

Notice issued against predecessor co. which has lost its existence after merger isn't valid: HC

Summary – The High Court of Gujarat in a recent case of Dharmnath Shares & Services (P.) Ltd., (the Assessee) held that where AO issued notice under sec. 148 to assessee on ground that it had received certain accommodation entries from a bogus company, in view of fact that by time of issuance of notice, assessee had already merged with another company and thereby lost its legal existence, notice issued in name of assessee became invalid and, therefore, impugned reassessment proceedings deserved to be quashed

Facts

- For relevant assessment year 2010-11, the assessee-company had not filed any return. The Assessing Officer issued a notice to assess/reassess the assessee's income, since he was of the opinion that the income chargeable to tax had escaped assessment.
- According to reasons recorded in search operations carried under section 132 in case of 'B' group of companies which was engaged in providing accommodation entries, it was found that the funds received by the companies in the form of share capital was not genuine, one of them being 'D' Limited. The Assessing Officer noted that the assessee-company had merged with 'D' Ltd., however, before its merger, assessee-company had been engaged in the entire chain of transactions of bogus share capital money and of providing accommodation entries.
- The assessee filed instant petition contending that since it had already amalgamated with 'D' Ltd., it had no legal existence and, thus, notice of reopening of assessment could not be issued to such a company.

Held

- It is not in dispute that the assessee-company amalgamated with 'D' by virtue of the judgment of High Court dated 4-5-2012. Though this order was passed on 4-5-2012, the effective date of amalgamation was 1-4-2010. Division Bench in case of *Khurana Engg. Ltd. v. Dy. CIT* [[2014](#)] [364 ITR 600](#)/[[2013](#)] [217 Taxman 75 \(Mag.\)](#)/34 [taxmann.com 261 \(Guj.\)](#) had held that once the assessee-company had amalgamated with the transferee company, its independent existence did not survive, and therefore, it would no longer be amenable to assessment proceedings. For such purpose, the Court had quashed the notice on the company which had already merged, for producing documents for assessment.
- Under the circumstances, the notices in the present case would also be invalid. The revenue, however, made faint attempt to argue that the impugned notices have been issued not to the transferor company, but to 'D'. Such contention has to be rejected out of hand. The notice itself is addressed to the Principal Officer/Director of [the present assessee]. By reference, it also records that the company has now merged with 'D' Limited, nevertheless, the notice is issued to present

assessee. Had the revenue desired to issue notice of reassessment to 'D' Limited, there would have been six different notices for the same assessment year, as in the present case. It is also noticed that the very same income has also been taxed in the hands of 'D' Limited.

- Under the circumstances, impugned notices are quashed.