

High Court, it appears that the High Court has heavily relied upon the earlier decision of the High Court in the case of *IRM Limited v. Deputy Commissioner of Income Tax, Circle-4*, reported in (2016) 72 taxmann.com 288 (Gujarat), which was rendered after following the decision of this Court in *Marshall Sons & Co. (India) Ltd. Vs. Income Tax Officer* (1997) 2 SCC 302. In para 13 of the said decision, this Court has observed and held as under -

"A reading of the above clauses of the scheme shows that according to the scheme, the entire undertaking of the Subsidiary Company shall be transferred to the Holding Company with effect from the transferred date and that the Subsidiary Company shall be amalgamated with the Holding Company with effect from the said date. Clause (6) states clearly that the implementation of the said scheme "is conditional upon the scheme being sanctioned under Section 391 of the Act and the appropriate orders for the implementation of this scheme being made under Section 394 of the Act by the High Courts of Tamil Nadu and Calcutta". Clause (8) further provides that the implementation of the said scheme "is conditional also upon shareholders holding not less than nine-tenths in value of the shares in the Subsidiary company becoming shareholders of the Holding Company by virtue of the amalgamation". It is one the basis of the language of clauses (7) and (8) that the High Court has opined that the scheme takes effect only on and from the date it was sanctioned by the High Courts of Madras and Calcutta coupled with the date on which the shareholders of the Subsidiary Company becomes the shareholders of the Holding Company as provided in the sub-clauses. The High Court has opined that the transfer date mentioned in the scheme viz., January 1, 1982 is "totally artificial and arbitrary" [for the reason that on the said date neither the company nor their shareholders had even thought of amalgamation] and that it has no legal significance. According to the High Court, therefore, the date on which the amalgamation

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should be deemed to have come into being is not January 1, 1982 but January 20, 1984/February 24, 1984, on which dates the Madras and Calcutta High Courts respectively approved the scheme. In other words, the High Court has taken the view that in the absence of any date being specified in the order of the High Court as the date of amalgamation, the date of the order of the High Court [Company Courts] shall be taken as the date of amalgamation. For arriving at the said view, the High Court followed an earlier Full Bench decision of that Court in Sahayanidhi (Virudhnagar) Ltd. v. A.R.S. Subramanivam Nadar [(1950) 20 Company Cases 214]. The High Court also opined that the decision of the Bombay High Court in Swastik Rubber Products Ltd. is of no assistance to the appellant. On this basis, the High Court has upheld the validity of the notices issued by the Income Tax Officer, which notices were impugned in the writ petition, and dismissed the writ petition. The question is whether the view taken by the High Court is correct."

Shri N Venkataraman, learned ASG appearing on behalf of the Revenue is not in a position to point out any contrary decision of this Court taking a contrary view than the view taken in the case of *Marshall Sons & Co. (India) Ltd.* (supra).

In view of the above, the impugned judgment and order passed by the High Court does not require any interference of this Court. Under the circumstances, the present Special Leave Petition deserves to be dismissed and is accordingly dismissed.

Pending application(s), if any, shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR