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Supreme Court rules assessment raised in name of nonexistent entity is invalid

Decision reinforces importance of principles of consistency, uniformity and certainty

In a 25 July 2019 [decision](#), India's Supreme Court held that an assessment issued in the name of an entity that had ceased to exist following a subsequent amalgamation was invalid.

Facts of the case

Suzuki Powertrain India Limited (SPIL) is a joint venture between Suzuki Motor Corporation and Maruti Suzuki India Limited (MSIL). The sequence of events is as follows:

- On 28 November 2012, SPIL filed an income tax return for assessment year (AY) 2012-13 in its own name (the amalgamation had not yet taken place).
- On 29 January 2013, the High Court approved an amalgamation between SPIL and MSIL, with retroactive effect from 1 April 2012.
- On 2 April 2013, MSIL advised the Indian assessing officer (AO) of the amalgamation.
- On 26 September 2013, the return filed by SPIL was selected for scrutiny
- On 22 January 2016, the transfer pricing officer issued an order determining the arm's length price for royalties at 3% and making an adjustment of INR 789.7 million in respect of the royalties paid by SPIL in the previous year.
- On 11 March 2016, a draft assessment order was issued in the name of SPIL (amalgamated with MSIL). MSIL participated in the assessment proceedings of the amalgamating entity (SPIL), via its authorized representatives and officers.
- On 12 April 2016, MSIL filed an application before the Dispute Resolution Panel (DRP) as the successor of SPIL, which had subsequently amalgamated.
- On 14 October 2016, the DRP issued its order in the name of MSIL (as the successor to SPIL).
- On 31 October 2016, the final assessment order was passed in the name of SPIL (amalgamated with MSIL).

In the appeal before the Delhi Bench of the Income Tax Appellate Tribunal (ITAT), MSIL argued that because the assessment proceedings had been continued in the name of the nonexistent or merged entity SPIL, the final assessment order (also issued in the name of a nonexistent entity) would be invalid.

Decisions of the ITAT and the High Court

The ITAT held that the assessment issued in the name of SPIL was null because the entity had been amalgamated with MSIL under an approved amalgamation and did not exist. The Delhi High Court upheld the ITAT's order following its own earlier decision in the case of MSIL for AY 2011-12. The Principal Commissioner of Income Tax filed a special leave petition (SLP) against the High Court's decision to the Supreme Court and asked that court to rule on whether a procedural irregularity resulting from an assessment issued to a nonexistent entity (due to an amalgamation), that otherwise would be deemed invalid, may be remedied by invoking the provisions of section

292B of the Income-tax Act, 1961 (ITA). Under section 292B, an income tax return, assessment, notice, summons or other proceeding is not invalid or deemed invalid merely because of a mistake, defect or omission if the return, etc. is "in substance and effect in conformity with or according to the intent and purpose of" the ITA.

Decision of the Supreme Court

The Supreme Court dismissed the SLP, thereby upholding the decisions of the ITAT and the Delhi High Court, for the following reasons:

- When an amalgamation is approved, the amalgamated company is dissolved without winding up; the amalgamating company ceases to exist in the eyes of the law so it cannot thereafter be regarded as a person against which assessment proceedings can be initiated or an assessment order can be issued.
- The notice, under which the AO assumed jurisdiction to make an assessment, was issued in the name of SPIL, a nonexistent entity, and was invalid. Hence, the initiation of assessment proceedings against a nonexistent entity was void from the outset.
- A previous Supreme Court decision in the case of Skylight Hospitality LLP held that the specific facts of the case (a private limited company converted into an LLP and the names also were similar) were influential in the court's conclusion that there was only a clerical mistake within the meaning of section 292B ITA 61 in the Skylight case.
- The court relied on a previous decision in which it held that where a statutory notice was issued in the name of the amalgamating company subsequent to the amalgamation becoming effective, the entire assessment would be a nullity from a legal perspective.
- The Supreme Court held that it must adopt the same view in respect of the AY 2012-13 appeal as it had in its earlier decision in the MSIL case for AY 2011-12, emphasizing the importance of certainty in tax litigation.

Comments

The Supreme Court observed that the appellant's participation in the proceedings in the circumstances cannot operate as an estoppel against law. Section 292BB of the ITA (providing that in certain circumstances, an assessment will be deemed valid where the assessee has appeared in any proceedings regarding the assessment and any further action by the assessee will be precluded) was not referred to or discussed in the decision. The SC decision sets an important precedent as it attaches significant value to the requirement of consistency, certainty and uniformity in tax.



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