

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
&  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.8055/Del/2019  
(Assessment Year: 2006-07)**

HCL Infosystems Ltd 806, 96, Nehru Place, South Delhi 110019	Vs.	DCIT Circle-25(2) New Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACH 2420 C		
Appellant	..	Respondent

Appellant by :	Sh. Deepesh Jain, Adv. & Sh. Shivam Gupta, CA
Respondent by :	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	29.01.2026
Date of Pronouncement	09.04.2026

**ORDER**

**PER VIMAL KUMAR, JM:**

The appeal filed by the assessee is against the order dated 16.07.2019 of the Ld. Commissioner of Income Tax (Appeals)-09, New Delhi (hereinafter

referred to as “Ld. CIT(A)”), u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), arising out of order dated 07.12.2018 of the of the Ld. Assessing Officer/DCIT Circle-25(2), New Delhi(hereinafter referred to as “Ld. AO”), u/s 143(3) of the Act for Assessment Year 2006-07.

2. Brief facts of the case are that, the assessee M/s HCI Inifinet Ltd., PAN No.AAACH7784H filed return of income of Rs.2,30,72,99,650/- on 15.03.2007. The case was selected for scrutiny. Notice u/s 143(2) of the Act was issued. The assessment was completed u/s 143(3) of the Act on 30.12.2008 at total income of Rs.2,32,45,33,297/- after making various additions.

3. First appeal by Ld. CIT(A) was decided on 01.08.2013. Tribunal vide order dated 26.05.2017 deleted various disallowances and remanded the matter to Ld. AO qua issue of addition on account of creditor balances amounting to Rs.49,25,160/-. Further, regarding disallowance of license fee, it was directed to allow license fee @ 6% of turnover as revenue expenditure. Pursuant to remand by the Hon’ble Tribunal, Ld. AO issued notices dated 17.08.2018, 04.09.2018 and 14.09.2018 and notice u/s 144 of the Act dated 29.10.2018 in the name of erstwhile/non-existent Company M/s HCL Inifinet

Ltd with PAN No.AAACH7784H. The assessee vide response dated 05.11.2018 disclosed that M/s HCL Infinet Ltd. PAN No.AAACH7784H had since merged with M/s HCL Infosystems Ltd. PAN No. AAACH2420C, so the proceedings initiated by the Ld. AO was without jurisdiction. Without considering the above facts, Ld. AO passed order dated 07.12.2018 u/s 143(3)/254/250 in the name of M/s HCL Infinet Ltd. a non-existent entity.

4. Against order dated 07.12.2018 of Ld. AO, assessee filed appeal before Ld. CIT(A) which was dismissed vide order dated 16.07.2019

5. Being aggrieved, the appellant-assessee preferred present appeal on following grounds of appeal:-

1. That on the facts and circumstances of the case and in law, the assessment order dated 07.12.2018 passed by the assessing officer under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 ("the Act") is without jurisdiction, illegal and void-ab-initio.

2. That on the facts and circumstances of the case and in law, the assessment order passed by the assessing officer in the name of non-existent entity, being HCL Infinet Ltd., which stood amalgamated with HCL Infosystems Ltd., and consequently ceased to exist, is illegal, without jurisdiction and void-ab-initio.

2.2 That the CIT(A) erred on facts and in law in not holding that since the assessing officer exercising jurisdiction over the appellant was DCIT, Circle-11(1), Delhi and not DCIT, Circle-25(2), Delhi, who completed the impugned assessment and consequently, the order passed is without jurisdiction and liable to be quashed.

2.3 That the CIT(A) erred on facts and in law in not adjudicating the additional ground of the appellant that impugned order having been passed by the officer not exercising jurisdiction over the appellant is without jurisdiction and liable to be quashed.

3. That on the facts and circumstances of the case, the assessment order passed and upheld by the CIT(A) is beyond jurisdiction, bad in law and void-ab-initio inasmuch as the same has been passed without affording adequate opportunity of being heard to the assessee, in violation of principles of natural justice insofar as appellant did not receive notices/questionnaires alleged to be issued during the course of assessment proceedings.

4. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the assessing officer in making addition of Rs.49,25,160 under section 68 of the Act on account of non-reconciliation of balances towards creditors.

4.1 That the CIT(A) grossly erred in not appreciating that parties appearing in books of account were genuine and payment outstanding towards creditors was made in subsequent years and therefore, there was no amount which remained unexplained under section 68 of the Act.

4.2 Without prejudice to aforesaid, the CIT(A) erred on facts and in law in confirming the addition on account of non-reconciliation of balances towards creditors under section 68 of the Act based on balance appearing in the 'books of creditor' rather than the 'books of account of the appellant'.

5. That on facts and in the circumstances of the case, the appellant is entitled to relief of Rs.11,91,750 on account of license fee based on correct calculation.

6. That the assessing officer erred on facts and in law in levying/ charging and computing interest under section 234B of the Act.

6. Ld. Authorized Representative for appellant-assessee M/s HCL Infosystems Ltd as successor in interest of erstwhile M/s HCL Infinet Ltd., submitted that assessment order dated 07.12.2018 is against M/s HCL Infinet Ltd., PAN No.AAACH7784H was a non-existent entity. Ld. AO was aware of factum of merger/amalgamation. M/s HCL Infinet Ltd., w.e.f. 01.04.2006

had merged/amalgamated with M/s HCL Infosystems Ltd pursuant to approval of scheme of arrangement by the Delhi High Court on 20.03.2007 and thus ceases to exist after the said date.

7. It is settled law that and notice/order passed in the name of a non-existent amalgamating entity is void ab initiation, non-est and bad in law.; further the Courts have held that the said jurisdictional defect is not curable under sections 154 and/or 292BB of the Act.

8. Reference in this regard may be made to the following judgements:

- PCIT v. Maruti Suzuki India Ltd: [2019] 416 ITR 613 (SC)
- CIT v. Spice Entertainment Ltd.: 247 CTR 500 (Del.) - Department's appeal (batch) dismissed by apex Court on 2.11.2017
- Sterlite Technologies Ltd. v. DCIT: (2024) 462 ITR 457 (Bom)- (affirmed by the Hon'ble Apex Court in (2024) 462 ITR 462)
- International Hospital Ltd. v. DCIT: [2024] 167 taxmann.com 317 (Delhi)[26-09-2024]
- BDR Builders and Developers Pvt. Ltd. v. ACIT: W.P.(C) 3174/2015 (Del.)
- Rustagi Engineering Udyog Pvt. Ltd. v. DCIT: 382 ITR 443 (Del.)
- CIT v. Micon Steels (P.) Ltd.: 233 Taxman 120 (Del)
- ACIT v. Micra India (P.) Ltd.: 231 Taxman 809 (Del)
- Emerald Company Ltd. v. ITO: [2016] 176 TTJ 276 (Kol Trib.)
- Siemens Ltd. v. DCIT: [2023] 199 ITD 470 (Mum Trib)

9. Reliance was placed on:-

- Ritz Theatre Vs. Income-tax Officer: [2010] 194 taxman 544 (Delhi)
- Jazzy Creations Pvt. Ltd. Vs. Income Tax Officer: ITA No.4560/Mum/2014

10. Ld. Departmental Representative submitted that, initial assessment order was against M/s HCL Infinet Ltd. PAN No.AAACH7784H, after

remand the order of Ld. AO has been validly passed. As per press report even present appellant M/s HCL Infosystems India's premier hardware, services and ICT systems integration and distribution company any Tikona Digital Networks Limited (Tikona) today announced the signing of the agreement on latter taking up the entire equity stake of HCL Infinet Limited, a wholly owned subsidiary of HCL Infosystems.

11. From examination of record, it is crystal clear that, erstwhile M/s HCL Infinet Ltd. PAN No.AAACH7784H merged/amalgamated with M/s HCL Infosystems Ltd. PAN No. AAACH2420C w.e.f. 01.04.2006 vide order dated 20.03.2007 and Hon'ble High Court of Delhi approving amalgamation/merger from opening date of 01.04.2006. In the second round, after remand by the Tribunal M/s HCL Infosystems Ltd. vide response dated 05.11.2018 page No.169 of paper book intimated Ld. AO regarding order dated 20.03.2007 of Hon'ble High Court approving the scheme arrangement w.e.f. 01.04.2006. Para No. 5 of assessment order dated 07.12.2018 mentions reply dated 05.11.2018.

12. As per ratio of judgment in PCIT Vs. Maruti Suzuki India Ltd it is well settled that and notice/order passed in the name of a non-existent

amalgamating entity is void ab initiation, non-est and bad in law.; further the Courts have held that the said jurisdictional defect is not curable under sections 154 and/or 292BB of the Act.

13. In view of above material facts and well settled principle of law, impugned order against M/s HCL Infinet Ltd. PAN No.AAACH7784H non-existent amalgamated entity which had merged with M/s HCL Infosystems Ltd. PAN No. AAACH2420C w.e.f. 01.04.2006 being null and void ab initio is set aside.

14. Therefore, grounds of appeal Nos.1 & 2 are accepted. Ground of appeal Nos. 2.2, 2.3 to 6 being academic in nature are left open.

15. In the result, the appeal filed by the assessee is **allowed**.

Order pronounced in the open court on 09.04.2026

Sd/-  
(S. Rifaur Rahman)  
ACCOUNTANT MEMBER

Sd/-  
(Vimal Kumar)  
JUDICIAL MEMBER

Dated 09.04.2026  
\*Mittali, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI