

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 2711/DEL/2024 [A.Y. 2018-19]

**Erstwhile United Bank of India
Now Punjab National Bank
New Delhi**

**Vs. The Dy. C.I.T
Circle -19(1)
Delhi**

PAN - AAACU 5624 P

(Applicant)

(Respondent)

Assessee By : Shri Vivek Gupta, CA

Department By : Shri Rishipal Bedi, CIT- DR

Date of Hearing : 05.03.2025

Date of Pronouncement : 26.03.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 29.03.2024 for A.Y 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case and provisions of the law, the order passed u/s 143(3) dated 26.08.2021 by the Ld. Assessing Officer (AO) and confirmed by the Ld. CIT(A)/National Faceless Appeal Centre, being passed in the name of non existent assessee, is void ab initio and therefore, the same needs to be quashed.

2. That without prejudice to ground no. 1 above, on the facts and circumstances of the case and provisions of the law, the learned CIT(A) erred in confirming addition of Rs. 37,08,18,000/- towards the amount of provision made for unrealised income from commission on Government transactions.

3. That without prejudice to ground no. 1 above, on the facts and circumstances of the case and provisions of the law, the learned CIT(A) erred in confirming addition of Rs. 1,19,51,594/- towards prior period expenses.

4. That without prejudice to ground no. 1 above, on the facts and circumstances of the case and provisions of the law, the learned CIT(A) erred in confirming addition of Rs. 12,964/- towards interest u/s 201(1A) or 206C(7) of the Act.

5. The appellant may be allowed to add, amend and forego any of the ground at the time of hearing."

3. In addition to the above, the assessee has raised the following additional ground of appeal:

"That, on the facts & circumstances of the case and provisions of the law, order passed u/s 143(3) dated 26.08.2021 by the Ld. Assessing officer (AO) and confirmed by the Ld. CIT(A), National Faceless Appeal Centre, being passed in the name of non-existence assessee, is void ab initio and therefore, the same needs to be quashed."

4. We have gone through the additional ground. We are of the considered view that the ground goes to the root of the matter, therefore, we admit the same following the decision of NTPC 229 ITR 383(SC). As the additional ground has raised a legal ground, we decided to adjudicate the same first.

5. Briefly stated, the facts of the case are that the assessee filed its original return of income on 30.10.2018 under the name of United Bank of India declaring a loss of Rs 1772,41,08,274/-. The assessee filed a revised return on 29.03.2019 declaring a loss of 5031,46,85,463/-. The return of the assessee was selected for complete scrutiny assessment through CASS and accordingly statutory notices were issued and served upon the assessee. Ultimately, the Assessing Officer passed order u/s 143(3) r.w

144B on 26.08.2021 in the name of United bank of India assessing the loss at Rs 4993,18,18,621/-.

4. The entire quarrel of the assessee is that the assessment has been made on an entity which was not in existence on 26.08.2021 at all. Brief facts of the case is that the United Bank of India got amalgamated with Punjab National Bank on 01.04.2020 vide Gazette Notification no CG-DI-E-04032020-216535 dated 04.03.2020. The assessee intimated the Addl.CIT, Special Range, New Delhi the fact of amalgamation of the United Bank of India with Punjab National Bank (PNB) vide mail dated 27.04.2020. This position was also mentioned in the written reply filed on 03.03.2021 with NFAC, Delhi as submissions were made on the letter head of PNB and the name of e-United Bank of India was mentioned in the subject itself.

5. Aggrieved, by the order of AO, the assessee went in appeal before the Id. CIT(A) but without any success.

6. Now the assessee is in appeal before us and reiterated what has been stated before the lower authorities.

7. The ld counsel of the assessee vehemently argued that the assessment made on the assessee is not valid as on the date of passing order u/s 143(3), the assessee was not in existence. The ld AR referring to the provisions of section 170(2) of IT Act submitted that where the predecessor cannot be found, "the assessment of the income of the previous year in which the succession took place up to the date of the succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor."

8. It is the say of the ld AR that despite intimating the fact of amalgamation to the AO, yet the AO passed order u/s 143(3) on 26.08.2021 in the name of United bank of India which was not in existence on 26.08.2021 at all. The ld AR submitted that this issue stands settled by various Courts of the Law And relied on the following decisions:

- i) **PCIT Vs, Maruti Suzuki India Ltd (2019) 107 Taxmann.com 375(SC).**
- ii) **Saraswati Industrial Syndicate Ltd vs CIT (1990) 186 ITR 278 (SC)**
- iii) **Spice Infotainment Ltd vs CIT (2011) 247 CTR 500(Del) which has been affirmed by the Hon'ble Supreme Court vide order dated November 2,2017 in CA No. 285 of 2014**
- iv) **CIT Vs. Micra India Pvt Ltd (2015) 231 Taxmann 809(Del)**
- v) **CIT vs Dimensions Apparels Pvt Ltd (2015) 370 ITR 288(Del)**

vi) PCIT-6 New Delhi Vs. Maruti Suzuki India Ltd (2017) 85 taxmann.com 330(Del)
vii) Hon'ble Delhi High Court in the case of PCT, Central-2 vs. BMA Capfin Ltd (2018) 100 Taxmann.com (Delhi). The revenue further filed SLP and the same also stands dismissed by Hon'ble Supreme Court in SLP no 40486/2018 (2018) 100 taxmann.com 330(SC)

In view of the above, the ld AR argued that the order u/s 143(3) passed by the ld AO in the name of non-existence assessee i.e United bank of India be declared as void ab initio and be quashed.

9. On being questioned about the applicability of the decision of the Hon'ble Supreme Court in the case of PCIT(central)-2 vs. Mahagun Realtors (P) Ltd (2022) 443 ITR 194(SC), the ld. counsel for the assessee submitted that the decision in the case of Mahagun Realtors [supra] is applicable only where the assessee has attempted to mislead or suppress material facts. The ld AR submitted that the fact of amalgamation was duly brought in the notice of Income Tax Department vide mail dated 27.04.2020 due to ongoing Covid-19. This position was also mentioned in the written reply filed on 03.03.2021 with NFAC, Delhi as submissions were made during assessment proceedings in the instant AY on the letter head of PNB and the name of e-United Bank of India was mentioned in the subject itself.

10. The ld AR further submitted that the fact of amalgamation was duly noted by the Revenue Department itself when Ld JAO issued notice dated

30.03.2021 after duly noting the facts of aforesaid amalgamation in his assessment order for AY 2012-13. The ld AR further pointed out that the NFAC Delhi issued a notice dated 06.08.2021 to PNB, during assessment proceedings for AY 2012-13, duly noting the fact of aforesaid amalgamation. The ld AR submitted that the assessee duly intimated the fact of aforesaid amalgamation to Revenue Department and Revenue Department itself noted the aforesaid amalgamation before passing the order dated 26.08.2021 in the name of non-existence assessee i.e., United bank of India. It was emphatically submitted that there has been no misrepresentation or suppression of facts by the assessee in this case which makes its case distinguishable in facts from the decision of the Hon'ble Supreme Court in the case of PCIT (central)-2 vs. Mahagun Realtors (P) Ltd (2022) 443 1TR 194(SC). The ld. counsel for the assessee further placed strong reliance on the decision of the Hon'ble Delhi High Court in the case of Sony Mobile Communications India Pvt Ltd 456 ITR 753(Del) and submitted that the Hon'ble Supreme Court has distinguished the facts with the facts of Mahagun Realtors [supra].

10. Per contra, the ld. DR relied upon the orders of the authorities below.

11. We have heard the rival submissions and have perused the relevant material on record. We note that the assessee United Bank of India got amalgamated with Punjab National Bank on 01.04.2020 vide Gazette Notification no CG-DI-E-04032020-216535 dated 04.03.2020. The amalgamated entity PNB duly intimated the Addl.CIT, Special Range, New Delhi the fact of amalgamation of the United Bank of India with Punjab National Bank (PNB) vide mail dated 27.04.2020. This position was also reiterated in the written reply filed on 03.03.2021 with NFAC, Delhi, during the assessment proceedings for the instant year, as submissions were made on the letter head of PNB and the name of e-United Bank of India was mentioned in the subject itself.

12. We also find that the Revenue itself acknowledged the fact of amalgamation during the assessment proceedings for AY 2012-13 when Id JAO issued notice dated 30.03.2021 to PNB after duly noting the facts of aforesaid amalgamation in his assessment order for AY 2012-13. We further find that the NFAC Delhi issued a notice dated 06.08.2021 to PNB, during assessment proceedings for AY 2012-13, duly noting the fact of aforesaid amalgamation. We note that the Revenue was very well aware of the facts of amalgamation before passing the assessment order dated 26.08.2021 for

AY 2018-19 in the name of non-existence assessee i.e., United bank of India. It is interesting to note that the assessment proceedings for AY 2012-13 and 2018-19 were simultaneously going on with the NFAC, yet for AY 2012-13 the NAFC acknowledged the factum of amalgamation but failed to take cognizance of amalgamation for AY 2018-19. We therefore are of the view that there was no misrepresentation or suppression of facts by the assessee in this case which makes its case distinguishable in facts from the decision of the Hon'ble Supreme Court in the case of ***PCIT (central)-2 vs. Mahagun Realtors (P) Ltd*** (2022) 443 1TR 194(SC).

13. We are in agreement with the Id AR that section 170(2) of Income Tax Act provides that where the predecessor cannot be found, "the assessment of the income of the previous year in which the succession took place up to the date of the succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor." In the instant case, despite being aware of the amalgamation of United Bank of India with Punjab National Bank, the AO proceeded to make assessment on United Bank of India, a non-existent entity on the date of passing the assessment

order. The decision of the hon'ble Supreme Court in the case of **Maruti Suzuki** (supra) squarely applies to the facts of the case wherein it was held as follows:

“33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainments on 2 November 2017. The decision in Spice Entertainments has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainments.”

14. On the issue of applicability of the decision of Supreme Court in the case of **Maruti Suzuki** (supra) as juxtaposed to the decision of **Mahagun** (supra), where the assessee has failed to disclose that it has ceased to exist in the eyes of law, the hon'ble Delhi High Court in the case of **International Hospital Ltd V DCIT** in ITA 116/2023 vide order dated 26.09.2024 has laid the controversy at rest. The Delhi High Court held as under:

29. As is apparent from the aforesaid extracts, what appears to have weighed upon the Supreme Court in Mahagun Realtors was a deliberate attempt on the part of the successor assessee to misrepresent and perhaps an evident failure to make a candid and full disclosure of material facts. The Court in Mahagun Realtors noticed that even though the factum of amalgamation was known to the assessee, it failed to make appropriate disclosures either at the time of search or in the statements which came to be recorded in connection therewith. Even the Return of Income which came to be filed had suppressed the factum of amalgamation. It also bore in consideration that the Return itself was submitted in the name of the amalgamating entity. It was that very entity in whose name further appeals came to be instituted. It was in the aforesaid backdrop that the Supreme Court was constrained to observe that the conduct of the assessee was evidence of it having held itself out to be the entity which had ceased to exist in the eyes of law coupled with an abject failure on its part to have made a complete disclosure.

30. These distinguishing features which imbue Mahagun Realtors were succinctly noticed in Sony Mobile Communications with the Court observing as under: -

"22. As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:

(i) There was no intimation by the assessee regarding amalgamation. of the concerned company.

(ii) The return of income was filed by the amalgamating company. and in the "business reorganisation" column, curiously, it had mentioned "not applicable".

(iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue

(1) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated-company.

(v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company. i.e., the amalgamating company was in existence.

23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.

24. As noticed above, even after the Assessing Officer was informed on December 6, 2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued to obtain, even after the Dispute Resolution Panel had made course correction.

25. Thus, for the foregoing reasons, we are unable to persuade ourselves with the contention advanced on behalf of the appellant- Revenue, that this is a mistake which can be corrected, by taking recourse to the powers available with the Revenue under section 29213 of the Act."

31. We thus find ourselves unable to read Mahagun Realtors as a decision which may have either diluted or struck a discordant chord with the principles which came to be enunciated in Maruti Suzuki. We also bear in mind the indisputable position of both judgments having been rendered by co-equal Benches of the Supreme Court. Mahagun Realtors is ultimately liable to be appreciated bearing in mind the peculiar facts of that case including the conduct of the assessee therein. It was those facets which appear to have weighed upon the Supreme Court to hold against the assessee.

32. In view of the aforesaid, the position in law appears to be well- settled that a notice or proceedings drawn against a dissolved company or one which no longer exists in law would invalidate proceedings beyond repair. Maruti Suzuki conclusively answers this aspect and leaves us in no doubt that the initiation or continuance of proceedings after a company has merged pursuant to a Scheme of Arrangement and ultimately comes to be dissolved, would not sustain.

33. We note that in this batch of writ petitions and in light of the disclosures which have been made, the assessee clearly appear to have apprised their respective AOs of the factum of amalgamation and merger at the first available instance. If the respondents chose to ignore or acknowledge those fundamental changes, they would have to bear the consequences which would follow. Once the Scheme came to be approved, the transferor companies came to be dissolved by operation of law. They, thus, ceased to exist in the eyes of law. Proceedings thus drawn in their name would be a nullity and cannot be validated by resort to Section 292B of the Act.

15. On a thoughtful consideration of the facts of the case in hand and in the light of the judicial decisions discussed hereinabove, we have no hesitation to hold that the assessment in the instant case has been framed on a non-existing entity (UBI). The Revenue was time and again informed of the amalgamation which was acknowledged in assessment proceedings for AY 2012-13 but completely ignored in assessment proceedings for AY 2018-19. As held by the Supreme Court in ***Maruti Suzuki*** that an assessment made on an entity that has ceased to exist, “is substantive illegality and not a procedural violation of nature adverted to in section 292B of the

Income Tax Act”. Therefore, we are of the considered view that the assessment order for AY 2018-19 on United Bank of India is void ab initio and has to be quashed. We order accordingly and set aside the findings of the CIT(A) by quashing the assessment order. Since the assessment order has been held to be a nullity, we do not find it necessary to dwell into the merits of the case. Accordingly, the additional ground raised by the assessee as well as the ground no 1 is allowed.

16. In the result, the appeal of the assessee in ITA No. 2711/DEL/2024 is allowed.

The order is pronounced in the open court on 26.03.2025.

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 26th MARCH, 2024.

VL/
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the fair Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Dispatch of the Order</i>	