आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

<u>आयकर अपील सं. / ITA No. 322/PUN/2021</u>
<u>निर्धारण वर्ष / Assessment Year : 2016-17</u>

Cognizant Technology Solutions India Private Limited
(As a successor in interest of TriZetto Services India Private Limited)
6th, 7th & 8th Floor, Menon Eternity Building,
New No.165, Old No.110, St. Mary's Road,
Alwarpet, Chennai-600 018
PAN : AABCT8862F

.......अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
TP-2(2), Pune

......प्रत्यर्थी / Respondent

Assessee by	:	Shri Rajendra Agiwal
Revenue by	:	Shri Piyush kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing	:	09.12.2021
घोषणा की तारीख / Date of Pronouncement	:	13.12.2021

<u>आदेश / ORDER</u>

<u>PER PARTHA SARATHI CHAUDHURY, JM:</u>

This appeal preferred by the assessee emanates from the order of the Ld. Dispute resolution Panel (DRP) u/s.144C(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2016-17 dated 17.02.2021 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that this appeal is time barred by 75 days. The Ld. Counsel further stated that the Hon'ble Supreme Court in **Civil Original Jurisdiction, Suo Moto Writ Petition (Civil) No.3 of 2020 dated 8th March, 2021** has taken note on COVID situation and limitation prevailing in the given circumstances. He also submitted that the delay in filing appeal has been caused because of such prevailing circumstances due to pandemic and it is neither deliberate nor intentional on the part of the assessee and hence, it may be condoned. The Ld. DR has also conceded to submissions of the assessee and did not raise any objection in condoning the delay. We have perused the directions of the Hon'ble Supreme Court (supra.) and abiding by the said directions, in the given facts and circumstances, we have appreciated that this delay on the part of the assessee is neither deliberate nor intentional. We, therefore, condone the delay and proceed to hear the appeal on merits.

3. The Ld. Counsel for the assessee thereafter submitted that there is a legal issue involved in this appeal and if they succeed on this legal issue then there would be no need to argue any other grounds filed in the appeal memo. The said legal issue enshrined in **Ground No.2** of the appeal memo which reads as follows:

> *"2. **Procedural irregularity in issuance of final assessment order***
>
> *Erred on the facts and in the circumstances of the case and in law by passing final assessment order in the name of TriZetto Services India Private Limited which is not in existence as on date of passing order, hence, adjustment should be deleted as the order is null and void."*

4. Demonstrating the relevant facts, the Ld. Counsel brought to our notice at Page 719 of the paper book wherein, there is a letter dated 25th October,

2019 addressed by the assessee to the Assessing Officer and the said letter is extracted as follows:

CTS/TAX/132/2019/NV
25 October, 2019

Cognizant
Cognizant Technology Solutions India Private Limited
6th, 7th & 8th Floor, Menon Eternity Building,
New No.165, Old No.110, St. Mary's Road,
Alwarpet, Chennai-600 018, Tamil Nadu
CIN-U72300TN1994PTC026590
Tel. 1-800-208-6999
Fax+914443865510
Email taxteam-india@cognizant.com

Assistant Commissioner of Income –tax
Circle-7, 60/61, Praptikar Sadan,
Erandwana, karve Road,
Pune-411 004

PAN of Cognizant Technology Solutions India Private Limited : AAACD3312M
PAN of Trizetto Services India Private Limited : AABCT8862F

Dear Sir/Madam

Sub : Letter intimating the amalgamation of Trizetto Services India Private Limited ('Trizetto Services' or 'Transfer Company) with Cognizant Technology Solutions India Private Limited ('CTS India or 'Transferee Company"

In connection with the captioned matter, we would like to intimate your goodself that Hon'ble Central Government (represented by the Regional Director, Ministry of Corporate Affairs, Souther Region) has sanctioned the scheme of Amalgamation ('Scheme') of Trizetto Services with CTS India under section 233 of the Companies Act, 2013 vide order dated 06 September 2019 ('the order').

The scheme is effective from 01 April 2018 ('the Appointed date'). A Copy of the order is enclosed as Annexure 1 for your records.

Pursuant to the above order, kindly note that Trizetto Services stands amalgamated with and into CTS India with effect from the Appointed date and has ceased to exist. Accordingly, CTS India will be the successor-in-interest of Trizetto Services with effect from the Appointed date.

In this regard, we request your good-self to take notice of the order and effect necessary changes in your records to note the fact that Trizetto Services is now amalgamated into and with CTS India.

We shall be grateful if you can also do the needful for effecting the transfer of all the tax credits pertaining to Financial Year 2018-19 (AY 2019-20) and Financial Year 2019-20 (AY 2020-21) standing in the name of Trizetto Services to PAN of CTS India (i.e. AAACD3312M)

Assistant Commissioner of Income Tax,
Circle-7, Pune
PAN of the Trizetto Services India Private Limited –AABCT8862F
25 October, 2019

We request you to take the above on record.

We shall be obliged to provide any further information/ clarification that you may require in this regard.
Thanking you
Yours faithfully
For Cognizant Technology Solutions India Private Limited
(As successor-in-interest of Trizetto Services India Private Limited)

Sd/-

Authorized Signatory

Copy to :

1. *Commissioner of Income Tax, Pune*
2. *Deputy Commissioner of Income Tax, Transfer Pricing-2(2), Pune*
3. *Deputy Commissioner of Income Tax, Large Taxpayer Unit-1, Chennai"*

5. In this said letter, the assessee has specifically mentioned that the Government of India, Ministry of Corporate Affairs (SR) has sanctioned the scheme of Amalgamation of Trizetto Services with CTS India under section 233 of the Companies Act, 2013 vide order dated 06 September 2019. The scheme is effective from 01 April 2018 which is the appointed date. Pursuant to the order, Trizetto Services stands amalgamated with and into CTS India with effect from the Appointed date i.e. 01 April, 2018 and after the said amalgamation Trizetto Services has ceased to exist. Accordingly, CTS India will be the successor-in-interest of Trizetto Services with effect from the Appointed date. That as evident, this letter was filed at the office of Assistant Commissioner of Income Tax, Circle-7, Pune as stamped dated 1st November, 2019 and also filed at the office of Pr. Commissioner of Income Tax, IT, Pune as stamped dated 4th November, 2019. The copy of this letter has been given to (1) Commissioner of Income Tax, Pune (2) Deputy Commissioner of Income Tax, Transfer Pricing-2(2), Pune and (3) Deputy Commissioner of Income Tax, Large Taxpayer Unit-1, Chennai.

6. The Ld. Counsel also referred before us the "Scheme of Amalgamation" under which Trizetto Services was amalgamated into and with CTS India which is annexed at Pages 721 to 724 of the paper book and at relevant Para 1.2 at Page 724, it is clearly mentioned that "Appointed Date" from which this scheme of amalgamation shall be operative is 01 April, 2018. The assessee has also annexed at Page 742 of the paper book, the confirmation order of Scheme of amalgamation of Trizetto Services with CTS India issued by Regional Director (SR) dated 06.09.2019, Chennai and the same is extracted as follows:

"CP No.12/5-233/2018-19

FORM NO.CAA.12
[Pursuant to section 233 and rule 25(5)]
Confirmation order of Scheme of amalgamation of
M/s. Valuesource Technologies Private Ltd.;
And
M/s. Trizetto India Private Ltd.;
And
M/s. Trizetto Services India Private Ltd.;
And
M/s. Kbace Technologies Private Ltd.;
With
M/s. Cognizant Technology Solutions India Private Ltd.,

(Pursuant to the provisions of section 233 of the Companies Act, 2013)

M/s. Valuesource Technologies Private Ltd.;(Transferor Company 1)
And
M/s. Trizetto India Private Ltd.; (Transferor Company 2)
And
M/s. Trizetto Services India Private Ltd.; (Transferor Company 3)
And
Kbace Technologies Private Ltd.; (Transferor Company 4)
With
M/s. Cognizant Technology Solutions India Private Ltd.,(Transferee Company)

approved by their respective members and creditors as required under section 233(1)(b) and (d), of the Companies Act, 2013 is hereby confirmed and the scheme shall be effective from the 1st April, 2018 and subject to compliance of Proviso to Sub Section (11) of Section 233 of the Companies Act, 2013 in respect of merger of authorized capital.

A Copy of the approved scheme is attached to this order

Sd/-
(M.R. Bhat)
Regional Director (SR)

Date : 06.09.2019
Place : Chennai

7. Therefore, the Ld. Counsel successfully demonstrated before us that the scheme of amalgamation of the company has taken place effective from 01 April, 2018 after which Trizetto Services has ceased to exist and it is amalgamated with CTS India. This information was duly placed before the Department at its various offices as has been brought to our notice. In spite of the correct information of amalgamation by the assessee, the Department still proceeded to pass relevant orders in respect of assessment in the name of Trizetto Services only. The draft assessment order dated 24.12.2019 was passed in the name of Trizetto Services India Private Limited. The Ld. DRP has dealt with this issue at Page 6, Para 2.2 of their order wherein it has been held as follows:

> ***"2.2. Findings of DRP***
>
> *We have carefully perused the submissions of the assessee. Assessee has stated that Trizetto Services was merged with Cognizant Technology Solutions India Private Limited (CTS India) with effect from 1 April, 2018 and same was communicated to the learned Assessing Officer (AP)/ Transfer Pricing Officer (TPO) vide letter dated 25 October, 2019. However, it is evident that the PAN selected for scrutiny belonged to Trizetto Services and AO/TPO has passed the order through ITBA system. AO/TPO cannot change the PAN or company name in ITBA system while doing assessment irrespective of the fact whether he is aware of it or not. Name of the company is automatically printed on the draft order passed by him. It is not a case where he was passing order manually and had failed to pass it in the correct name. Also, assessment has been done for the FY 2015-16 and the company was in existence in that year. Hence, this ground of objection is rejected. However, we direct the Ld. AO to mention the present name of the company and the name from which it was formerly known, in the final assessment order."*

8. Firstly, the Ld. DRP's order is again addressed to Trizetto Services India Private Limited dated 17.02.2021. However, the important finding of the Ld. DRP wherein they directed the Assessing Officer to mention the present name

of the company and the name from which it was formerly known, in the final assessment order. However, when we peruse the final assessment order dated 27.03.2021 again it is only in the name of Trizetto Services India Private Limited and not in the correct name of CTS India. Therefore, the Ld. DRPs' direction was also not followed by the Assessing Officer while passing the final assessment order.

9. We find the Hon'ble Supreme Court in the case of Maruti Suzuki India Limited by following its own order in batch of Civil Appeals, the lead appeal being Spice Infotainment reported in 247 CTR 500 (Del.) has held that the assessment in the name of a company which has been amalgamated and dissolved is null and void. Further, the Hon'ble Supreme Court held the passing of assessment order against the amalgamating company is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B of the Act. In this case, final assessment order has been passed dated 27.03.2021 in the name of Trizetto Services India Private Limited which has ceased to exist as per Scheme of amalgamation w.e.f. 01 April, 2018 and as has been certified by Confirmation order of Scheme of Amalgamation by Regional Director (SR) dated 06.09.2019, Chennai. All these information was intimated by the assessee to the Department vide letter (supra.) at various offices i.e. the office of Assistant Commissioner of Income Tax, Circle-7, Pune dated 1st November, 2019 and also filed at the office of Pr. Commissioner of Income Tax, IT, Pune dated 4th November, 2019. In spite of these efforts by the assessee for properly intimating the department about the amalgamation and regarding the fact that Trizetto Services has been amalgamated with CTS India and has ceased to exist, still the Department had passed the final assessment order in the name of Trizetto Services. Therefore, as held by the Hon'ble Supreme Court (supra.), the assessment in

the name of a company which has been amalgamated and dissolved has to be declared null and void.

10. That on identical facts and circumstances, the Pune Bench of the Tribunal dealt with this issue in the case of **Garrett Motion Technologies (India) Private Limited Cases, ITA No.443/PUN/2015, ITA No.477/PUN/2016, ITA No.557/PUN/2016 & ITA No.44/PUN/2017 for the assessment year 2010-11, 2011-12 & 2012-13 dated 07.09.2021** wherein it has been held as follows:

> *"8. The ld. AR placed on record legal paper book containing 60 pages, wherein, we note that the Hon'ble Supreme Court in the case of Maruti Suzuki India Limited by following its own order in batch of Civil Appeals, the lead appeal being Spice Infotainment reported in 247 CTR 500 (Del.), which held the assessment in the name of a company which has been amalgamated and dissolved is null and void. Further, the Hon'ble Supreme Court held the passing of assessment order against the amalgamating company is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B of the Act. In the present case, despite the fact that the DCIT/AO was informed of the amalgamating company having ceased to exist in consequence of the approved scheme of amalgamation by the Hon'be High Court of Bombay, the final assessment order and demand notice was issued in its name is against the legal principle that the amalgamating company (Honeywell Turbo (India) Private Limited) ceased to exist upon the approved scheme by the Hon'ble High Court of Bombay. Regarding the participation in the proceedings as contended by the ld. DR, in our opinion, participation in the proceedings by the assessee in such circumstances cannot operate as an estoppels against law, thus, the final assessment as framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which would be cured by invoking the provisions of Section 292B of the Act, thus, in view of the facts and circumstances of the case, the framing of final assessment against a non-existent company goes to the root of the matter which is not a procedural irregularity, but a jurisdictional defect. Therefore, we find force in the arguments of ld. AR in support of additional ground No. 21 challenging the validity of final assessment in the name of non-existent entity and therefore, the final assessment order passed by the DCIT/AO dated 27-02-2015 u/s. 143(3) r.w.s. 144C(13) of the Act is quashed. Thus, the additional ground No. 21 raised by the assessee is allowed."*

11. That on examination of facts and circumstances and on the same parity of reasoning following the ruling of the Hon'ble Supreme Court (supra.), we hold the final assessment order dated 27.03.2021 u/s. 143(3) r.w.s.144C(13)

r.w.s.143(3A) & 143(3B) of the Act as null and void, hence, quashed. The assessee succeeds on this legal ground.

12. Since the assessee succeeds on legal ground, the other grounds raised in grounds of appeal memo becomes academic in nature.

13. In the result, **appeal of the assessee is allowed.**

Order pronounced on 13th day of December, 2021.

Sd/- **R.S.SYAL** **VICE PRESIDENT**	Sd/- **PARTHA SARATHI CHAUDHURY** **JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 13th December, 2021.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **"सी"** बेंच, पुणे / DR, ITAT, "**C**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	08.12.2021	Sr.PS/PS
2	Draft placed before author	13.12.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		