

IN THE INCOME TAX APPELLATE TRIBUNAL “T” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VP AND SHRI GIRISH AGRAWAL, AM

ITA No.3275/Del/2015
(Assessment Year: 2006-07)

Dy. CIT, Circle-2(1)(2) (Intl. Tax.) New Delhi	V s.	M/s. Khaitan Holdings (Mauritius) Ltd. (erstwhile Black Lion Ltd.) C/o. Axis Fiduciary Ltd. 2 nd Floor, The Axis, 26 Cybercity Ebene 722 201, Mauritius
PAN/GIR No. AAECK 8302 J		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Harsh Kapadia (Virtually Present) & Narsingh Nahta
Respondent by	:	Shri Krishna Kumar (Sr. DR)

Date of Hearing	:	14.08.2025
Date of Pronouncement	:	25.08.2025

ORDER

Per Saktijit Dey, VP:

This is an appeal by the Revenue against order dated 29.10.2014, passed by learned Commissioner of Income Tax (Appeals)-10, Mumbai ('Id.CIT(A) for short), pertaining to assessment year (A.Y.) 2006-07.

2. The effective grounds raised by the Revenue are as under:

1. *The Ld. CIT(A) has erred and holding that the proceedings u/s 148 of the Act are void.*
2. *Ld CIT(A) has erred to consider that the assessee did not object to the issue of notice and in fact complied with the notice.*
3. *The CIT(A) did not confront it to the additional evidence of amalgamation to the AO, as required under the provisions of Income-tax Rule 46.*
4. *The Ld. CIT(A) has erred in holding that the Short term capital gains of INR 88,52,46,554 shall not be taxable.*
5. *The Ld CIT(A) has erred in not appreciating the fact that the assessee has used a colourable device only for the purpose of avoiding taxes and therefore it is not liable for treaty benefit.*

3. The crucial issue, which needs to be addressed at the very outset is, with regard to the decision of learned First Appellate Authority on the validity of the impugned assessment order.

4. Briefly stated, the facts of the case are, the assessee hitherto is a non-resident corporate entity and is a tax resident of Mauritius. Earlier, there was a company in the name and style M/s. Black Lion Ltd. (BLL) incorporated in Mauritius. This company amalgamated/merged with M/s. Khaitan Holdings (Mauritius) Limited, the present assessee, w.e.f. 31.03.2012. However, proceedings u/s. 147 of the Act was initiated in the name of BLL for the impugned assessment year and on 26.03.2013 the Assessing Officer (AO) issued a notice u/s. 148 of the Act in the name of BLL. The assessee objected to the reassessment proceedings on various grounds vide letter dated 14.02.2014. The A.O. disposed of the objections vide order dated 12.03.2014, rejecting assessee's contentions. Ultimately, the A.O. completed the assessment u/s. 144C(3) r.w.s. 147 r.w.s. 143(3) of the Act vide order dated 12.05.2014, determining the total income at Rs.88,52,46,554/- on account of short term capital gain on sale of shares.

5. Against the assessment order so passed, the assessee preferred an appeal before learned First Appellate Authority, *inter alia*, challenging the validity of the assessment order on the ground that it has been passed in the name of a non-existent entity.

6. While deciding the appeal, learned First Appellate Authority, having verified the factual position, agreed with the assessee that the assessment order has been passed in the name of a non-existent entity. Hence, he held the assessment order to be invalid.

7. We have considered rival submissions and perused the materials on record. Before we proceed to decide the issue relating to the validity of the impugned assessment order, it is necessary to take note of the following crucial dates and events:

- 31.03.2012 – BLL amalgamated with the present assessee namely M/s. Khaitan Holdings (Mauritius) Limited.
- 31.03.2013 – notice u/s. 148 of the Act was issued
- 05.06.2013 – The assessee intimates the A.O. regarding the merger of BLL with M/s. Khaitan Holdings (Mauritius) Limited.
- 13.09.2013 – The assessee again intimates regarding the merger of BLL with M/s. Khaitan Holdings (Mauritius) Limited.
- 20.09.2013 – Another intimation by the assessee to the A.O. regarding merger of BLL with M/s. Khaitan Holdings (Mauritius) Limited.
- 14.02.2014 – The assessee raises objection before the A.O., objecting to the reopening of the assessment. In the said objection, the assessee again reiterates the invalidity of the proceedings initiated in the name of a non-existent entity.
- 12.03.2014 – A.O. disposes of the objections.
- 18.03.2014 – In response to notice u/s. 142(1) of the Act, the assessee again brings the fact of merger to the notice of the A.O. and furnishes all the relevant details, including certificate of amalgamation.

8. The chronology of events noted above, would clearly demonstrate that after initiation of the proceedings u/s. 147 of the Act, the assessee on multiple occasions had intimated the A.O. not only regarding the amalgamation of BLL with the present assessee, but has also questioned the validity of the proceedings initiated in the name of a non-

existent entity. The fact that the A.O. was conscious of the merger of BLL with the present assessee, is established from notice issued u/s. 142(1) of the Act on 17.01.2014, placed in the paper book, wherein the A.O. has acknowledged the fact of merger/amalgamation. Despite the A.O. being conscious of the fact that the BLL has merged with the present assessee, still he went ahead not only to frame the draft assessment order in the name of BLL, which was no longer in existence, but even pass the final assessment order in the name of BLL.

9. The crucial issue which arises for consideration is - what would be the status of an order passed in the name of a non-existent entity. In our view, the issue is no-more *res integra* in view of the ratio laid down by the Hon'ble Supreme Court in case of *PCIT vs. Maruti Suzuki India Ltd.* [2019] 107 taxmann.com 375 (SC), wherein, the Hon'ble Apex Court in no uncertain terms has held that the order passed in the name of a non-existent entity is invalid. The following observations of the Hon'ble Supreme Court in this regard would be of much relevance:

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 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment.*

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.*

35 *For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.*

10. Pertinently, while expressing such view, the Hon'ble Supreme Court negated Revenue's contention of applicability of section 292B of the Act, by observing that a jurisdictional error cannot be cured by such provision. The aforesaid view expressed by the Hon'ble Supreme Court has been unreservedly followed by Hon'ble High Courts and various benches of the Tribunal. In fact, in a recent decision rendered in case of *Reliance Industries Ltd. vs. P. L. Roongta* [2025] 171 taxmann.com 467 (Bom), the Hon'ble Jurisdictional High Court has not only followed the ratio laid down by the Hon'ble Supreme Court in the case of *Pr. CIT vs. Maruti Suzuki India Ltd.* (supra), but has also distinguished the decision of the Hon'ble Supreme Court in the case of *Pr. CIT vs. Mahagun Realtors (P.) Ltd.* [2022] 443 ITR 194 (SC) due to its specific facts. Suffice to say, in case of *Mahagun Realtors (P.) Ltd.* (supra), there is concurrent finding of fact that the assessee never intimated the fact of merger/amalgamation to the A.O. Whereas, in the facts of the present appeal, not only the assessee on multiple occasions intimated the A.O. about the merger/amalgamation of BLL with the present assessee immediately after receipt of notice u/s. 148 of the Act, but even the facts on record reveal that the A.O. was conscious of the merger/amalgamation before framing of both the draft and final assessment orders. Therefore, the decision of *Mahagun Realtors (P.) Ltd.* (supra), having been rendered with reference to its own peculiar facts would not apply to assessee's case.

11. In view of the aforesaid, we do not find any infirmity in the decision of learned First Appellate Authority in declaring the assessment order to be invalid, having been passed in the name of a non-existent entity. Accordingly, we uphold the decision of learned First Appellate Authority on this specific issue. Having held so, we do not intent to adjudicate

the other issues raised in the present appeal including the issue on merits as they have become academic.

12. In the result, the appeal is dismissed.

Order pronounced in the open court on 25.08.2025

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 25.08.2025

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)
Vice President

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai