

## Assessment of amalgamating Co. after its amalgamation with successor Co. is null and void

**Summary – The Delhi ITAT in a recent case of Satwant Exports (P.) Ltd., (the Assessee) held that where assessee had already amalgamated with another company before finalisation of assessment, no assessment could be framed on assessee as it was not in existence when such assessment was framed**

### Facts

- Search and seizure operation was carried out wherein certain documents belonging to the assessee, a company, were seized and proceedings were initiated on the basis of such seized documents.
- Subsequently, a notice under section 153C was issued to the assessee, requiring the assessee to file its return within the stipulated time.
- Pursuant to the notice, the assessee informed the department that it had already amalgamated with another company. Consequently, the notices issued were illegal and without any jurisdiction. It was further informed that the notices, if any, could be issued to the amalgamated company on its behalf.
- In response to the notice under section 153C, the assessee filed return of income under protest for the said period showing *nil* income.
- Notices under section 142(1)/142(3) along with detailed questionnaires were issued and served upon the assessee and date of hearing was fixed. The authorised representative of the assessee attended such assessment proceedings from time to time and furnished details along with books of account and other information.
- Ultimately, the Assessing Officer disallowed certain purchases of textile goods by treating it as unexplained/unaccounted under section 69C.
- On appeal before the Commissioner (Appeals), the assessee contended that before framing of such assessment it had already amalgamated with another company hence, no assessment could be framed on an entity which is no more in existence.
- The Commissioner (Appeals) held that since assessee filed its return of income in the name of its previous company and even attended the proceedings without raising any objection, therefore, the addition was rightly made.
- On appeal:

### Held

- There is no dispute to the fact that the assessee had already amalgamated with another company and assessee participated in the assessment proceedings even then this Tribunal held the proceedings to be *null and void* after placing reliance upon number of cases. Therefore, the argument of the revenue that the assessee is participated in the proceedings and therefore, the present appeals are distinguishable and the present appeals cannot be accepted is having no substance. Therefore, there is no merit in this argument of the revenue.

- If the totality of the facts are summarized it can be said that a company incorporated under the Indian Companies Act is a juristic person and its takes its birth and gets life with its incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is a trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. Having regard this consequence provided in law, a number of cases the Apex Court held that assessment upon a dissolved company is impermissible as there is no provision in the IT Act to make an assessment upon a non-existent company. In the case of *Saraswati Industrial Syndicate Ltd. v. CIT* [1990] 186 ITR 278/53 Taxman 92, the legal position was explained. In amalgamation two or more companies are fused into one by merger or by taking over by another. The amalgamation is a blending of two or more existing undertaking into one undertaking, and the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blending undertakings. Therefore, no assessment can be framed on a non-existent entity. Identical view was expressed by High Court of Calcutta in *IK Agencies (P.) Ltd. v. CWT* [2012] 20 taxmann.com 731 (Cal.), wherein notice was issued upon a company which was not in existence at the time of issuance of notice due to its winding up. It was held that transferor company would no longer be amenable to assessment proceedings. Likewise, Gujarat High Court in *Torrent (P.) Ltd. v. CIT* [SCA No. 5857 of 2004, dated 15-1-2013] on the issue of validity of assessment on a non-existent person held the same a nullity.
- In view of the clear factual position and judicial pronouncements discussed hereinabove, all these appeals of the assessee are allowed.