

Assessment in name of amalgamating co. was invalid as it ceased to exist after amalgamation

Summary – The High Court of Delhi in a recent case of Micra India (P.) Ltd., (the Assessee) held that where assessee-company had amalgamated with transferee-company, notice under section 153C ought to have sent to latter, and since such notice had not been issued to transferee-company, assessment made in hands of assessee-company was a nullity

Facts

- The assessee-company was amalgamated with the other company with effect from 1-4-2008.
- The terms of amalgamation described that the liabilities of transferor-company, *i.e.*, original assessee were to be discharged by the transferee-company. The said fact was intimated to the revenue as well.
- While so, the Assessing Officer issued notice under section 153C to the assessee, on the basis of incriminating material seized during search conducted in premises of some other parties.
- Despite of assessee's objection that it ceased to exist on account of its amalgamation, the Assessing Officer completed assessment in the name of the assessee-company.
- The Tribunal held that since the assessee had been amalgamated with the transferee-company, notice ought to have been sent to the latter, and since such notice had not been issued to the transferee-company, the entire proceedings were in nullity.
- On revenue's appeal:

Held

- In the instant case, no doubt there was participation during the course of assessment; however, the Assessing Officer, despite being told that the original company was no longer in existence, did not take remedial measures and did not transpose the transferee as the company which had to be assessed, instead, he resorted to a peculiar procedure of describing the original assessee as the one in existence; the order also mentioned the transferee's name below that of assessee's company. Now, that did not lead to the assessment being completed in the name of the transferee-company. According to the Assessing Officer, the assessee-company was still in existence. Clearly, this was a case where the assessment was contrary to law, as having being completed against a non-existent company. The Tribunal's decision is, in the circumstances, justified and warranted.