IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.772 OF 1999

Reliance Industries Limited
a public limited company
incorporated under the
Companies Act, 1956 and
having its registered office at
Maker Chambers IV, 3rd floor,
Nariman Point, Post Box No.11717,
Mumbai-400 021. ...Petitioner

Versus

1. P. L.Roongta
the Commissioner of Income-tax
Mumbai City-VI, having his
office at Aayakar Bhavan
Maharshi Karve Road,
Mumbai-400020.

2. V. Nagaprasad
the Joint Commissioner of
Income-tax, Special Range-18,
Mumbai, having his office at
Aayakar Bhavan, Maharshi
Karve Road, Mumbai-400020.

3. The Union of India ...Respondents

WITH
INCOME TAX APPEAL NO.1313 OF 2007
WITH
INTERIM APPLICATION (L) NO.2614 OF 2025

Reliance Industries Limited
(Reliance Polypropylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant/Applicant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai
having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.1380 OF 2007
WITH
INTERIM APPLICATION (L) NO.2290 OF 2025

Reliance Industries Limited
(Reliance Polyethylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai
having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.970 OF 2007
WITH
INTERIM APPLICATION (L) NO.2214 OF 2025

Reliance Industries Limited
(Reliance Polypropylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai

having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.971 OF 2007
WITH
INTERIM APPLICATION (L) NO.2250 OF 2025

Reliance Industries Limited
(Reliance Polyethylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai
having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.722 OF 2007

Reliance Industries Limited
(Reliance Polypropylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai
having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.723 OF 2007

Reliance Industries Limited
(Reliance Polyethylene Limited is
now merged with Reliance
Industries Limited)
a company registered under the
Companies Act, 1956 and having
its registered office at 3rd floor,
Maker Chambers-IV, Nariman point,
Mumbai-400 021. ...Appellant

Versus

Deputy Commissioner of Income Tax,
Special Range 18, Mumbai
having its office at Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020. ...Respondent

WITH
INCOME TAX APPEAL NO.6033 OF 2010

The Commissioner of Income Tax-3
613, Aayakar Bhavan,
M.K.Road, Mumbai-20 ...Appellant

Versus

M/s. Reliance Polypropylene Ltd.
Maker Chambers-IV, 222,
Nariman point, Mumbai-400 021. ...Respondent

WITH
INCOME TAX APPEAL NO.6099 OF 2010

The Commissioner of Income Tax-3
613, Aayakar Bhavan,
M.K.Road, Mumbai-20 ...Appellant

Versus

M/s. Reliance Polyethylene Ltd.
Maker Chambers-IV, 222,
Nariman point, Mumbai-400 021. ...Respondent

Mr. J. D. Mistri, Senior Counsel a/w Mr. Madhur Agrawal, Mr. Fenil Bhatt, Mr. P. C. Tripathi, Mr. Ashwin Dave, Mr. Ketan Dave, Mr. Amit Mathur and Mr. Gaurav Gangal i/b. A. S. Dayal & Associates for Petitioner in WP/722/1999.

Mr. J. D. Mistri, Senior Counsel a/w Mr. Madhur Agrawal, Mr. Fenil Bhatt, Mr. P. C. Tripathi, Mr. Ashwin Dave, Mr. Ketan Dave, Mr. Amit Mathur and Mr. Gaurav Gangal i/b. A. S. Dayal & Associates for Appellant in ITXA/1313/2007, ITXA/1380/2007, ITXA/970/2007, ITXA/971/2007, ITXA/722/2007 and ITXA/723/2007 and for Respondent in ITXA/6033/2010 and ITXA/6099/2010.

Mr. Vipul Bajpayee for Appellant in ITXA/6033/10 and ITXA/6099/10.

Mr. Suresh Kumar for Respondent in ITXA/1313/2007 and ITXA/ 1380/2007 .

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 28 January 2025

PRONOUNCED ON : 14 February 2025

JUDGMENT (Per Jitendra Jain, J.) :-

1. This group of appeals for the assessment years 1993-94 to 1995-96 and Writ Petition No.772 of 1999 are, by consent of both the parties, disposed of by the common order since the jurisdictional issue raised in the appeals filed by the appellant-assessee-(RIL) is common in all these appeals and the outcome of these appeals would have direct bearing on appeals filed by the revenue and writ petition filed by petitioner-RIL.

2. Mr. Mistri, learned Senior Counsel appears in the Writ Petition and all appeals filed by the assessee. Mr. Suresh Kumar appears in ITXA Nos.1313 of 2007 and 1380 of 2007 for revenue-respondent and Mr. Bajpayee in ITXA Nos.6033 of 2010 and 6099 of 2010.

3. The tabular statement of appeals and writ petition are as under :-

Sr. No.	Writ Petition/Income Tax Appeal Numbers (ITXA)	Assessment Year	Name of Amalgamating Companies/Amalgamated Company
1.	Writ Petition No.772 of 1999 (Assessee)	1993-94 to 1995-96	Reliance Industries Limited (RIL)
2.	ITXA No.1313 of 2007 a/w IA (L) No.2614 of 2025 (Assessee)	1993-94	Reliance Polypropylene Limited (RPPL)
3.	ITXA No.1380 of 2007 a/w IA (L) No.2290 of 2025 (Assessee)	1993-94	Reliance Polyethylene Limited (RPEL)
4.	ITXA No.970 of 2007 a/w IA (L) No.2214 of 2025 (Assessee)	1994-95	Reliance Polypropylene Limited
5.	ITXA No.971 of 2007 a/w IA (L) No.2250 of 2025 (Assessee)	1994-95	Reliance Polyethylene Limited
6.	ITXA No.722 of 2007 (Assessee)	1995-96	Reliance Polypropylene Limited
7.	ITXA No.723 of 2007 (Assessee)	1995-96	Reliance Polyethylene Limited
8.	ITXA No.6033 of 2010 (Revenue)	1994-95	Reliance Polypropylene Limited
9	ITXA No.6099 of 2010 (Revenue)	1994-95	Reliance Polyethylene Limited

4. The six appeals for the assessment years 1993-94 to 1995-96 are filed by the appellant-assessee M/s. Reliance Industries Ltd. (RIL) and the revenue has filed two appeals for the assessment years 1994-95 being cross-appeals.

5. All the assessee's appeals were admitted in the year 2008 and the revenue's appeals were admitted in the year 2013 on the questions of law set out in the respective orders of admission. However, we do not propose to reproduce the questions of law admitted by this Court in the years 2008 and 2013 since these questions were on merits of the additions. However, when these appeals were taken up for final hearing in the year 2025, the appellant raised a preliminary jurisdictional ground on whether the assessment orders for these years could at all have been passed in the name of M/s. Reliance Polyethylene Limited

('RPEL') and M/s. Reliance Polypropylene Limited ('RPPL') non-existing companies on account of amalgamation order by which these companies were merged with Reliance Industries Limited (RIL).

6. This Court on 20 January 2025 in this group of appeals had passed the order permitting the appellant-RIL to raise the jurisdictional ground since same goes to the root of the matter.

7. The order dated 20 January 2025 passed by this Court, for the sake of convenience is transcribed hereinbelow:-

> *"1. Heard learned counsel for the parties.*
>
> *2. On the issue of framing additional substantial questions of law, on 13 January 2025, we made the following order:-*
>
> > *"1. At the disclosure that one of us (Jitendra Jain, J.) has shares in the petitioner/respondent company, learned counsel for the parties states that they have no objection to this bench taking up this matter.*
> >
> > *2. Accordingly, we will proceed with the final hearing in these matters.*
> >
> > *3. Heard learned counsel for the parties.*
> >
> > *4. In the Income Tax Appeals, Mr.Mistri, learned Senior Advocate for the appellants urged framing of an additional substantial question of law, which according to him, is not only involved in these appeals but is a question which goes to the root of the jurisdiction of the Assessing Officer to make the assessment order. Mr. Mistri proposes the following question :-*
> >
> > *"Whether on the facts and circumstances of the case and in law, the assessment order under Section 143 (3) of the Act passed on a non-existent entity is bad in law, void ab-initio ?*
> >
> > *5. Mr. Suresh Kumar, learned counsel for the respondents submits that he would like to oppose the framing of such an additional substantial question of law. He submits that since such a question is sought to be framed for the first time at the stage of final hearing, he may be given some time until 14 January 2025 to put forth his objection.*
> >
> > *6. Accordingly, we list these matters on 14 January 2025 at 2.30 p.m. after the Public Interest Litigation which is specifically fixed tomorrow."*
>
> *3. Today, we have heard Mr. Mistri, the learned senior advocate for the Appellant and Mr. Suresh Kumar and Mr. Vipul Bajpayee, the learned counsel for the Revenue.*
>
> *4. Mr. Mistri submitted that the question that is proposed to be raised now goes to the root of the matter and challenges the jurisdiction of the Assessing Officer to pass an assessment order in the name of a non-existing entity. Mr. Mistri pointed out that insofar as the assessment year 1993-1994 involved in Income Tax Appeal Nos.1381 of 2007 and 1313 of 2007 is concerned, there is material to show that the Assessing Officer was informed about or in any event, aware of the order dated 11 January 1995 by which the Reliance Polypropylene Limited and Reliance Polyethylene Limited were merged with Reliance Industries Limited (RIL). He submitted*

that this material may not be on record. Still, the Appellant proposes to file an application under Order 41, Rule 27 of the Code of Civil Procedure, 1908, to bring such material on record since such material is unimpeachable.

5. Mr. Mistri submitted that insofar as the assessment years 1994-1995 and 1995-1996 are concerned, clear material on record establishes that the Assessing Officer was aware of the merger orders. He pointed out that the assessment order for the year 1995-1996 refers explicitly to this merger order. He pointed out that for the assessment year 1994-1995, the assessment order of RIL on page Nos.56/87 of the paper book in Writ Petition No.772 of 1999 shows that refunds of RIL were adjusted against the outstanding demand of not only RIL but also the merged companies. The said adjustment order is before the date of the assessment order for the assessment year 1994-1995.

6. Mr. Mistri submitted that the Hon'ble Supreme Court, in the case of PCIT vs. Maruti Suzuki India Limited1, was very clear that issuance of a jurisdictional notice and assessment order in the name of a non-existing company is a substantive illegality and not just a procedural violation. The Court held that where the assessee-company was amalgamated with another company and thereby lost its existence, the assessment order passed in the name of the said non-existing entity would be without jurisdiction and was liable to be set aside.

7. Mr. Suresh Kumar and Mr. Vipul Bajpayee submitted that the decision in Maruti Suzuki India Limited (supra) was considerably watered down in PCIT vs. Mahagun Realtors Pvt. Ltd.2. They pointed out that for the assessment year 1993-1994, there was nothing on record to show that the Assessing Officer was informed about the merger and consequent dissolution of the assessee-companies. They submitted that there was no prejudice because RIL represented the merged companies. They submitted that such an issue was never raised before the Commissioner of Income-Tax (Appeals) or ITAT. They submitted that this was not an issue that went to the root of the jurisdiction because there was a dispute about the Assessing Officer being informed of the factum of the merger. For all these reasons, they submitted that no leave should be granted to frame the above additional substantial question of law.

8. Section 260A(4) of the Income Tax Act, 1961 ("the IT Act)" provides that the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, the proviso to this sub-section states that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

9. Usually, for a case to "involve" such a question, the same should have been raised before the original authority or at least the appellate authorities. When a question was never raised before the original authority or the appellate authorities, then, typically, it would not be easy to hold that such a question was involved and, therefore, should be framed by exercising the powers under the proviso to sub-section (4) of Section 260A of the IT Act. However, to the above general proposition, there are

exceptions. Suppose a question of law goes to the root of the jurisdiction, and there is no necessity to investigate new facts or if there is no serious dispute on facts. In that case, such a question can be framed even though the same may not have been raised in the earlier proceedings before the original or appellate authority. Consent, per se, cannot confer jurisdiction upon an authority where such jurisdiction is inherently lacking.

10. In Ashish Estates & Properties (P.) Ltd. vs. Commissioner of Income-tax3, the Co-ordinate Bench of this Court held that a question which was not raised before Tribunal should not ordinarily be allowed to be raised in an appeal under Section 260A unless it was a question on the issue of jurisdiction or question, which went to the root of the jurisdiction.

11. In Santosh Hazari vs. Purshottam Tiwai (Dead) by L.Rs.4 the Hon'ble Supreme Court held that an entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.

12. In Commissioner of Income-tax, Kolkata-III vs. Jhabua Power Ltd.5, the two questions set out in paragraph 3 of the order were sought to be raised for the first time before the Hon'ble Supreme Court. Both the questions related to the issue of limitation and, in that sense, did go to the root of the jurisdiction. The Court held that these two questions were required to be answered first by the ITAT. Therefore, the appeal was allowed, the decisions of the High Court and the Tribunal were set aside, and the matter was remanded to the Tribunal to decide the questions of law relating to limitation after affording an opportunity of hearing to both parties.

13. The above decision was distinguished in Ashish Estates & Properties (P.) Ltd. (supra) on the ground that the questions raised before the Apex Court were a question of jurisdiction. Therefore, the same was, in a sense, allowed to be raised for the first time even before the Hon'ble Supreme Court. However, the matter was remanded to the Tribunal for a decision on the said questions.

14. In Veena Estate (P.) Ltd. vs. Commissioner of Income-tax6, the issue of prejudice on account of the allegation concerning breach of natural justice was sought to be raised for the first time before the High Court. Since the issue of prejudice involved an investigation into facts and further, since such an issue was never raised before the original authority or the first appellate authorities, this Court did not permit such an issue to be raised for the first time in the High Court.

15. In the present case, as was agreed by Mr. Suresh Kumar and submitted by Mr. Mistri, there was no question of prejudice as such. The question, at the highest, was whether the factum of the merger was intimated to the Assessing Officer or whether the Assessing Officer was otherwise aware of this fact before making the impugned assessment orders. Mr. Mistri submitted that the decision in Veena Estate (P.) Ltd. (supra) was inapplicable, and Mr. Suresh Kumar also submitted that this

decision could not apply to the facts of the present case, and therefore, he did not cite the same.

16. The issue of whether the Appellant's case is fully covered by the decision of the Hon'ble Supreme Court in Maruti Suzuki India Limited (supra) or whether the exceptions carved out in Mahagun Realtors Pvt. Ltd. (supra) is a question that we will have to decide once the additional substantial question as proposed is framed. Mr. Suresh Kumar and Mr. Vipul Bajpayee tried to contend that the revenue case was covered by the decision of Mahagun Realtors Pvt. Ltd. (supra). We propose to hear them on this issue once the substantial question is framed.

17. For all the above reasons, we are satisfied that the question proposed by Mr. Mistri is involved in these appeals, and therefore, we frame the above question in all these appeals. If answered in favour of the assesses, the question would go to the root of jurisdiction.

18. After framing this question, we defer the hearing to 27 January 2025 so that the counsel for the parties would have sufficient time to address, inter alia, the additional question that we have now framed in these appeals. List the matters on 27 January 2025 at 2:30 p.m. under the caption of part heard.

8. We propose to adjudicate the jurisdictional substantial question of law which was permitted by our order dated 20 January 2025 and which reads as under :

> *"Whether on the facts and circumstances of the case and in law, the assessment order under Section 143 (3) of the Act passed on a non-existent entity is bad in law, void ab-initio ?"*

9. The issue, therefore, which requires adjudication is whether the assessment order with regard to amalgamating company should be assessed in the name of amalgamating company or amalgamated company post the amalgamation order ?

Assessment Year 1994-95

10. We propose to adjudicate the appeals filed by RIL for the assessment year 1994-95 being Appeal No.971 of 2007 and 970 of 2007 as the lead matter.

(i) On 30 November 1994, return of income was filed by RPEL and RPPL declaring total income of Rs.2490/- and Rs.NIL respectively.

On 11 January 1995, this Court approved the merger of RPEL and RPPL with RIL w.e.f. 1 January 1995.

(ii) On 30 November 1995, the original return filed by RPEL and RPPL was revised at Rs.2490/- and Rs.16,28,370/- respectively.

(iii) On 27 March 1997, an assessment order under Section 143(3) came to be passed in the case of RPEL and RPPL assessing income at Rs.36,96,04,710/- and Rs.40,28,92,970/- respectively. Both these assessment orders have been passed in the name of M/s. Reliance Polyethylene Limited ('RPEL') and M/s. Reliance Polypropylene Limited ('RPPL').

(iv) The above assessment orders were challenged by filing an appeal to the first appellate authority. In the appeal form, the name of the appellant was mentioned as 'RPEL' (now merged with 'RIL') and 'RPPL' (now merged with 'RIL').

(v) On 13 February 2003, the Commissioner of Income-tax (Appeals) disposed of the above appeals. The appeal orders were passed in the name of RPEL and RPPL.

11. Being aggrieved by the order of the Commissioner of Income-tax (Appeals), an appeal was filed to the Tribunal and in Form No.36, the name of the appellant was mentioned as 'RPEL' (now merged with 'RIL') and 'RPPL' (now merged with 'RIL').

12. On 21 December 2006, the Tribunal passed a common order for the assessment years 1994-95 and 1995-96 respectively. The above-referred order passed by the Tribunal is challenged by the assessee and the appeal is filed by RIL. In the body of the present appeal memo, the name of the appellant is shown as 'RIL' (RPEL is now merged with RIL) and 'RIL' (RPPL is now merged with RIL) respectively.

13. These appeals were numbered as '970 of 2007 and 971 of 2007' and came to be admitted on 10 July 2008 on the substantial questions of law referred to in the said order.

14. As stated above, this Court vide order dated 20 January 2025 permitted the appellant-assessee to raise jurisdictional ground involving substantial question of law, which is reproduced above.

Submissions of the Appellant :

15. Mr. Mistri, learned senior counsel for the appellant submits that although the Assessing Officer was aware that RPEL and RPPL are merged with RIL, still the assessment order was passed in the name of the non-existing entities RPEL and RPPL. It is his submission that after 1 January 1995, RPEL and RPPL ceased to exist on account of the merger order and, therefore, any assessment order passed in the name of such a non-existing entity is void. Mr. Mistri submitted that on 17 December 1996, pursuant to an application made by RPEL, the Assessing Officer adjusted the refund of RIL against the demand of RPEL and RPPL and the very same officer on 27 March 1997 passed an assessment order in the name of non-existing entities. He, therefore, submitted that since the Assessing Officer was made aware about the amalgamation/merger, he ought not to have passed the order against the non-existing entities namely, RPEL and RPPL. Mr. Mistri in support of his submissions, relied upon the following decisions :-

(I) Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.[1]

(II) Anokhi Realty (P) Ltd. Vs. Income-tax Officer[2]

(III) Adani Wilmar Ltd. Vs. Assistant Commissioner of Income-tax[3]

(IV) Gujarat High Court Inox Wind Energy Ltd. Vs. Assistant

1 (2019) 416 ITR 613
2 (2023) 153 taxman 275 (Gujrat)
3 (2023) 150 taxman 178 (Gujrat)

Commissioner of Income-tax[4]

(V) Principal Commissioner of Income-tax Vs. GPT Sons (P) Ltd.[5]

(VI) Pharmazell (India) (P.) Ltd. Vs. Add/Joint/Depty/ACIT/ ITO/ National Faceless Assessment Centre[6]

(VII) International Hospital Ltd. Vs. Deputy Commissioner of Income-tax[7]

16. The appellant-assessee has also taken out an interim application (Lodging No.2250 of 2025 in ITXA No. 971 of 2007 and Lodging No.2214 of 2025 in ITXA No. 970 of 2007). These applications are made under Order XLI Rule 27 of the Code of Civil Procedure, 1908 praying for additional documents to be taken on record in support of the plea of the appellant-assessee that the fact of amalgamation was within the knowledge of the Assessing Officer. The documents consists of intimation under Section 143(1)of the Act, notes to computation of income, letter addressed by assessee to Assessing Officer.

17. Mr. Mistri, learned counsel therefore submitted that the assessment orders passed against non-existing entities is bad in law and void.

Submissions of the Respondents :

18. Mr. Suresh Kumar and Mr. Bajpayee, learned counsel for the respondents submitted that if the appellant-assessee had taken up the point on assessment order being bad in the name of amalgamating companies at the first available instance then the revenue could have taken appropriate proceedings under the Act for assessing the amalgamated company 'RIL'. He submits that he objects to the conduct

4 (2023) 454 ITR 162 (Gujarat)
5 ITA No.88 of 2022 (Delhi) dated 17 January 2025
6 (2024) 161 taxman 484 (Madras)
7 (2024) 167 taxman 317 (Delhi)

of the appellant to raise this plea after nearly 3 decades by which time the revenue may not be in a position to assess the income in the hands of the amalgamated company 'RIL'. He submits that the appellant-assessee has taken over all the liabilities as per the merger order of the amalgamating company and, therefore, cannot shrug off its obligation by taking such a belated plea. He further submits that the appellant-assessee itself has in Form No.35 and 36 in the appeal memo mentioned the name of the amalgamating company as the appellant. He further submits application for adjustment of refund of RIL is also on the letter head of the amalgamating company RPEL. He places reliance on the decision of the Supreme Court in the case of ***PCIT (Central)-2 Vs. M/s. Mahagun Realtors (P) Ltd.***[8] and contends that since the appellant never raised this objection and conducted itself before all the authorities as representing RPEL and RPPL, the appellant cannot contend otherwise and submit that the assessment orders passed are void. He further submitted that this Court should follow the decision in the case of ***M/s. Mahagun Realtors (P) Ltd.*** *(supra)* being latter decision and on a reading of various paragraphs of the said decision, ***Maruti Suzuki's*** case should not be followed. He, therefore, prayed that this question should be answered against the appellant-assessee.

19. Mr. Suresh Kumar, learned counsel for the respondents strongly objected to the interim applications being taken out by the appellant-assessee for bringing documents on record to show that the Assessing Officer had knowledge of the merger.

Analysis & Conclusions :-

20. Before we adjudicate on the issue of jurisdiction, we propose to deal with the interim applications filed by the appellant-assessee-RIL for taking on record documents to show that the Assessing Officer was

8 2022 443 ITR 194 (SC)

aware about the amalgamation of RPEL and RPPL with RIL before passing the assessment order.

21. Section 260A(7) of the Act provides that save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (CPC) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section. In the Income-tax Act, there is no provision dealing with admission of additional evidence by the High Court under Section 260A of the Act. Therefore, we have to examine the provisions of CPC.

22. Order XLI of the CPC deals with appeals from original decrees. Rule 27 of Order XLI of CPC deals with production of additional evidence in Appellate Court. Order XLI Rule 27(1) provides that the parties shall not be entitled to produce additional evidence, but if the circumstances prescribed in clauses (a), (aa) and (b) exists then the Appellate Court may allow such evidence or document to be produced. Order XLI Rule 27 reads as under:-

> *"27. Production of additional evidence in Appellate Court-*
>
> *(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*
>
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
>
> *[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]*
>
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> *(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

23. In the instant case before us, the documents which are sought to be produced are *inter-parte* documents and communications exchanged between the appellant-assessee and the respondent-revenue. There is no dispute that these documents were filed with the Assessing Officer or are generated by the revenue. Under clause (b) of Order XLI Rule 27, the Appellate Court may allow additional evidence if it requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. In the instant case, the issue which requires to be examined is whether in light of the Supreme Court's decision in the case of ***Maruti Suzuki India Ltd. (supra) and Mahagun Realtors (P) Ltd. (supra),*** the Assessing Officer had knowledge and was intimated about the fact of amalgamation of RPEL and RPPL with RIL before the assessment order was passed. If the answer is 'yes', then the assessment order passed in the name of RPEL and RPPL is void. To enable this Court to ascertain whether the Assessing Officer had knowledge of the amalgamation prior to passing of the assessment order, the documents which are sought to be produced as additional evidence would enable this Court to pronounce its judgment on this issue and, therefore, the application made under Order XLI Rule 27 is required to be allowed. It is also important to note that for the assessment year 1995-96, the fact of amalgamation has been mentioned in the assessment order itself. Therefore, even if for the other years, the additional evidence is not allowed, but the fact of the amalgamating company having ceased to exist from 1st January 1995 is a fact which would not change even for the other assessment year 1993-1994 for which the interim applications are filed. Therefore, looked at from any angle, in our view, for the reasons mentioned above, the additional evidence is permitted to be produced by the appellant-assessee.

24. For the assessment year 1994-95, the order of assessment was made in the name of RPEL and RPPL on 27 March 1997. It is relevant to note that on 17 December 1996 i.e. prior to the assessment order being passed in the name of RPEL and RPPL, an intimation was issued in the case of RIL, i.e. amalgamated company for the assessment year 1996-97 which had resulted into a refund of approximately Rs.45 crores. The said intimation records that the refund of RIL was adjusted against demand of RPEL and RPPL for the assessment years 1992-93, 1993-94 and 1994-95. The officer issuing the intimation in the case of RIL is the same officer who had passed the assessment order under Section 143(3) of the Act in the case of RPEL and RPPL for assessment year 1994-95. The accounts and notes to computation of income filed with the revenue by RIL for previous year ending 1995 relevant to assessment year 1995-96 on 30 November 1995 also disclose the fact of amalgamation of RPEL and RPPL with RIL. The refund is adjusted on an application made by the appellant-assessee. In our view, intimation under Section 143(1) of the Act is an *inter-parte* document generated by the respondent-revenue whereby refund of the amalgamated company (RIL) is sought to be adjusted against demand of the amalgamating companies (RPEL and RPPL). This document and the notes to computation of income are necessary documents for deciding whether the revenue-respondent had knowledge of the amalgamation. In our view the objections raised by the respondent-revenue on admission of these documents cannot be sustained firstly because these are *inter-parte* documents and intimation is generated by the respondent-revenue itself. There is no dispute that these documents are on record of the respondent-revenue and the contents are also not disputed. There is also no dispute about the fact of amalgamation and merger having taken place between RPEL and RPPL with RIL. These documents would be relevant for adjudicating upon the jurisdictional

ground with which we are concerned. Therefore, the interim applications filed in ITXA Nos. 971 of 2007 and 970 of 2007 are allowed and the appellant-assessee is justified on relying upon the same in support of its submissions.

25. As stated by us above, the Assessing Officer who has passed the assessment orders for the assessment year 1994-95 on 27 March 1997 had knowledge that RPEL and RPPL have merged with RIL. The dates are not disputed by the respondent-revenue of intimation and notes to accounts and computation of income which are referred to hereinabove. The existence and contents of these documents are also not disputed. The dates of these documents are prior to the assessment orders. Therefore, it can be safely concluded that the assessment orders have been passed in the name of RPEL and RPPL (non-existing entities), although the respondent-revenue had full knowledge that such entities did not exist.

26. We are conscious that this plea is taken after almost 3 decades at the stage of third appeal but for the reasons which we have stated in our order dated 20 January 2025, since it being a jurisdictional issue going to the root of the matter, we cannot restrain ourselves from not permitting and not adjudicating upon the same merely on the ground that such a plea is taken after almost 3 decades.

27. The plea of the respondent-revenue is that if the appeals are allowed on this ground, then they may not be able to pass an order in the name of the amalgamated entity-RIL on account of the limitations provided under the Act. *Prima facie,* we do not agree that the consequences of allowing the jurisdictional plea would result into depriving the revenue of assessing and passing an order in the name of the amalgamated company-RIL on account of limitation. There are

sufficient provisions in the Act to take care of this situation based on the order passed by various authorities, for e.g. Sections 153(5), 153(6), 150 etc. Revenue is free to take appropriate action, in accordance with law, to give effect to the submissions of the appellant-assessee if the law so permits. We may also note and accept that the consequence of the appellant-assessee's submission is that the revenue ought to have assessed and passed the order in the name of the amalgamated company-RIL. If that be so, then the revenue is free to take appropriate proceedings under the Act in accordance with law for assessing the amalgamated company-RIL since the appellant-assessee's submission impliedly admits that the assessment ought to have been done in the name of RIL and not in the name of the amalgamating companies RPEL and RPPL.

28. The reliance placed by the respondent-revenue on the decision of the Supreme Court in the case of ***Mahagun Realtors (P) Ltd. (supra)*** is distinguishable. This decision was rendered on 5 April 2022 and in which the decision of the Supreme Court in the case of ***Maruti Suzuki India Ltd. (supra)*** was also considered. In the case of ***Mahagun Realtors (P) Ltd. (supra)***, after the merger order, return of income was filed in the name of the amalgamating company. In the said return of income, PAN of the amalgamating company was mentioned. In the return of income, the date of incorporation of the amalgamating company was mentioned and in the form of return of income to a specific query "Business Reorganization (a)……. (b) In case of amalgamated company, write the name of amalgamating company" the reply mentioned was "NOT APPLICABLE". The appeal before the Tribunal was also filed in the name of amalgamating company. It was on these facts that the Supreme Court observed that since the amalgamating company did not inform the revenue about the amalgamation but held out to the revenue

as if the amalgamating company is in existence, the Supreme Court did not accept the submission made by the assessee that the proceedings were taken against the non-existing company. In the present case before us, the respondent-revenue has not pointed out how the facts in the present case are identical to the facts of ***Mahagun Realtors (P) Ltd. (supra)*** which was the basis of the decision of the Supreme Court. These facts are absent in the present matter before us, but on the contrary the respondent-revenue had knowledge about the amalgamation/merger as observed by us above and, therefore, the decision of ***Mahagun Realtors (P) Ltd. (supra)*** is not applicable to the facts before us.

29. We may observe that the Supreme Court in the case of ***Mahagun Realtors (P) Ltd. (supra)*** gives an indication of dissent from the decision in the case of ***Maruti Suzuki India Ltd. (supra)*** but after giving such an indication does not dissent from the decision in the case of ***Maruti Suzuki India Ltd. (supra)*** but on facts distinguishes it to reject the contentions of the assessee therein.

30. We may, however, note that a reading of paragraph Nos.18 to 33 of the Hon'ble Supreme Court in the case of **Mahagun Realtors (P) Ltd. (supra)** does indicate that the Hon'ble Supreme Court in ***Mahagun Realtors (P) Ltd. (supra)*** did not agree with the proposition that the proceedings taken against the non-existing company would be void. In paragraph 32 of ***Mahagun Realtors (P) Ltd. (supra)***, it is observed that the legislative change, by way of introduction of Section 2(1A), defining "amalgamation" was not taken into account in the earlier decision of the Hon'ble Supreme Court. Further, tax treatment in the various provisions of the Act was not brought to the notice of this Court in the previous decisions. In paragraph 30 of ***Mahagun Realtors (P) Ltd.***

(supra), the Hon'ble Supreme Court observed that the combined effect of Section 394(2) of the Companies Act, 1956, Section 2(1A) and various other provisions of the Income-tax Act, 1961 is that unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation continues. In paragraph 18 of ***Mahagun Realtors (P) Ltd. (supra)***, the Hon'ble Supreme Court observed that it is essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. The Supreme Court further observed that there are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not *per se* cease – depending of course, upon the structure and objective of enactment. It is further observed that broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

31. In our view after making various observations from paragraphs 18 to 32, the Supreme Court in the case of ***Mahagun Realtors (P) Ltd. (supra)*** distinguishes the applicability of the decision in the case of **Maruti Suzuki India Ltd. (supra)** to the facts before them which we have already observed above. The subsequent decision of the Supreme Court in the case of ***Mahagun Realtors (P) Ltd. (supra)*** does not dissent from the decision in the case of ***Maruti Suzuki India Ltd. (supra)*** but the observations made from paragraphs 18 to 32 do give an indication in that direction. However, the decision of various High Courts and the decision of the Supreme Court in the case of ***Maruti Suzuki India Ltd. (supra)*** holds the field today and therefore we have to consider the effect of the decision in the case of ***Maruti Suzuki India Ltd. (supra)*** to the facts of the present case.

32. The Supreme Court in the case of ***Maruti Suzuki India Ltd. (supra)*** in paragraph 19 has adverted to various facts of the assessee before them, which we propose to advert here for deciding whether the case of the appellant falls within the facts of ***Maruti Suzuki India Ltd. (supra)***.

(i) The income which was sought to be subjected to tax was of the erstwhile entity prior to amalgamation. In the instant case before us also the assessment order by which the demand is raised is in the name of the erstwhile entity.

(ii) Under the scheme of amalgamation, the amalgamated company has assumed the liabilities of the amalgamating company, including tax liabilities. This fact is also present in the case before us.

(iii) The Supreme Court after referring to the decision in the case of ***Saraswati Industrial Syndicate Ltd. (supra)*** observed that the consequence of the scheme of amalgamation is that the amalgamating company ceased to exist. In the instant case before us also, this would be the consequence insofar as RPEL and RPPL are concerned.

(iv) Upon ceasing to exist, an entity cannot be regarded as a “person” under Section 2(31) of the Act against whom an assessment order can be passed. In the instant case before us also the amalgamating companies are RPEL and RPPL which have ceased to exist on account of amalgamation, but still the assessment order is passed in the names of RPEL and RPPL.

(v) The scheme of amalgamation in the present case before us was approved on 11 January 1995 with effect from 1 January 1995 by

the order of this Court and the assessment orders were passed after 1 January 1995.

(vi) Inspite of the Assessing Officer being aware of the fact of amalgamation, the assessment order was passed on an entity which had ceased to exist.

(vii) The assessment orders are passed in the name of RPEL and RPPL only without mentioning anything about RIL. This fact is identical to ***Maruti Suzuki's*** case whereas in ***Mahagun's*** case, assessment orders contained names of both amalgamating and amalgamated company.

33. In our view, the facts of the present appellant-assessee before us are similar to the significant facts in the case of ***Maruti Suzuki India Ltd. (supra)*** on the basis of which the Supreme Court has held that inspite of the fact of the Assessing Officer being informed of the amalgamating company having ceased to exist as a result of the scheme of amalgamation, if the proceedings are initiated against the non-existing companies, then such proceedings are *void ab initio* although the amalgamated company participated in the proceedings. In our view, in the present case also although RIL-amalgamated company participated in the proceedings, the respondent-revenue having knowledge of the amalgamation still passed an order in the name of the amalgamating companies which would make the assessment order dated 27 March 1997 *void ab initio*.

34. The appellant-assessee is justified in relying on the decisions of the High Courts of Gujarat, Calcutta, Delhi and Madras, which are referred to in the paragraph dealing with the submissions made on behalf of the appellant-assessee. These have considered the decisions in the cases of ***Maruti Suzuki India Ltd. (supra)*** and ***Mahagun Realtors Pvt.***

Ltd. (Supra), and have come to a conclusion that proceedings against non-existing entities are bad in law. In our view, the reliance placed on these decisions by the appellant-assessee supports the submissions made by them on the proposition that the proceedings against an amalgamating company post the amalgamation orders are *void ab initio* if the revenue had knowledge of the amalgamation prior to the proceedings.

35. In view of above, assessment orders dated 27 March 1997 passed by the Assessing Officer in the name of RPEL and RPPL is held to be bad in law and quashed and set aside and consequently all the proceedings before the appellate authorities would also stand quashed. In view of above, question of law framed by our order dated 20 January 2025 is answered in favor of the appellant-assessee and against the respondent-revenue and the appeals filed by the appellant-assessee for assessment year 1994-95 are allowed.

36. The revenue has also filed an appeal for assessment year 1994-95 against the order of the Tribunal which arises from the assessment orders having been passed on 27 March 1997. These appeals are numbered as Income Tax Appeal No.6033 of 2010 and Income Tax Appeal No.6099 of 2010. Since we have held that the assessment orders passed on 27 March 1997 in the name of amalgamating companies RPEL and RPPL are bad in law, the appeals filed by the respondent-revenue are required to be dismissed as being infructuous.

Assessment year 1995-96

37. Income Tax Appeal Nos.722 and 723 of 2007 pertain to assessment year 1995-96 filed by the appellant-assessee-RIL. Income Tax Appeal No.723 of 2007 relates to RPEL and Income Tax Appeal No.722 deals with RPPL.

38. On 11 January 1995, amalgamation / merger order was passed by this Court merging RPEL and RPPL with RIL with effect from 1 January 1995.

39. On 30 November 1995, return of income was filed by RPEL and RPPL for assessment year 1995-96.

40. On 27 February 1998, an assessment order came to be passed under Section 143(3) of the Act in the case of RPEL and RPPL. In the said assessment order at page 2, paragraph 2, the Assessing Officer has stated that the assessee companies merged with RIL with effect from 1 January 1995 vide order passed by the Bombay High Court dated 11 January 1995 and, therefore, total income of the assessee is computed for the previous year from April 1994 to December 1994.

41. Insofar as the assessment year 1995-96 is concerned, the Assessing Officer in the assessment order itself has recorded the fact of RPEL and RPPL have merged with RIL with effect from 1 January 1995.

42. The Assessing Officer has acknowledged the fact that he was aware about the merger on the date of passing the assessment order. Having observed so, in our view and for the reasons more elaborately stated while dealing with appeals for assessment year 1994-95, the assessment orders passed for assessment year 1995-96 on 27 February 1998 in the name of the amalgamating companies RPEL and RPPL are void and bad in law. Therefore, the assessment orders dated 27 February 1998 are quashed and set aside. Consequently, the appeal orders pursuant to these assessment orders would also not survive.

43. The appeals of the appellant-assessee are allowed and the question of law framed by this Court on 20 January 2025 is answered in favour of the appellant-assessee and against the respondent-revenue.

Assessment year 1993-94

44. Income Tax Appeal No.1313 of 2007 and Income Tax Appeal No.1380 of 2007 have been filed by the appellant-assessee for the assessment year 1993-94. In these appeals, the appellant-assessee has also taken out Interim Application Nos.2614 of 2025 and 2290 of 2025 respectively. Income Tax Appeal No.1380 of 2007 pertains to RPEL and Income Tax Appeal No.1313 of 2007 pertains to RPPL.

45. In December 1993, RPEL and RPPL filed their returns of income which were subsequently revised by these entities on 30 November 1994.

46. On 11 January 1995, pursuant to an amalgamation / merger order passed by this Court, RPEL and RPPL merged with RIL with effect from 1 January 1995.

47. On 18 March 1996, an assessment order came to be passed in the name of RPEL and RPPL.

48. It is the above assessment orders which are challenged in the present appeal on the ground that the same having been passed in the name of non-existing entities, they are void.

49. In the Interim Application taken out by the appellant-RIL, leave is sought of this Court under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to bring on record *inter-parte* documents between the parties to demonstrate that the Assessing Officer was aware of the amalgamation / merger order.

50. In our view, the documents consist of intimation under Section 143(1) of the Act and notes to accounts of computation of income filed

along with the return of income with the respondent-revenue. In addition to these two documents, there is a letter dated 9 October 1995 filed by the appellant-RIL with the respondent requesting for adjusting the refund of RIL against the demand of the amalgamating companies and also intimating the fact of the amalgamation. In our view, for the reasons set out while dealing with assessment year 1994-95, these *inter-parte* documents, existence and contents of which are not in dispute, are allowed to be taken on record for adjudicating the issue raised before us.

51. The above documents clearly demonstrate that the respondent-revenue was made aware about the amalgamation. This is evident from the letter of 9 October 1995 and notes to the computation of income filed on 30 November 1995 which are much prior to the date of the assessment order 18 March 1996.

52. In our view, based on these two documents i.e., letter dated 9 October 1995 and notes to computation of income filed on 30 November 1995, it clearly demonstrates that the respondent-revenue was informed about the merger order and, therefore, although having knowledge of the entities having merged with RIL, the assessment orders were made on 18 March 1996 in the name of the amalgamating companies RPEL and RPPL. For the reasons stated above while dealing with appeals for assessment years 1994-95, these assessment orders are required to be quashed and set aside as they are bad in law. Consequently, the appeal orders would also not survive. The question of law framed on 20 January 2025 is therefore answered in favour of the appellant-assessee and against the respondent-revenue.

Writ Petition No.772 of 1999

53. Mr. Mistri, learned senior counsel for the Petitioner in Writ Petition No.772 of 1999 on instructions states that if the appeals of the appellant-assessee are allowed on the ground of jurisdiction and the revenue's appeal is consequently being dismissed as infructuous, the cause/grievance raised in the writ petition would not survive and the writ petition would become infructuous.

54. In view of the above statement, Writ Petition No.772 of 1999 is disposed of as being infructuous. Interim order, if any, passed in Writ Petition No.772 of 1999 would stand vacated.

55. We may, once again clarify that we have allowed the appellant-assessee's appeal only on the ground that assessment orders have been passed in the name of the amalgamating companies by accepting the submission of the appellant-assessee that the orders could not have been made against the non-existing companies post amalgamation / merger, but result of this submission is that assessment order ought to have been and shall and should be passed in the name of amalgamated company RIL. We clarify that nothing in this order would preclude the revenue- respondents from initiating fresh proceedings against the amalgamated company-RIL in accordance with law for assessing income in the hands of the amalgamated company. We further clarify that since we have quashed the assessment orders, the questions of law admitted by this Court in the years 2008 and 2013 in various appeals on merits is not adjudicated upon.

56. To conclude, the appeals and interim applications filed by the appellant-assessee for assessment year 1993-1994 to 1995-1996 are

allowed, consequently the appeals filed by the appellant-revenue for the assessment year 1994-1995 and writ petition filed by the petitioner are rendered infructuous.

(Jitendra S. Jain, J.) (M. S. Sonak, J.)