IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 2226/Ahd/2018
(Assessment Year: 2011-12)

Edelweiss Broking Ltd. [(on behalf of amalgamating company Edelweiss Financial Advisors Ltd.)] Ahmedabad	Vs.	ACIT Circle-1(3), Ahmedabad
PAN No. AABCE9421H/AABCA2916K		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Vartik Chokshi, AR
Respondent by :	Shri R. R. Makwana, SR. DR

Date of Hearing	08.01.2021
Date of Pronouncement	02.03.2021

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 27.08.2018 passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad arising out of the penalty order dated 27.03.2017 passed by the ACIT, Range-1(3), Ahmedabad under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2011-12.

2. The matter relates to the penalty order dated 27.08.2018 passed by the Ld. CIT(A) confirming the order passed by the Ld. ACIT, Range-

1(3), Ahmedabad dated 27.03.2017 under Section 271(1)(c) of the Act, levying penalty of Rs. 17,86,440/-.

3. The brief facts leading to the case is this the M/s. Edelweiss Financial Advisors Ltd. having PAN No. AABCA2916K in short 'EFAL' has been amalgamated with Edelweiss Broking Limited having PAN No. AABCE9421H in short 'EBL' by and under the order passed by the Hon'ble High Court at Gujarat dated 17.10.2014 with effect from 01.10.2013. The said fact of amalgamation was brought to the notice of the revenue on 16.03.2015 by the appellant without consideration of which the Ld. AO passed the order of penalty under Section 271(1)(c) 27.03.2017 imposing penalty of Rs. 17,86,440/- which was, in turn, confirmed by the Ld. CIT(A).

4. The crux of the case made out by the appellant and the submission made by the Ld. AR on the preliminary issue of maintainability is this that one the company is amalgamated with another it loses its original identity and proceeding cannot be continued in the earlier name rather it is the settled principle of law that the proceeding has to continue in the name of the amalgamated company and order can only be passed in the new name as Edelweiss Broking Limited, the appellant company before us. In support of the contention made by the Ld. AR, he has relied upon the judgment passed by the Coordinate Bench in the matter of Intas Lifesciences vs. ACIT in ITA Nos. 677 & 678/Ahd/2019 for A.Ys. 2013-14 & 2014-15. He has further relied upon the judgment passed by the

Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Limited reported in 416 ITR 613.

5. We have heard the respective parties and we have also perused the relevant materials available on record.

6. It appears that the fact of amalgamation of the earlier company namely Edelweiss Financial Advisors Limited (EFAL) with the new company namely Edelweiss Broking Limited (EBL) by and under the order dated 17.10.2014 passed by the Hon'ble Gujarat High Court with effect from 01.10.2013, the amalgamating company i.e. EFAL stood dissolved from the date on which that amalgamation/transfer took effect and, thus, ceased to exist in the eyes of law, fact of which has been made known to the revenue as the said fact is reflecting at paragraph 2.2 at Page of the appellate order impugned before us. The appellant, as it further appears from the order impugned, vehemently made objection in regard to the penalty proceeding initiated and continued by the revenue in the name of the erstwhile company. The AO has no jurisdiction to levy penalty and/or to pass order in the hands of EFAL as it has become a non-existent entity. As submitted by the Ld. AR that the issuance of notice under Section 148 of the Act admittedly issued upon the dissolved company which is neither permissible in the eyes of law.

7. In fact, the Ld. DR has failed to draw our attention to any provision under the Income Tax Act, supporting such issuance or orders on the non-existent entity. In fact, the assessment proceedings for the

Assessment Year 2010-11 to 2013-14 have also been conducted by the concerned AO in the hands of the then amalgamated company i.e. EFAL after considering income and expenses of amalgamating company Edelweiss Stock Broking Ltd. (ESBL) in view of merger of Edelweiss Stock Broking Ltd. (ESBL) into Edelweiss Financial Advisors Ltd. (EFAL). Similarly in view of merger EFAL into EBL with effect from 01.10.2013 i.e. the pointed date of effect of merger, the penalty proceeding under Section 271(1)(c) must have been continued only in the hands of the amalgamated company i.e. Edelweiss Broking Limited as Edelweiss Financial Advisors Limited became a non-existent company from the date as envisaged under the scheme of amalgamation approved by the Hon'ble High Court of Gujarat on 01.10.2013.

8. In this regard, we have also considered the judgment passed by the Coordinate Bench in the matter of Intas Lifesciences vs. ACIT being ITA No. 677&678/Ahd/2019 for A.Y. 2013-14 & 2014-15. It further appears that the judicial pronouncement relied upon by the Ld. AR passed by the Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Limited has also been taken into consideration while deciding the issue in favour of the assessee. In the said case of Maruti Suzuki India Limited, on 29.01.2013 a scheme for amalgamation of SPIL and MSIL was approved by the Hon'ble High Court with effect from 01.04.2012 in terms of which all liabilities and duties of the transferor company stood transferred to the transferee company and the transferor company stood dissolved without winding up. The scheme stipulated that the order of amalgamation would not be construed as an order granted exemption

from the payment of stamp duty or taxes or any other charges, if any, payable in accordance with law. The MSIL participated in the assessment proceeding of erstwhile amalgamating entity i.e. SPIL through its authorized representative. But the final assessment order passed on 31.10.2016 was in the name of the erstwhile entity i.e. SPIL which already amalgamated with MSIL. The objection of the assessee that assessment order passed in the name of the non-existent company is void ab initio has been accepted by the Ld. Tribunal which was upheld by the Hon'ble High Court and finally by the Hon'ble Apex Court. While holding the said assessment order a nullity as the same was in the name of non-existent company per se the Hon'ble Apex Court has been pleased to observe 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 Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainment 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 (supra).*
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> *34. 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- 12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. 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.""*

We have further carefully considered the judgment passed by the Coordinate Bench wherein it appears that the judgment passed by the Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Limited and the judgment of Delhi High Court in the case of CIT vs. Dimension Apparels P. Ltd. on the identical issue were taken into consideration. The relevant portion whereof is as follows:-

> *"…In the case of Emerald Company Ltd., ITAT Kolkata Bench has also dealt with similar situation after making reference to judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Dimension Apparels P.Ltd. 370 ITR 288 (Del) as well as decision of Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. The ITAT has also made reference to the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Intel Technology Ltd. P. Ltd., 380 ITR 272 (Kar.). The Tribunal has held that action under section 263 is a jurisdictional action against an assessee. In the case of a company, the ld. Commissioner was required to issue a show cause notice against a juridical person contemplated in section 2(31) of the Income Tax Act and if a juridical person ceases to exist then it would not be construed as a person within the meaning of section 2(31) against whom any action can be taken. The Commissioner would not assume proper jurisdiction and such type of defect would not be cured with help of section 292B of the Act, because it is not a procedural irregularity which could be cured. We also note that this Tribunal in the case of Snowhill Agencies Pvt. Ltd. Vs. Pr. CIT bearing ITA No. 1775/AHD/2019 vide order dated 21-1-2020 involving identical facts and circumstances has decided the issue in favour of the assessee. In view of above, we note that the assessment framed under section 143(3) r.w.s. 92CA of the Act is not sustainable. Hence the additional ground of appeal of the assessee is allowed."*

Hence, respectfully relying upon the ratio laid down by the Hon'ble Apex Court as discussed above and the judgment passed by the Coordinate Bench following such ratio we find that the order of penalty passed by the revenue on a non-existing company is not sustainable in the eyes of law. The same is void ab initio and liable to be quashed. Hence, we quash the entire proceeding. The penalty is, therefore, is hereby deleted. Since legal issue on the point of maintainability of the penalty proceeding has been deciding in favour of the assessee we refrain

from deciding the matter on merit. The other grounds are therefore dismissed as infructuous.

8. In the result, assessee's appeal is partly allowed.

This Order pronounced in Open Court on	**02/03/2021**

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 02/03/2021
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad