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

\+ **ITA 263/2019**

THE PR. COMMISSIONER OF INCOME TAX -9 ..... Appellant
Through: Mr. Shailendra Singh, Advocate.

versus

TRANSCEND MT SERVICES PVT. LTD. ..... Respondent
Through: (appearance not given)

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 30.07.2019

Dr. S. Muralidhar, J.:

1. The Revenue is in appeal against an order dated 30th November, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.12697/Del/2014 and CO. No. 163/Del/2017 for Assessment Year (AY) 2007-08.

2. The facts in brief are that the Assessee is a subsidiary of Heartland Asia (Mauritius) Limited primarily engaged in the provision of IT enabled services in the area of medical transcription to its parent company in the United States of America and other Associated Enterprises ('AEs').

3. The Assessee filed its return of income for the AY in question on 31st October 2007. The return was picked up for scrutiny under Section 143 of

the Income Tax Act, 1961 ('Act'). As the Assessee had entered into international transactions with its AEs, the Assessing Officer (AO) referred the matter to the Transfer Pricing Officer (TPO) for determination of their Arm's Length Price ('ALP'). The TPO by order dated 25th October, 2010 proposed an adjustment of Rs.1,54,72,764/- on the basis of which a draft assessment order was prepared by the AO under Section 144-C of the Act on 28th December, 2010. Subsequently, a final assessment order was passed on 22nd February, 2011 wherein in addition to the Transfer Pricing (TP) adjustment, the Assessee's claim for deduction under Section 10A of the Act was rejected.

4. The Assessee's appeal was allowed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] on the issue of deduction under Section 10A of the Act. On the issue of the TP adjustment, the CIT (A) directed inclusion of 4 comparables from the final set of comparables and directed the TPO to calculate the ALP accordingly.

5. Aggrieved by the order of the CIT (A), the Revenue filed an appeal ITA No.2697/Del/2014 in the ITAT. The Assessee filed Cross Objection No.163/Del/2017.

6. The Assessee contended before the ITAT that Heartland Delhi Transcription & Services Pvt. Ltd. (HDTS) in whose name the assessment was framed had been amalgamated with Heartland Information & Consultancy Services Pvt. Ltd. (HICS) pursuant to the order dated 25th July 2008 passed by this Court. Further the name of the new amalgamated entity got changed to Transcend MT Services Private Limited (TMTS) i.e. the

Respondent herein. On this basis it was contended by the Assessee that since the AO had on 22nd February 2011 framed the assessment on a company that had ceased to exist from 25th July 2008, the assessment was void *ab initio*.

7. The ITAT, relying on the judgment of this Court in ***Principal Commissioner of Income Tax-6, New Delhi v. Maruti Suzuki India Limited (successor of Suzuki Power Train India limited) (2017) 397 ITR 681 (Del)*** as well as decision of this Court in ***Spice Infotainment v. Commissioner of Income Tax (2012) 247 CTR (Del) 500*** [which was affirmed by the Supreme Court by its order dated 2nd November 2017 in C.A. 285 of 2014 ***CIT, New Delhi v. Spice Enfotainment***] held that the assessment framed by the AO on a non-existent company would be void *ab initio***.** As a result, the ITAT quashed the assessment whilst allowing the cross objections of the Assessee.

8. Learned counsel for the Revenue submitted that the judgement of this Court in ***Principal Commissioner of Income Tax-6 v. Maruti Suzuki India Ltd***. *(supra)* was affirmed by the Supreme Court by an order dated 16th July, 2018 dismissing the Special Leave Petition filed by the Revenue. Nevertheless, he sought to place reliance on the judgment of the Division Bench (DB) of this Court in ***Skylight Hospitality LLP v. ACIT (2018) 505 ITR 296 (Del)*** in which judgment the decision of this Court in ***Spice Infotainment*** (*supra*) was distinguished. Instead the decision in ***CIT v. Jagat Novel Exhibitors Pvt. Ltd. (2013) 356 ITR 559 (Del)*** was followed and it was held that inconsequential defects in the notice would not vitiate the assessment in view of Section 292-B of the Act. He further pointed out

that the SLP filed by the Assessee against the above decision was dismissed by the Supreme Court in ***Skylight Hospitality LLP v. ACIT (2018) 13 SCC 146***. The Supreme Court noted the 'peculiar facts' of the case where 'wrong name was given in the notice' on account of 'merely a clerical error' which could be corrected under Section 292B of the Income Tax Act.

9. Learned counsel for the Assessee appearing on advance notice has placed before this Court the recent judgment dated 25th July, 2019 of the Supreme Court of India in ***Principal Commissioner of Income Tax v. Maruti Suzuki India Limited (2019) 107 taxmann.com 375 (SC).*** By the said judgment, which is an elaborate one, the Supreme Court upheld the decision dated 9th January, 2018 of this Court in ***Principal Commissioner of Income Tax v. Maruti Suzuki India Limited*** which was for the AY 2012-2013, and which in turn followed the earlier decision in ***Principal Commissioner of Income Tax -6 New Delhi v. Maruti Suzuki India Limited*** *(supra)* which was for AY 2011-12. In this judgment, apart from noting a series of orders of this Court which followed the decision in ***Spice Enfotainment*** *(supra)*, the Supreme Court specifically discussed the decision of this Court in ***Skylight Hospitality LLP*** *(supra)*. It noted that the SLP filed by the Assessee therein was dismissed by the Supreme Court in 'the peculiar facts of the case'.

10. The following observations of the Supreme Court in ***Principal Commissioner of Income Tax v. Maruti Suzuki India Limited*** (*supra*) are relevant:

> "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*** on 2nd November, 2017. The decision in ***Spice Enfotainment*** has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-12. In doing so, this Court has relied on the decision in ***Spice Enfotainment***.
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> 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.*"*

11. Learned counsel for the Revenue submitted that the fact that the entity to which notices had been issued and in respect of which the assessment order had been passed had ceased to exist long before the notices were issued and orders passed was brought to the notice of the Department only at the stage of the proceedings before the ITAT, in the cross objections filed by the Assessee, by way of a letter.

12. Learned counsel for the Assessee on the other hand states that this letter was given to the TPO and thereafter to the CIT (A) as well as the ITAT. This fact has been noted in para 6 of the impugned order dated 30th November 2017 of the ITAT.

13. This Court finds that there was indeed a letter dated 19th October, 2008 filed with the AO informing him that pursuant to the order dated 25th July, 2008 of this Court, HDTS had amalgamated with HICS. The certified copy of the above order of this Court had been filed with the Registrar of Companies on 17th September, 2008. It was stated that HDTS had ceased to exist and HICS had taken over the liability. The said information was also given to the CIT (A). Copies of those letters were placed before the ITAT. Despite this, the assessment order was framed on 22nd February, 2011 against the erstwhile company i.e. HDTS.

14. Clearly, therefore, in the present case, unlike the facts of ***Skylight Hospitality*** *(supra)*, there is no question of a mere clerical error warranting invocation of Section 292B of the Act. There the notice had been issued to Skylight Hospitality Pvt. Ltd. whereas the said entity had got converted to a partnership by the name of Skylight LLP. In the present case, however, there is sea change with the original entity against which the assessment was framed viz., HDTS long ceasing to exist at least three years prior thereto, getting amalgamated with HICS and then getting re-named as TMS. The case is squarely covered by the decision of this in ***Principal Commissioner of Income Tax-6 v. Maruti Suzuki*** *(supra)* as well as by the recent judgment of the Supreme Court in ***Principal Commissioner of Income Tax***

v. Maruti Suzuki India Ltd. *(supra).*

15. Thus, there is no legal error committed by the ITAT in the impugned order. No substantial question of law arises for consideration.

16. The appeal is dismissed.

C.M.Nos. 13230-31/2019 (Delay)

17 For the reasons explained in the applications, the delay in filing and re-filing the appeal is condoned. The applications are allowed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 30, 2019
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