IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.2942 /Mum/2024
(Assessment Year: 2019-20)

Asst. Commissioner of Income Tax, Circle-2(1)(1), Room No.575, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	**M/s. Bank of Baroda (e- Vijaya Bank)** C-26, 2 Floor, Boroda Corporate Centre, Bandra Kurla Complex, Bandra (East), Mumbai
PAN/GIR No.AAACV4791J		
(**Appellant**)	:	(**Respondent**)

&

ITA No.2533/Mum/2024
(Assessment Year: 2019-20)

M/s. Bank of Baroda, Corporate Accounts & Taxation Dept, 2 Floor, Boroda Corporate Centre, Bandra Kurla Complex, Bandra (East), Mumbai **– 400 051**	Vs.	Assessing Officer, NFAC, New Delhi
PAN/GIR No.AAACV4791J		
(**Appellant**)	:	(**Respondent**)
Assessee by	:	Shri S. Ananthan, AR & Shri Nabil Ahmed, AR
Respondent by	:	Shri Vimal Kumar Meena, (CIT DR) Shri Leyaqat Ali Aafaqui, Sr. Ar

Date of Hearing	:	08.12.2025
Date of Pronouncement	:	10.02.2026

O R D E R

Per Kavitha Rajagopal, J M:

These captioned appeals are cross appeals filed by the assessee and the Revenue, challenging the order of the learned Commissioner of Income Tax Appeal, Mumbai

('ld. CIT(A)' for short), passed u/s 250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2019-20.

2. The assessee as well as the Revenue have challenged the order of ld. CIT(A) on various grounds and the assessee has raised the legal ground challenging the validity of assessment order on the ground that the assessment order was passed in the name of non-est entity. Since, the legal ground goes to the root of the case, we deem it fit to decide this issue prima-facie before getting into the merits of the case.

3. Brief facts are that the assessee bank is a public sector bank carrying on the banking business where the erstwhile entities namely Vijaya Bank and Dena Bank amalgamated with Bank of Baroda Scheme, 2019 with effect from 01.04.2019. The assessee bank had filed its return of income for the year under consideration dated 30.09.2019 declaring total loss at Rs.1418,82,57,594/- and claimed refund of Rs.694,13,11,216/-. The assessee's case was selected for complete scrutiny under E-assessment scheme, 2019 on the following issues:

    i. Claim of Any Other Amount Allowable as Deduction in Schedule BP
    ii. High Creditors/liabilities (BL06)
    iii. Loss From Currency Fluctuations
    iv. Default in TDS
    v. Default in TDS & disallowances for such Default
    vi. Refund Claim
    vii. Taxability of business liability written off u/s 41 or any other section (BL07)

viii. ICDS Compliance and Adjustment

ix. Unsecured Loans

x. Expenses Incurred for Earning Exempt Income

xi. Capital Gains/Income on Sale of Property

xii. Business Expenses

4. Notice u/s 143(2) and 142(1) of the Act were duly issued and served upon the assessee. After considering the assessee's submission the Learned Assessing Officer (Ld. AO) passed the assessment order dated 30.09.2021 u/s 143(3) r.w.s. 144(B) of the Act determining total income at Rs.547,10,19,604/- after making addition/disallowances.

5. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 29.03.2024 had partly allowed the appeal filed by the assessee.

6. Both the assessee and the Revenue are in appeal before us against the order of Ld. CIT(A) on various grounds.

7. Ld. Authorized Representative (Ld. AR) for the assessee commenced the argument on the legal ground raised by the assessee where the Ld. AR contended that the assessment order was passed in the name of Vijaya Bank post amalgamation where the said bank has been amalgamated with Bank of Baroda. The Ld. AR further contended that Vijaya Bank ceased to exist post-merger with Bank of Baroda. The impugned assessment order ought to have passed in the name of the amalgamated entity and not in the name of amalgamating entity. The Ld. AR contended that this issue was also raised before the first appellate authority who erred in dismissing the said ground by relying on the decision of Hon'ble Delhi High Court in the case of ***Sky Light Hospitality LLP v. Asst.***

CIT [2018] 90 taxmann.com 413/254 Taxman 109/405 ITR 296 ("Skylight Hospitality LLP") which was further upheld by the Hon'ble Apex Court in the case of ***Skylight Hospitality LLP v. Asstt. CIT [2018] 92 taxmann.com 93/254 taxman 390 (SC)*** holding that it is a mere procedural defect or curable mistake u/s 292(B) of the Act. Ld. AR submitted that the lower authorities have failed to consider the decision of the Hon'ble Apex Court in the case of ***Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC)*** which was subsequently followed by various High Courts and the Tribunals. The Ld. AR distinguished the facts of the case in the ***Sky Light Hospitality LLP v. Asstt. CIT (Supra)*** relied upon by Ld. CIT(A). The ld. AR relied on the catena of decisions in support of the assessee's contention that the assessment order passed in the name of the erstwhile company is invalid and bad in law.

8. Ld. Departmental Representative (Ld. DR) on the other hand, controverted the said fact and distinguished the decision of Hon'ble Supreme Court in the case of ***Maruti Suzuki India Ltd. (supra)*** stating that the assessee in the present case participated in the proceeding and therefore not entitled to challenge the same during the appellate proceedings. The Ld. DR further contended that passing of the assessment order in the name of an erstwhile entity is held to be a procedural defect or rather a curable mistake u/s 292(B) of the Act and reiterated that ld. CIT(A) has rightly held that no prejudice to the assessee was caused due to the action of the Ld. AO in passing the assessment order in the name of the amalgamating company. The Ld. DR also drew support from decision to the Hon'ble Apex Court in the case of ***Mahagun Relators (P) Ltd. (2022) 443 ITR 194 (SC)*** where identical issue was decided in favour of the Revenue.

9. We have heard the rival submissions and perused the materials available on record.

10. The impugned issue that requires adjudication is whether the assessment order passed in the name of non-existent entity would render the assessment order invalid or whether the same would be a curable defect as per the provision of section 292(B) of the Act. It is an admitted fact that Vijaya Bank which was the original assessee was amalgamated along with Dena Bank vide Bank of Baroda Scheme, 2019 with effect from 01.04.2019 much prior to the passing of the impugned assessment order dated 30.09.2021. It is also undeniable that the statutory notices were also issued in the name of Vijaya Bank which is dated 30.03.2021, 27.08.2021 and 13.09.2021. The amalgamation of the erstwhile entity with Bank of Baroda was also within the knowledge of Ld. AO during the assessment proceeding, which fact, was also not controverted by the counsel for the revenue during the appellate proceeding and same is also not controverted by the first appellate authority. It is observed that the assessee has raised the specific ground challenging the validity of the assessment order stating that the assessment order was passed in the name of non-existing entity, before the first appellate authority and further in the reply to notice u/s 142(1) of the Act dated 13.09.2021, the assessee had categorically mentioned that Vijaya Bank has merged with Bank of Baroda w.e.f. 01.04.2019 vide Government of India Notification dated 02.01.2019, which corroborates the fact that the information of merger was well within the knowledge of the Ld. AO during the assessment proceeding. To support its contention, the assessee contended that the replies to the notices were in the name of the amalgamated company namely Bank of Baroda. The assessee further states that the assessment order for the

earlier year namely A.Y. 2018-19 passed by the Ld. AO, after the file was transferred from Bengaluru to Mumbai, makes it evident that the Revenue was aware of the merger. The assessee also contends that the Ld. AO failed to deal with the objections raised by the assessee bank for the draft assessment order, thereby passing the impugned order which is said to be in violation of the guidelines issued by the CBDT. The Ld. CIT(A) rejected the contention of the assessee by stating that it is merely mistake, defect or omission which is curable u/s 292B of the Act and since the assessee bank has participated in the assessment proceeding no prejudice was caused neither to the amalgamating entity nor the amalgamated bank. The Ld. CIT(A) relied on the decision of the Hon'ble Delhi High Court in the case of ***Sky Light Hospitality LLP (supra)*** which was subsequently affirmed by the Hon'ble Apex Court wherein it was held that notice u/s 148 of the Act issued in the name of non-existent Pvt. Ltd. Company amounts to a procedural defect or mistake curable u/s 292B of the Act. The Ld. AR, on the other hand, placed reliance on the following decisions where this issue has been squarely covered in favour of the assessee:

1. ***State Bank of India (Successor of State Bank of Travancore) - (2022) 11 TMI 528 – ITAT Mumbai – ITA No.3476/Mum/2019 order dated 31.10.2022***
2. ***Reliance Industries Limited – (2025) 479 ITR 770 (BOM)***
3. ***Bank of Baroda (erstwhile Vijaya Bank) – ITA No.2534 & 2583/Mum/2024 order dated 14.08.2025 AY 2018-19***

The Ld. AR also relied on the decision of the Hon'ble Apex Court in the case of ***Maruti Suzuki India Ltd. (supra)*** and ***State Bank of India Vs. ACIT in ITA No.3476/M/2019 & Ors. order dated 31.10.2022 (2022) (11) 528-ITAT Mumbai*** extensively.

11. Upon perusal of the abovementioned decisions, it is observed that subsequent to the decision of the Hon'ble Apex Court in the case of ***Maruti Suzuki India Ltd. (supra)*** there has been a plethora of decisions in favour of the assessee where it has been held that the assessment order passed in the name of the non-existing entity would render the assessment order invalid in the eyes of law. On perusal of the decision relied upon by the Ld. DR in the case of ***Skylight Hospitality LLP (supra),*** it is observed that the Hon'ble High Court of Delhi has given a finding that issuance of notice u/s 148 of the Act in the name of the erstwhile entity was an error and mistake where the notice was issued in the name of M/s. Skylight Hospitality Pvt. Ltd. instead of M/s. Skylight Hospitality LLP, which according to the Hon'ble High Court was a mere mistake for the reason that the reason to believe recorded by the Ld. AO, approval obtained from the Ld. PCIT, order u/s 167 of the Act and the tax evasion report etc. mentions only the amalgamated company and not the erstwhile entity. It further held that such mistake, defect or omission shall not invalidate the assessment proceeding when there was no prejudice caused to the assessee, when the assesse was clearly made aware of the contents of the notice and allowed the same to be a technical lapse. The Hon'ble High Court had further relied on the decision of the Hon'ble Delhi High Court in the case of ***Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR 500 (Delhi)*** wherein it was held that notice as well as the assessment order was passed in the name of the amalgamating company and only in such situation the assessment order will be held to be void and illegal. The proposition that was laid in the said cases is that assessment proceeding is nullified when the assessment order is passed in the name of the amalgamating

company inspite of the AO being aware of the factum of amalgamation. The present case squarely falls under the category where inspite of the AO being aware of the amalgamation the impugned assessment order was passed in the name of the amalgamating entity which was non-existent at the time of passing of the assessment order. The Hon'ble Apex Court in the case of ***Maruti Suzuki India Ltd. (supra)*** has categorically held that the assessment order is null and void, if the same is passed in the name of the non-existing entity, which in the present case even after the AO being aware of the amalgamation, passed an order in the name of the amalgamating company. There are various decisions of the Hon'ble Jurisdictional Bombay High Court which has decided this issue in favour of the assessee where it has been held that despite the AO being informed about the factum of amalgamation, the notices and the consequential assessment order which was passed in the name of the dead entity was held to be *void ab-initio.* We are also conscious of the fact that the decision relied upon by the Ld. DR in the case of ***Mahagun Realtors Pvt. Ltd. (supra)*** is distinguishable on the facts of the present case, where in the said case the assessee company suppressed the facts of amalgamation which is not the scenario in the present appeal.

12. On the above observation, we deem it fit to allow ground No.2 raised by the assessee in its appeal and hereby quash the impugned notice and the consequential assessment order. As we have held the impugned notice and the assessment order to be null and void, the other grounds of appeal raised by the assessee on merits requires no further adjudication and are rendered academic in nature. In consequence thereof, the Revenue's grounds of appeal are hereby dismissed.

13. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 10.02.2026

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 10.02.2026

* Kishore

<u>Copy of the Order forwarded to</u>:

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai