



ECONOMIC
LAWS
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RECENT DEVELOPMENTS IN DIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

Chennai Tribunal¹ holds that shares in the Amalgamated Company received by the shareholders of the Amalgamating Company pursuant to amalgamation cannot be treated as 'benefit or perquisite' to be taxed under section 28(iv) of the Income Tax Act, 1961 ('the Act')

FACTS OF THE CASE

- Buhari Holdings Private Limited (**Assessee**) held 29,21,250 shares of Rs. 10 each valued at Rs. 2,92,12,500 in Transcar India Private Limited (**'TIPL' 'Amalgamating Company'**). The Assessee's businesses activities included trading in investments / shares.
- TIPL amalgamated into Kemcos Land Developers Pvt. Ltd. (**'KLDPL' or Amalgamated Company**). Pursuant to the amalgamation, KLDPL issued shares to the shareholders of TIPL in terms of the share exchange ratio of 16 equity shares of KLDPL for every 10 shares in TIPL. Accordingly, assessee received 46,74,000 shares of Rs. 10 each valued to Rs. 4,67,40,000 in KLDPL in lieu of its holding in the Amalgamating Company.
- Assessee credited the incremental value of shares in the Amalgamated Company vis-à-vis the value of shares held in TIPL i.e. Rs. 1,75,27,500 (Rs. 4,67,40,000 minus Rs. 2,92,12,500) to the capital reserve account in its books of account.
- Assessee's case was reopened by the tax authorities under section 147 of the Act (dealing with provisions relating to reassessment).
- The tax authorities taxed the incremental value so credited to the capital reserve account of Rs. 1,75,00,000 as benefit accruing under section 28(iv) of the Act.
- Assessee appealed before Commissioner of Income Tax appeals [**'CIT(A)'**] against the order of the lower tax authorities. CIT(A) being satisfied with the submission of the assessee, deleted the addition made by the lower tax authorities and passed order in favour of the assessee. Consequently, the tax authorities challenged CIT(A) order before the Tribunal.

ASSESSEE'S CONTENTIONS BEFORE TRIBUNAL

- Section 28(iv) of the Act is not applicable as merely the existing shares in the amalgamating company were converted into the shares in the amalgamated company.
- Increase in value of shares is only notional which does not represent any income.
- Assessee relied on the decision of Kolkata ITAT in case of Kyal Developers² where it was held that the benefit accruing to the assessee on account of amalgamation was in the nature of capital transaction and not in the nature of revenue. Therefore, no addition could be made under section 28(iv) of the Act.

TRIBUNAL DECISION

- Tribunal observed that income is taxable under section 28(iv) of the Act when the following conditions are satisfied:
 - There should be benefits or perquisite, and;
 - Such benefits or perquisite should arise from the business or exercise of profession.
- Benefit arising on the amalgamation of companies can only relate to capital field as it relates to non-trading assets of the company.
- Tribunal distinguished assessee's case from the Delhi HC judgement in the case of Nalwa Investments Ltd³, and

¹ M/S. Buhari Holdings Pvt. Ltd. - ITA No. 325/Chny/2024

² M/s Kyal Developers Pvt. Ltd.- ITA No.627/Kol/2012

³ 118 taxmann.com 278(Delhi)

observed that only if such shares were held as stock-in-trade, such transaction would be taxable as normal business income under section 28 of the Act. However, assessee's case is of capital asset.

- The Tribunal held that capital reserve of Rs. 1,75,27,500 could not be considered as benefit accruing to the assessee under section 28(iv) of the Act and decided in favour of the assessee.



ELP Comments

While a tax neutral amalgamation is also considered to be tax neutral for the shareholder of the Amalgamating Company, it is important to take into account the ramifications where such shareholder holds the shares in the Amalgamating Company as stock in trade. It is pertinent to note that the Tribunal's order was silent on one of the assessee's contentions that there is no benefit accruing to the assessee pursuant to the scheme as the same is based on the share swap ratio determined after taking into account the fair values of the merging companies.

Hyderabad Tribunal upholds validity of tax assessments on merged entity having an active PAN

FACTS OF THE CASE

- Microsemi India Private Limited ('MIPL' or 'Amalgamating Company') was amalgamated with Microchip Technology (India) Private Limited ('MTIPL' or 'Amalgamated Company') from the Appointed Date of 1st April 2019.
- Tax authorities issued scrutiny assessment notice under section 143(2) of the Act on the Amalgamating Company on 22nd September 2019.
- Intimations were filed by the Amalgamating Company between March 2021 and April 2021 with the tax authorities to give the effect of merger in the records of the tax authorities.
- Assessee argued that assessment order cannot be passed in the name of Amalgamating Company which is not in existence upon sanctioning of the scheme from the Appointed Date i.e. 1st April 2019. However, the tax authorities passed an assessment order under section 143(3) of the Act in the name of Amalgamating Company on 29th July 2022.
- On being aggrieved by such order, assessee filed an appeal before Tribunal to quash such invalid order.

ASSESSEE'S CONTENTIONS BEFORE TRIBUNAL

- Assessee submitted that there are several past rulings wherein it has been held that assessment order passed in the name of non-existent Amalgamating Company is non-est in the eye of law.

DEPARTMENT'S CONTENTIONS

- Department argued that as the PAN of Amalgamating Company continued to be in existence in the income tax records, assessment order was passed in the name of Amalgamating Company. Reliance was placed on the decision of Hon'ble Supreme Court (SC) in the case of Mahagun Realtors (P.) Ltd⁴.
- Department referred to the submission of the Assessee that the PAN of Amalgamating Company could not be surrendered due to litigations pending against the Amalgamating Company and such surrender could have been done only after the pending litigations are complete and demands against the said PAN are exhausted.

TRIBUNAL DECISION

- Tribunal highlighted the observations of the Hon'ble SC in case of Mahagun Realtors (P.) Ltd. (supra) where the Hon'ble SC held that:
 - In case of amalgamation, unlike the winding up of a corporate entity, only the outer shell of the entity is

⁴ TS-248-SC-2022

destroyed, the corporate venture continues unfolded within the transferee entity.

- business and the adventure lives on but within a new corporate residence, namely, the transferee company. Therefore, it is essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings.
- In light of the observations of the Hon'ble SC, Tribunal held that if a company exists for the purpose of some litigation, it exists for the purpose of tax litigation also.
- Based on the aforesaid SC decision, Tribunal concluded that the Amalgamating Company would remain in existence for the purpose of tax litigation despite losing its identity post merging into the Amalgamated Company.



ELP Comments

The judgement highlights the importance of surrender of PAN of the Amalgamating Company upon conclusion of a Scheme of Amalgamation. Typically, in a Scheme of Amalgamation, all kinds of pending litigations of the Amalgamating Company get transferred to the Amalgamated or the surviving Company. Accordingly, the surviving Company steps into the shoes of the Amalgamating Company to sue or be sued, as the case may be.

Interestingly, the facts in the case of Mahagun Realtors (Supra) slightly differ from the present case to the extent that in case of Mahagun Realtors, tax authorities passed the assessment order mentioning the names of both companies i.e Amalgamating and Amalgamated Company whereas in the present case, order was passed in the name of Amalgamating Company ('MIPL') only. Further the assessee had not intimated the tax authorities regarding the amalgamation whereas in the present case, Amalgamating Company (MIPL) had filed intimations with the tax authorities about effectiveness of the Scheme of Amalgamation.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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