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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment delivered on: 21.11.2024***

\+ W.P.(C) 7391/2024 & CM APPL. 30899/2024 (Interim Relief)

HCL INFOSYSTEMS LTD. .....Petitioner

Through: Mr. Puneet Agrawal, Mr. Yuvraj Singh, Mr. Prem Kandpal, Mr. Yash Bhardwaj & Mr. Chetan Kumar Shukla, Advs.

versus

COMMISSIONER OF STATE TAX & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr. Ankit Gupta & Mr. Mayank Kamra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. This writ petition impugns the **Show Cause Notice**[1] dated 03 December 2023 as also a final order dated 27 April 2024 purporting to be under Section 73 of the **Central Goods and Services Tax Act, 2017**[2] and raising a demand in the name of "Digilife Distribution and Marketing Services Limited".

2. From the disclosures which are made on the writ petition, we

[1] SCN
[2] CGST Act

gather that a **Scheme of Arrangement**[3] was formulated between Digilife Distribution and Marketing Services Limited and the petitioner/HCL Infosystems Limited. For the sake of brevity, we would hereinafter refer to Digilife Distribution and Marketing Services Limited as the "Amalgamating Company" and the petitioner/HCL Infosystems Limited as the "Amalgamated Company".

3. The Scheme ultimately came to be approved by the **National Company Law Tribunal**[4] in term of its order of 10 August 2022. The appointed date specified in that Scheme was 01 April 2022. Pursuant to the aforesaid Scheme coming to be approved, both the Amalgamating Company as well as the petitioner informed and apprised the Registrar of Companies of the factum of the Scheme having come to be duly approved.

4. On 12 October 2022, the Amalgamating Company moved an application for cancellation of its existing registration citing the reason for the filing of that application as being "*transfer of business on account of amalgamation, merger, demerger, sale*". It was during the pendency of consideration of the aforesaid application that the respondents issued an acknowledgement of the same and suspended the **Goods and Services Tax**[5] registration of the Amalgamating Company with effect from 12 October 2022. This becomes apparent from the communication which stands placed on our record as Annexure P/8.

5. Of equal significance is the filing made by the petitioner on the

[3] Scheme
[4] NCLT
[5] GST

same date in Form GST ITC-02 together with a certificate of a Chartered Accountant seeking transfer of the Input Tax Credit standing in the account of the Amalgamating Company to the petitioner. Although and according to writ petitioner, the respondents were duly apprised of the Scheme having been approved and the Amalgamating Company thus having ceased to exist, a SCN in the name of the Amalgamating Company came to be issued by the respondents on 29 September 2023 for **Financial Year**[6] 2017-2018.

6. On receipt thereof, the petitioner submitted a reply dated 16 November 2023, again apprising the second respondent of the Scheme which had come to be approved by the NCLT as well as the fact that the Amalgamating Company could no longer be viewed as existing in law. This fact was again brought to the attention of the respondents by way of a further detailed reply which was submitted on 16 February 2024.

7. At this juncture, it would be apposite to note that the proceedings for FY 2017-2018 were dropped on the merits of the case. However, and notwithstanding those disclosures having been duly made, the second respondent proceeded to issue yet another SCN in the interregnum, for FY 2018-2019 on 03 December 2023. This notice too was in the name of the Amalgamating Company.

8. Despite the petitioner, thus, having clearly and in unequivocal terms informed and having apprised the respondents that Digilife Distribution and Marketing Services Limited could no longer be viewed as existing in law, the respondents proceeded to frame a final

[6] FY

order on 27 April 2024 in the name of the Amalgamating Company.

9. Dealing with an identical situation albeit under the **Income Tax Act,1961**[7], we had in a recent pronouncement in **International Hospital Limited v. DCIT Circle 12 (2)**[8] held as follows:-

> **"13.** According to the writ petitioners, the challenge on grounds noticed above is no longer res integra and stands conclusively answered by the Supreme Court in *Maruti Suzuki*. It becomes pertinent to note that the judgment of the Supreme Court in *Maruti Suzuki* had come to be rendered on an appeal which arose from a judgment of this Court and which while upholding the decision rendered by the Tribunal had held that an assessment made in the name of **Suzuki Powertrain India Ltd.**, and which had evidently under an approved Scheme amalgamated with **Maruti Suzuki India Ltd.**, was a nullity. On facts it emerged that MSIL had duly intimated the AO of the amalgamation prior to the case being selected for scrutiny assessment. Notwithstanding that information being available, the AO appears to have framed a draft assessment order in the name of SPIL.
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> **14.** It was in the aforesaid backdrop that the Supreme Court firstly took note of an earlier decision of this Court in *Spice Entertainment Ltd.* v. *Commissioner of Service Tax*, where it had been held that an assessment made in the name of a transferor company would be *void ab initio* and could not possibly be viewed as a procedural defect curable or rectifiable under Section 292B of the Act.
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> xxxx xxxx xxxx
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> **18.** Arguments flowing on lines similar to those which were addressed before us in this batch appear to have been urged before the Supreme Court in *Maruti Suzuki* with it being argued that a notice in the name of a company which stood dissolved would be a curable mistake and that in any case, Section 170 of the Act would save those notices. This becomes apparent from a reading of

[7] IT Act
[8] 2024 SCC OnLine Del 6730

paragraphs 32 and 33 of the report which are extracted hereinbelow:

> "**32.** 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 292-B. A close reading of the order of this Court dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147], 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 292-B. Thus, there is no conflict between the decisions in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on the one hand and *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] on the other hand. It is of relevance to refer to Section 292-B of the Income Tax Act which reads as follows:
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> "**292-B.** ***Return of income, etc., not to be invalid on certain grounds***.—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 292-B.

33. 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. Succession to business otherwise than on death**.—

(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 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."

19. The Supreme Court in *Maruti Suzuki* ultimately held:

"**36.** 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 coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on 2-11-2017. The decision in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] 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* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353].

37. 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 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 20122013. 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."

20. As is evident from the above, *Maruti Suzuki* came to affirm the view which was expressed by this Court in *Spice Entertainment*. The Court in *Spice Entertainment* had identified the principal question to be whether the provisions of Section 292B could be invoked to salvage a situation where an assessment comes to be framed in the name of the transferor company. The Court was called upon to examine whether such an order of assessment would be a nullity or one which could be viewed as suffering from a procedural defect which could be validated by invoking Section 292B. Dealing with this aspect, the Court in *Spice Entertainment* had observed as follows:—

"**8.** A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. This position is even accepted by the Tribunal in para-14 of its order extracted above. Having regard this consequence provided in law, in number of cases, the Supreme Court held that assessment upon a dissolved company is impermissible as there is no provision in Income-Tax to make an assessment thereupon. In the case of *Saraswati Industrial Syndicate Ltd.* v. *CIT*, 186 ITR 278 the legal position is explained in the following terms:

"The question is whether on the amalgamation of the Indian Sugar Company with the appellant Company, the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under

Section 391 read with Section 394 of the Companies Act. The Saraswati Industrial Syndicate, the trans free Company was a subsidiary of the Indian Sugar Company, namely, the transferor Company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee Company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that Company incurred or it could incur, any liaiblity, before the dissolution or not thereafter.

Generally, where only one Company is involved in change and the rights of the share holders and creditors are varied, it amounts to reconstruction or reorganisation or scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or amalgamation has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the share holders of each blending Company become substantially the share holders in the Company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new Company, or by the transfer of one or more undertakings to an existing Company. Strictly amalgamation does not cover the mere acquisition by a Company of the share capital of other Company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See *Halsburys Laws of England* 4th Edition Vol. 7 Para 1539. Two companies may join to form a new Company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third Company or one is absorbed into one or blended with another, the amalgamating Company loses its entity."

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21. A few years after *Spice Entertainment*, a similar question arose yet again in *Sky Light Hospitality*. Our Court on that occasion came

to the conclusion that the mistake in that particular case was a technical error which could be attended to and saved by virtue of Section 292B of the Act. However, and as the Supreme Court itself had an occasion to note in *Maruti Suzuki*, the Court while coming to hold that Section 292B would apply, had pertinently observed that the material on record was indicative of the Revenue having always intended the notice to be addressed to the successor entity. It becomes pertinent to note that the Court in *Sky Light Hospitality* had alluded to *"substantial and affirmative material and evidence on record"* which indicated that the issuance of the notice in the name of the dissolved entity was a mistake. In arriving at that conclusion, it had not only borne in consideration the material which existed on the record as also the tax evasion report which had duly taken note of the conversion of the Private Limited Company into an LLP. It is thus apparent that Sky Light Hospitality came to be rendered in its own peculiar facts. It was in the aforesaid factual backdrop that the Supreme Court in *Maruti Suzuki* ultimately came to hold that there was no apparent conflict between *Spice Entertainment* and *Sky Light Hospitality* with the latter turning upon its individual facts.

22. However, the sheet anchor of the submission of the respondents was, as noticed in the prefatory parts of this decision, the judgment in *Mahagun Realtors.* However, and as was noticed by a Division Bench of our Court in *Commissioner of Income Tax* v. *Sony Mobile Communications India Pvt. Ltd.*, and which decision we shall advert to a little later, that decision of the Supreme Court itself turned upon the facts of that particular case.

23. In *Mahagun Realtors*, while expounding upon the effect of merger of two corporate entities consequent to a Scheme of Arrangement being sanctioned, the Supreme Court pertinently observed:—

> "**18.** Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues - enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the transferee-company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil

law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease-depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall."

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27. After copiously taking note of the disclosures which were made in the course of assessment, it found that the following salient facts emerged in the case of *Mahagun Realtors*:—

"**40.** The facts of the present case are distinctive, as evident from the following sequence:

"1. The original return of MRPL was filed under section 139(1) on June 30, 2006.

2. The order of amalgamation is dated May 11, 2007 - but made effective from April 1, 2006. It contains a condition-clause 2 - whereby MRPL's liabilities devolved on MIPL.

3. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised returns was March 31, 2008, after the amalgamation order.

4. A search and seizure proceeding was conducted in respect of the Mahagun group, including the MRPL and other companies:

(i) When search and seizure of the Mahagun group took place, no indication was given about the amalgamation.

(ii) A statement made on March 20, 2007 by Mr. Amit Jain, MRPL's managing director, during statutory survey proceedings under section 133A, unearthed discrepancies in the books of account, in relation to amounts of money in MRPL's account. The specific amount admitted was Rs. 5.072 crores, in the course of the statement recorded.

(iii) The warrant was in the name of MRPL. The directors of MRPL and MIPL made a combined statement under section 132 of the Act, on August 27, 2008.

(iv) A total of Rs. 30 crores cash, which was seized - was surrendered in relation to MRPL and other transferor companies, as well as MIPL, on August 27, 2008 in the course of the admission, when a statement was recorded under section 132(4) of the Act, by Mr. Amit Jain.

5. Upon being issued with a notice to file returns, a return was filed in the name of MRPL on May 28, 2010. Before that, on two dates, i.e., July 22/27, 2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for the assessment year 2007-2008 (for which separate proceedings had been initiated under section 153A) and not for the assessment year 2006-2007.

6. The return specifically suppressed - and did not disclose the amalgamation (with MIPL) - as the response to query 27(b) was 'N.A.'.

7. The return - apart from specifically being furnished in the name of MRPL, also contained its permanent account number.

8. During the assessment proceedings, there was full participation-on behalf of all transferor companies, and MIPL. A special audit was directed (which is possible only after issuing notice under section 142). Objections to the special audit were filed in respect of portions relatable to MRPL.

9. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending March 31, 2006, in the cross objection before the Income-tax Appellate Tribunal, for the first time (in the appeal preferred by the Revenue), an additional ground was urged that the assessment order was a nullity because MRPL was not in existence.

10. Assessment order was issued - undoubtedly in relation to MRPL (shown as the assessee, but represented by the transferee company MIPL).

11. Appeals were filed to the Commissioner of Income-tax (and a cross-objection, to the Income-tax Appellate Tribunal) - by MRPL 'represented by MIPL'.

12. At no point in time - the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities, taken over by MIPL.

13. The counter-affidavit filed before this court - (dated November 7, 2020) has been affirmed by Shri. Amit Jain S/o Shri. P. K. Jain, who-is described in the affidavit as 'Director of M/s. Mahagun Realtors (P.) Ltd., R/o…'.""

28. It was on the aforesaid set of facts that it ultimately came to hold as under:

"**41.** In the light of the facts, what is overwhelmingly evident - is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the Revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the Commissioner of Incometax, and a cross-appeal was filed before the Income-tax Appellate Tribunal. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The Assessing Officer, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home D'cor Pvt. Ltd.). The mere choice of the Assessing Officer in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i. e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order - and section 394(2). Furthermore, it would be

anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the Assessing Officer is, in this court's opinion in consonance with the decision in Marshall and Sons (supra), which had held that:

"an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee company."

42. Before concluding, this court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.

43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside. Since the appeal of the Revenue against the order of the Commissioner of Income-tax was not heard on the merits, the matter is restored to the file of the Income-tax Appellate Tribunal, which shall proceed to hear the parties on the merits of the appeal - as well as the cross objections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs."

29. As is apparent from the aforesaid extracts, what appears to have weighed upon the Supreme Court in *Mahagun Realtors* was a deliberate attempt on the part of the successor assessee to misrepresent and perhaps an evident failure to make a candid and full disclosure of material facts. The Court in *Mahagun Realtors* noticed that even though the factum of amalgamation was known to the assessee, it failed to make appropriate disclosures either at the time of search or in the statements which came to be recorded in connection therewith. Even the Return of Income which came to be filed had suppressed the factum of

amalgamation. It also bore in consideration that the Return itself was submitted in the name of the amalgamating entity. It was that very entity in whose name further appeals came to be instituted. It was in the aforesaid backdrop that the Supreme Court was constrained to observe that the conduct of the assessee was evidence of it having held itself out to be the entity which had ceased to exist in the eyes of law coupled with an abject failure on its part to have made a complete disclosure.

30. These distinguishing features which imbue *Mahagun Realtors* were succinctly noticed in *Sony Mobile Communications* with the Court observing as under:—

> "**22.** As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:
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> (i) There was no intimation by the assessee regarding amalgamation of the concerned company.
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> (ii) The return of income was filed by the amalgamating company, and in the "business reorganisation" column, curiously, it had mentioned "not applicable".
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> (iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.
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> (iv) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated-company.
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> (v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company, i.e., the amalgamating company was in existence.
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> 23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.
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> 24. As noticed above, even after the Assessing Officer was informed on December 6, 2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued to obtain, even after the Dispute Resolution Panel had made course correction.

> 25. Thus, for the foregoing reasons, we are unable to persuade ourselves with the contention advanced on behalf of the appellant Revenue, that this is a mistake which can be corrected, by taking recourse to the powers available with the Revenue under section 292B of the Act."

> **31.** We thus find ourselves unable to read *Mahagun Realtors* as a decision which may have either diluted or struck a discordant chord with the principles which came to be enunciated in *Maruti Suzuki*. We also bear in mind the indisputable position of both judgments having been rendered by co-equal Benches of the Supreme Court. *Mahagun Realtors* is ultimately liable to be appreciated bearing in mind the peculiar facts of that case including the conduct of the assessee therein. It was those facets which appear to have weighed upon the Supreme Court to hold against the assessee.
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> **32.** In view of the aforesaid, the position in law appears to be well-settled that a notice or proceedings drawn against a dissolved company or one which no longer exists in law would invalidate proceedings beyond repair. *Maruti Suzuki* conclusively answers this aspect and leaves us in no doubt that the initiation or continuance of proceedings after a company has merged pursuant to a Scheme of Arrangement and ultimately comes to be dissolved, would not sustain."

10. In *International Hospital*, we also had an occasion to deal with the canvassed and perceived distinction between the principles which had been enunciated by the Supreme Court in **Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki (India) Limited**[9] and the stand of the respondents there that the dictum in *Maruti Suzuki* stood diluted by virtue of the subsequent judgment handed down by the Supreme Court in **Principal Commissioner of Income Tax (Central)-2 v. Mahagun Realtors (P) Ltd**[10]. This perception stands duly dispelled in light of the aforesaid observations which appear in *International Hospital*.

[9] (2020) 18 SCC 331
[10] 2022 SCC OnLine SC 407

11. The law would thus have to necessarily be recognised to be that which had come to be enunciated by the Supreme Court in *Maruti Suzuki*, namely, of all proceedings taken against a company which had come to merge with another being rendered void and a nullity. We had also and on a due consideration of the factual position which had obtained in *Mahagun Realtors* found that the same turned on its own peculiar facts and where the assessee had deliberately misled the authorities. It was in those peculiar facts that the Supreme Court had ultimately held against the assessee in *Mahagun Realtors*.

12. We also bear in mind the conclusion rendered by the Supreme Court in the case of *Maruti Suzuki* and which had on a construction of Section 292B of the IT Act held that a notice or order framed in respect of a non-existent entity would not be rectifiable in terms of that provision. We find that the CGST Act incorporates a provision which is *pari materia* to Section 292B and which is Section 160.

13. Learned counsel for the petitioner has placed for our consideration a comparative table from which it becomes apparent that Section 160 proceeds on lines identical and similar to Section 292B of the IT Act. That table is extracted hereinbelow:-

Income Tax Act, 1961	**Goods and Services Tax Act, 2017**
292B. – Return of income, etc., not to be invalid on certain grounds. No return of income, assessment, notice, summons or other proceeding, furnished or	**160. – Assessment proceedings, etc., not to be invalid on certain grounds.-** (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have

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.	been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes or requirements of this Act or any existing law. (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.

14. We are, thus, of the firm opinion that even the powers conferred by Section 160 upon the respondents under the CGST Act would not come to their rescue or enable them to salvage the notice as well as the final order which has come to be passed.

15. That only leaves us to examine a submission addressed by Mr. Aggarwal, learned counsel appearing for the respondents, who had invited our attention to Section 87 of the CGST Act. That provision reads as follows-

> **"87. Liability in case of amalgamation or merger of companies**.—(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each

> other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
>
> (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order."

16. As is manifest from the above, Section 87 essentially seeks to preserve and identify the transactions which may have occurred between two or more companies which ultimately amalgamate and merge. In order to fix the liabilities that would accrue under the CGST Act and to avoid a contention being raised that the Amalgamating Company and transactions undertaken with it would no longer be subject to tax, the Legislature, *ex abundanti cautela*, has come to place Section 87 on the statute book and which bids us to bear in mind that notwithstanding an order of amalgamation or a scheme of merger coming to be approved, for the purposes of the CGST Act, the two entities would be treated as a distinct companies for the period up to the date of the order of the competent court or tribunal approving the scheme and the registration certificate of the companies being cancelled.

17. We thus find ourselves unable to read Section 87 as enabling the respondents to either continue to place a non-existent entity on notice or for that matter to pass an order of assessment referable to Section 73 against such an entity. In fact, in terms of Section 87, the liabilities of the non-existent company would in any case stand

transposed to be borne by the amalgamated entity. This is, therefore, not a case where the Revenue would stand to lose or be deprived of their right to subject transactions to tax.

18. In our considered opinion, the principles that we had identified in *International Hospital* albeit in the context of the IT Act would equally apply to the CGST Act.

19. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the impugned SCN dated 3 December 2023 as well as the impugned order dated 27 April 2024.

20. We leave it open to the respondents to draw such proceedings as may be otherwise permissible in law.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 21, 2024
Ch