* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 17 December 2024**
Judgment pronounced on: 17 January 2025

\+ ITA 88/2022

PR. COMMISSIONER OF INCOME TAX-7, DELHI .....Appellant

Through: Mr. Puneet Rai, Sr. Standing Counsel with Mr. Ashvini Kumar and Mr. Rishab Nangia, JSCs.

versus

VEDANTA LTD. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Prakash Kumar and Ms. Rashmi Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J.

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 24 December 2020. We had by our order of 29 July 2024 admitted the instant appeal on the following question of law: -

> "A. Whether the inadvertent mistake committed by the TPO as well as Assessing Officer ["**AO**"] in not mentioning the name of the entity correctly is a curable mistake under the Income Tax Act, 1961 ["**Act**"] specifically rectifiable in light of decision rendered by the

[1] Tribunal

Supreme Court in case of **Sky Light Hospitality LLP vs. ACIT** [(2018) 13 SCC 147]?"

2. The question of law as set out above however came to be rectified in terms of our order dated 13 September 2024 by way of which the expression "*as well as Assessing Officer*" came to be deleted.

3. The undisputed facts which emerge from the record are as follows. The respondent-assessee, **M/s Vedanta Limited**[2] is the resultant entity which came into existence consequent to **M/s Cairn India Limited**[3] amalgamating with it from an Effective Date of 01 April 2017. The Appointed Date under the Scheme of Amalgamation was stated to be 01 April 2016.

4. A reference with respect to international transactions pertaining to **Assessment Year**[4] 2015 – 16 came to be made to the **Transfer Pricing Officer**[5] on 21 September 2017. The TPO upon conclusion of those proceedings proceeded to pass an order referable to Section 92 CA(3) of the **Income Tax Act, 1961**[6] on 29 October 2018. It however becomes pertinent to note that the order referable to Section 92 CA (3) was drawn in the name of Cairn and which entity had ceased to exist in the eyes of law as on 01 April 2017.

5. It is the case of the respondent-assessee that the factum of amalgamation was duly communicated to the TPO in terms of its

[2] Vedanta
[3] Cairn
[4] AY
[5] TPO
[6] Act

submissions dated 13 December 2017. However, and notwithstanding that information having been duly provided, the TPO proceeded to frame an order in the name of Cairn. The aforesaid order of the TPO resulted in the framing of a draft assessment order by the **Assessing Officer**[7] on 28 December 2018. The said order was styled to have been made in the name of "*M/s Vedanta Limited (Formerly known as Cairn India Ltd.)*". It becomes pertinent to note that the draft assessment order was not framed in respect of the respondent-assessee being a successor of Cairn. On the contrary, the AO chose to use the expression "*formerly known as….*". We lay emphasis on this since Vedanta had come to be constituted pursuant to a Scheme of Amalgamation as opposed to a mere change of the corporate name of an entity.

6. Between the passing of the order under Section 92CA(3) and the framing of the draft assessment order on 28 December 2018, the TPO passed an order on 12 December 2018 seeking to rectify what it claimed was a mistake and a typographical error. That order reads as under:-

> "**Order u/s 92CA(5) r.w. Sec 154 of the Income Tax Act. 1961**
>
> As apparent from the records, a typographical error in table has crept in inadvertently in the Transfer Pricing Order u/s 92CA (3) dated 29.10.2018 issued by this office. The assessing officer has informed and requested to rectify through later dated 23.11.2018 which was received in this office on 10.12.2018 reminding the error i.e. name and PAN of the assessee was typed wrongly M/s Cairn India Ltd. in place of M/s Vedanta Ltd. The same has been perused.
>
> 2. Accordingly, of the said order will be read as under:

[7] AO

On perusal of the said order, it is seen that the order is passed by TPO on the name and PAN of M/s Cairn India Ltd. which in non-existence entity and the M/s Cairn India is now merged with the M/s Vedanta Ltd.

Therefore the mistake is apparent from record and same has been rectified by u/s 154 of the IT Act.

3. Apart from the above all other remaining Para and contents of the order u/s 92CA (3) dated 29.10.2018 will remain unchanged.

(ABHISHEK TRIPATHY, IRS)
ASSISTANT COMMISSIONER OF INCOME TAX,
TRANSFER PRICING OFFICER-3(3)(I), NEW DELHI."

7. The objections preferred by the respondent-assessee to the draft assessment order ultimately came to be disposed of by the **Dispute Resolution Panel**[8] in terms of an order dated 20 September 2019 and the proceedings culminated in the framing of a final assessment order on 28 November 2019.

8. Mr. Rai, learned counsel appearing in support of the appeal has essentially sought to contend that the mistake which had crept into the original order passed under Section 92 CA (3) was one which was rectifiable and thus would have been liable to be sustained bearing in mind the decision of this Court in **Sky Light Hospitality LLP v. Assistant commissioner of Income-tax**[9].

9. According to learned counsel, notwithstanding what the Supreme Court has ultimately come to hold in **Principal Commissioner of**

[8] DRP
[9] 2018 SCC OnLine Del 7155

Income Tax, New Delhi v. Maruti Suzuki (India) Limited[10], the mistake in the present case would fall within the scope of Section 292B read along with Section 154 in light of the facts being similar to those which obtained in *Sky Light*.

10. Mr. Vohra, learned senior counsel appearing for the respondent-assessee, on the other hand, submitted that the order of the TPO dated 29 October 2018 clearly suffered from a patent and fatal mistake which was clearly not rectifiable either under Section 154 or Section 292B of the Act. According to learned senior counsel, the challenge as mounted is liable to be negated bearing in mind the judgment rendered by this Court in **International Hospital Limited v. DCIT Circle 12(2)**[11].

11. We note that apart from the aforesaid, the Tribunal has held against the appellant also on the ground of limitation, with it coming to the conclusion that the final assessment order could have, at best, been framed by 31 December 2018. In view of the aforesaid, it has come to additionally hold that the final order of assessment dated 28 November 2019 passed by the AO is barred by limitation.

12. Insofar as this issue is concerned, we do not propose to render any opinion since the appeal stood admitted only in respect of the question whether the TPO could have cured the mistake bearing in the mind the judgment in *Sky Light*.

[10] (2020) 18 SCC 331
[11] 2024 SCC OnLine Del 6730

13. In *International Hospital*, we had an occasion to notice the decision of the Supreme Court in *Maruti Suzuki* in extenso and where the distinguishable facts which underpinned its judgment in *Sky Light* had been duly noted. It would be apposite to extract the following passages from our judgment in *International Hospital*: -

> "**13.** According to the writ petitioners, the challenge on grounds noticed above is no longer res integra and stands conclusively answered by the Supreme Court in *Maruti Suzuki*. It becomes pertinent to note that the judgment of the Supreme Court in *Maruti Suzuki* had come to be rendered on an appeal which arose from a judgment of this Court and which while upholding the decision rendered by the Tribunal had held that an assessment made in the name of **Suzuki Powertrain India Ltd.**, and which had evidently under an approved Scheme amalgamated with **Maruti Suzuki India Ltd.**, was a nullity. On facts it emerged that MSIL had duly intimated the AO of the amalgamation prior to the case being selected for scrutiny assessment. Notwithstanding that information being available, the AO appears to have framed a draft assessment order in the name of SPIL.
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> ****
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> **17.** In *Maruti Suzuki* it appears to have been urged by and on behalf of the Revenue that the decision in *Spice Entertainment* would not hold good in light of the decision which our High Court had pronounced in *Sky Light Hospitality* and which had come to be affirmed by the Supreme Court. Dealing with the aforesaid contention, the Supreme Court in *Maruti Suzuki* observed as follows:
>
> > "**28.** The submission, however, which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] which was affirmed on 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] by a two-Judge Bench of this Court consisting of Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Ashok Bhushan. In assessing the merits of the above submission, it is necessary to extract the order dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] of this Court : (*Skylight Hospitality*

case[*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147], SCC p. 147, para 1)

> "*1.* In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed.
> Pending applications stand disposed of."

Now, it is evident from the above extract that it was in the *peculiar facts* of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292-B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296]. Skylight Hospitality, an LLP, had taken over on 13-5-2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd. upon conversion under the Limited Liability Partnership Act, 2008 (the LLP Act, 2008). It instituted writ proceedings for challenging a notice under Sections 147/148 of the 1961 Act dated 30-3-2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the Income Tax Department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292-B for the following reasons

: (*Skylight Hospitality case [Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296], SCC OnLine Del para 18)

> "18. … There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11-4-2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

29. The decision in *Spice Entertainment* [*Spice Entertainment Ltd.* v. Commr. *of Service Tax*, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] was distinguished with the following observations : (*Skylight Hospitality case* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296], SCC OnLine Del para 19)

> "*19.* Petitioner relies on *Spice Infotainment* v. *CIT* [This judgment has also been referred to as *Spice Infotainment Ltd.* v. *CIT*, (2012) 247 CTR 500 (Del)]. Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Sections 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the assessing officer was informed about amalgamation but the assessment order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of assessment order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Sections 147/148 of the Act was declared to be void and invalid but a case in which assessment order was

passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal."

30. From a reading of the order of this Court dated 6-4-2018 [*Skylight Hospitality* LLP v. *CIT*, (2018) 13 SCC 147] in the special leave petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292-B. The decision in *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] has been distinguished by the Delhi, Gujarat and Madras High Courts in:

(i) Rajender Kumar Sehgal [Rajender Kumar Sehgal v. CIT, 2018 SCC OnLine Del 12890];

(ii) Chandreshbhai Jayantibhai Patel [Chandreshbhai Jayantibhai Patel v. CIT, 2018 SCC OnLine Guj 4812]; and

(iii) Alamelu Veerappan [Alamelu Veerappan v. CIT, 2018 SCC OnLine Mad 13593].

31. There is no conflict between the decisions of this Court in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] (dated 2-11- 2017) and in Skylight Hospitality LLP v. CIT [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] (dated 6-4-2018)."

18. Arguments flowing on lines similar to those which were addressed before us in this batch appear to have been urged before the Supreme Court in *Maruti Suzuki* with it being argued that a notice in the name of a company which stood dissolved would be a curable mistake and that in any case, Section 170 of the Act would save those notices. This becomes apparent from a reading of paragraphs 32 and 33 of the report which are extracted hereinbelow:

"**32.** Mr. Zoheb Hossain, learned counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for

reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292-B. A close reading of the order of this Court dated 6-4-2018 [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147], however indicates that what weighed in the dismissal of the special leave petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the special leave petition this Court observed that it was the peculiar facts of the case which led the Court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292-B. Thus, there is no conflict between the decisions in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on the one hand and *Skylight Hospitality LLP* [*Skylight Hospitality LLP* v. *CIT*, (2018) 13 SCC 147] on the other hand. It is of relevance to refer to Section 292-B of the Income Tax Act which reads as follows:

> "**292-B.** ***Return of income, etc., not to be invalid on certain grounds***.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive

illegality and not a procedural violation of the nature adverted to in Section 292-B.

33. In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

> "**170.** ***Succession to business otherwise than on death***.—
> (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession—
> (*a*) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;
> (*b*) the successor shall be assessed in respect of the income of the previous year after the date of succession.
> (2) Notwithstanding anything contained in sub-section (1), when 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 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, and all the provisions of this Act shall, so far as may be, apply accordingly.
> (3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the assessing officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.
> (4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and

simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in Section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession."

19. The Supreme Court in *Maruti Suzuki* ultimately held:

"**36.** 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 coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] on 2-11-2017. The decision in *Spice Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353] 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 Enfotainment* [*CIT* v. *Spice Enfotainment Ltd.*, (2020) 18 SCC 353].

37. We find no reason to take a different view. There is a value which the Court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 20122013. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are

conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

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21. A few years after *Spice Entertainment*, a similar question arose yet again in *Sky Light Hospitality*. Our Court on that occasion came to the conclusion that the mistake in that particular case was a technical error which could be attended to and saved by virtue of Section 292B of the Act. However, and as the Supreme Court itself had an occasion to note in *Maruti Suzuki*, the Court while coming to hold that Section 292B would apply, had pertinently observed that the material on record was indicative of the Revenue having always intended the notice to be addressed to the successor entity. It becomes pertinent to note that the Court in *Sky Light Hospitality* had alluded to *"substantial and affirmative material and evidence on record"* which indicated that the issuance of the notice in the name of the dissolved entity was a mistake. In arriving at that conclusion, it had not only borne in consideration the material which existed on the record as also the tax evasion report which had duly taken note of the conversion of the Private Limited Company into an LLP. It is thus apparent that Sky Light Hospitality came to be rendered in its own peculiar facts. It was in the aforesaid factual backdrop that the Supreme Court in *Maruti Suzuki* ultimately came to hold that there was no apparent conflict between *Spice Entertainment* and *Sky Light Hospitality* with the latter turning upon its individual facts.

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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 assessees 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.

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39. We find ourselves unable to be concur with the view as taken by the Tribunal for the following reasons. Undisputedly, the factum of merger was duly brought to the notice of the AO. In fact, the said authority has duly taken note of the order of the High Court and in terms of which the Scheme had come to be approved. However, inexplicably, it proceeded to frame an order in the name of EHSSIL. We note that the Return in this case was submitted by EHSSIL prior to the Scheme being sanctioned. It was perhaps in that backdrop that the notice under Section 143(2) came to be issued in its name, albeit after the Scheme had come into force. The assessment proceedings were thus ongoing at the time when the Scheme came to be sanctioned.

40. However, and admittedly, the factum of merger had been duly brought to the attention of the AO. The merger was taken into consideration at more than one place in the order of assessment that came to be framed. Despite the above, the AO proceeded to draw the order in the name of an entity which had ceased to exist. We also bear in consideration the indubitable fact that the rectification order came to be passed three years after the framing of the original order of assessment, and that too, during the pendency of the appeal of the assessee and where a specific ground of challenge was raised in this regard. This was therefore not a case of discovery of an inadvertent error or mistake immediately after the passing of an order.

41. We also bear in consideration *Maruti Suzuki* having clearly held that such a mistake would not fall within the ken of Section 292B of the Act. An exercise of rectification as undertaken in the present case, if accorded a judicial imprimatur, would in effect amount to recognising a power to amend, modify or correct in an attempt to overcome a fundamental and jurisdictional error contrary to the principles enunciated in *Maruti Suzuki*.

42. We also cannot lose sight of the fact that this was not a case where the assessee had attempted to mislead or suppress material facts and which may have warranted the case of the assessee being placed in the genre which was considered in *Mahagun Realtors*. The mere submission of replies on the letter head of EHSSIL also fails to

> convince us to hold in favour of the Revenue. In any event, none of the authorities below have held that the appellant was guilty of suppression. We would thus be inclined to allow the instant appeal and answer the question as posed in favour of the appellant and against the Revenue."

14. As is apparent upon a reading of the aforesaid extracts, we had found that the decision of the Supreme Court in *Maruti Suzuki* had while enunciating the legal position with respect to an order being framed in the name of a non-existent entity had unequivocally held as being a fatal flaw which could neither be corrected nor rectified. It had held in explicit terms that such an order cannot be salvaged by taking recourse to Section 292B of the Act. We had also noticed the peculiar facts which obtained in *Sky Light* and which alone had led to the Supreme Court upholding the assessment made, albeit in the name of an entity which had ceased to exist.

15. In the facts of the present case, however, we find that there was a valid disclosure made by the respondent-assessee and the AO being duly apprised of the factum of merger. Despite the above, it chose to make the draft assessment order in the name of a party which no longer existed on that date. This was, therefore, not a case where the factum of merger had either been suppressed or where the respondent had held out that Cairn still existed and could be proceeded against. It was the conduct of the assessee in *Sky Light* which had convinced the Supreme Court to observe that the mistake would not render the order of assessment invalid and that it could be saved under Section 292B of the

Act. The facts of the present case are clearly not akin to what prevailed in *Sky Light*.

16. Regard must also be had to the fact that Section 154 enables an authority under the Act to rectify and correct an accidental slip or omission. It pertains to a power to rectify a mistake apparent from the record. Section 292B seeks to save orders which may suffer from similar mistakes provided they be otherwise compliant with the letter and spirit of the Act. However, and as the Supreme Court explained in *Maruti Suzuki*, the making of an order of assessment which is inherently flawed or suffering from a patent illegality, and which would include a case where the order is drawn in the name of a non-existent entity, cannot be saved or rescued.

17. In our considered opinion, the power conferred by Section 154 would stand restricted to an inadvertent or unintentional error. The appellant has woefully failed to establish that the order of assessment as originally framed was intended to be in respect of the affairs of Vedanta, the respondent herein, or made cognizant of the factum of merger. Mr. Rai has also failed to draw our attention to any recital or observation forming part of the order of assessment which may have been representative of a conscious intent of the AO to frame an assessment in the name of the resultant entity and the order drawn in the name of Cairn being an accidental or inadvertent error.

18. We also bear in mind the indubitable fact that the AO proceeded to draw the order of assessment using the expression *"formerly known as"*. The appellant thus failed to acknowledge the merger even at this stage. The usage of the expression *"formerly known as"* is indicative of them presuming that the amalgamation was akin to a change to the façade of a legal entity as opposed to a fundamental alteration and the merger giving rise to a new being. It was these facts which had weighed upon us when we had amended the question of law on which the appeal was admitted. We thus find no merit in the argument of Mr. Rai that the challenge would be liable to be answered in light of *Sky Light*. Bearing in mind the fundamental error which beset the order of the TPO, the said decision would clearly not salvage the inherent and patent error which beset the order passed by the TPO. Absent any intent to assess the resultant entity, the order could neither have been rectified nor would it be saved by Section 292 B of the Act.

19. We thus answer the question as posited in the negative and against the Commissioner. The appeal fails and shall consequently stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 17, 2025/DR