MRPL stood dissolved as per Section 394 of the Companies Act, 1956 and cannot be considered as a 'person' under Section 2(31) of the Income-tax Act, 1961 (Act).
- So, the assessment order issued stands null and invalid as per the assessee as issued in the name of MRPL, which is a non-existent entity. Reliance in this regard was placed on the Supreme Court's decision in the case of Saraswati Industrial[3].
- As per the provisions of Section 170(2) of the Act (liability of a successor), the assessment framed in the name of amalgamating company is invalid. Once the amalgamation is effective, the notice has to be issued in the name of the amalgamated company. Reference was made to the Supreme Court decision in the case of Maruti Suzuki and the Delhi High Court decision in the case of Spice Infotainment[4].

1. Mahagun Realtors (P) Ltd [TS-248-SC-2022]
2. Principal Commissioner of Income Tax v. Maruti Suzuki India Limited (2019) SCC Online SC 928
3. Saraswati Industrial Syndicate Ltd. v. CIT [1990] 186 ITR 278/53 Taxman 92 (SC)
4. Spice Infotainment Ltd. v. CIT [2012] 247 CTR (Del.)

Tax Authority's Contentions

- The assessment order issued should be considered valid as it was issued in the names of both the companies, i.e., MRPL and MIPL. Thus, such mistakes are curable.
- The amalgamated company duly represented the amalgamating or transferor company and no prejudice was caused to any of the parties by the assessment order.
- In the Maruti Suzuki decision, the Supreme Court rejected the tax authority's appeal on the ground that the final assessment order referred only to the name of the amalgamating company and there was no mention of the amalgamated company.
- Furthermore, in the Maruti Suzuki decision, the revenue was duly informed about the merger and change in the name of the company and still, the order was passed in the name of the amalgamating company. However, in this case, the merger was not informed at any stage of the proceedings.

Supreme Court's Decision

The Supreme Court observed as under:

- The amalgamation scheme is different from winding up. While the outer shell of the entity is destroyed in case of amalgamation, the corporate venture continues.
- Referring to a specific provision of Section 2(1A) and other amalgamation related provisions, Section 394 of the Companies Act and several income tax decisions on the matter, the combined effect is, in case of amalgamation, the business, enterprise and undertaking of the amalgamating company continue. Therefore, unlike winding up, there is no end to the enterprise with the entity.
- The decision in the case of Saraswati Industrial and decisions following it have not considered the provision of Section 2(1A) and other amalgamation-specific provisions. Saraswati Industrial decision relates to the year when the specific definition of the term 'amalgamation' did not exist under the Act.
- It factually distinguished the facts of the case of Maruti Suzuki and Spice Infotainment as there was no intimation to tax authorities in the present case. The assessee complied throughout the proceedings without any disclosure/intimation of the fact of the merger. Furthermore, in the present case, the assessment order was in the name of both the companies,i.e., MRPL and MIPL. Furthermore, in the referred cases, the amalgamated companies had participated in the proceedings before the department, and the Courts held that the participation by the amalgamated company would not be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL itself.
- It further observed that there was a clause in the scheme which provided that MRPL's liability would devolve in MIPL. Furthermore, the return of income filed by MRPL did not mention the fact of amalgamation. There was no revision of the return of income post amalgamation.
- The appeal before CIT(A) and ITAT was filed in the name of MRPL, from this conduct, the Supreme Court determined that MRPL itself held to be the assessee.
- Relying on the above-stated judicial precedents, the Supreme Court held that the notice issued in the name of MRPL stands valid, and the matter was restored back to the Income Tax Tribunal for deciding on the merits of the appeal.

Our Comments

The Supreme Court, through this decision, has held that the validity of an assessment order in the name of the amalgamating company depends upon the terms of the amalgamation and the facts of each case. The Supreme Court has laid a principle that an amalgamation scheme is different from winding up. In case of an amalgamation, while the outer shell of the entity is destroyed, the corporate venture continues to exist.

While rendering the decision, it has distinguished the earlier Supreme Court decisions, which as a principle, had held assessment proceedings in the name of amalgamating company to be invalid. The distinguishing factor is an intimation of the fact of the merger by the assessee to the tax authorities. This is an important aspect to be noted by the taxpayers contemplating or undergoing merger exercises. Further, due disclosures should be made in the communications to the tax authorities, return forms, other income tax filings, etc., about the merger.

The decision relates to the amalgamation scheme sanctioned as per the provisions of the Companies Act, 1956. Under the present company law provisions (Companies Act, 2013), there is a specific requirement of intimating the tax authorities and providing them with an opportunity to raise objections to the amalgamation scheme. Thus, a question would arise as to whether this would have a bearing on the principle laid down in the decision. In our view, it should not, as the opportunity to object to a scheme is prior to the same receiving sanction of the National Company Law Tribunal (NCLT). There is no assurance that a scheme would receive accord at that stage. There is a possibility of the same getting rejected. Thus, when a scheme has been sanctioned, the same has to get intimated to the tax authority.

About Nexdigm

Nexdigm is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services, that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm is of utmost importance, and we are ISO/ISE 27001 certified for information security and ISO 9001 certified for quality management.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications.

Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to ***Think Next***.

USA Canada Poland UAE India Hong Kong Japan

www.nexdigm.com

Reach out to us at ***ThinkNext@nexdigm.com***

Follow us on

Listen to our podcasts on all major platforms