

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19683 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 19617 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 19628 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 19621 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

=====

INTAS PHARMACEUTICALS LIMITED

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 2(1)(1)

Appearance:

MR TUSHAR HEMANI, SENIOR ADVOCATE WITH MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1

MR MANISH BHATT, SENIOR ADVOCATE FOR M R BHATT & CO.(5953) for the Respondent(s) No. 1,2

=====

CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 30/08/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr. Tushar Hemani for learned advocate Ms. Vaibhavi Parikh for the petitioner and learned Senior Advocate Mr. Manish Bhatt for M.R. Bhatt and Co. for the respondents.

2. Having regard to the controversy involved in these petitions, with the consent of the learned advocates for the respective parties, the petitions are taken up for final hearing.

3. The issues involved in all these petitions are similar and they have therefore, been heard together and would be disposed of by this common judgment.

4. Rule returnable forthwith in each petition.

Learned advocate Mr. Karan Sanghani waives service of notice of rule on behalf of the respondents in each petition.

5. In Special Civil Application No.19683/2021, challenge is made to impugned notice dated 31.03.2021 issued under section 148 of the Income Tax Act, 1961 (For short "the Act") for reopening the assessment for the Assessment Year 2013-2014. Similarly in Special Civil Application No.19617/2021, impugned notice dated 27.03.2021 issued for the Assessment Year 2015-2016 is challenged and in Special Civil Application No.19628/2021 impugned notice dated 27.03.2021 is challenged issued for the Assessment Year 2016-2017 whereas in Special Civil Application No.19621/2021 impugned notice dated 31.03.2021 is challenged issued for the Assessment Year 2014-2015.

6. For the sake of convenience, facts are recorded from Special Civil Application No. 19683/2021.

6.1) The petitioner is a company incorporated under the Companies Act, 1956. It is the case of the petitioner that the petitioner - Intas Pharmaceutical was in existence in the form of a partnership firm dated 01.12.2005 under the provisions of the Indian Partnership Act, 1932. Name of Intas Pharmaceuticals was, thereafter, changed to Intas Lifesciences with effect from 28.02.2015. Intas Lifesciences (partnership firm) has been thereafter converted into a private limited company, in the name of Intas Lifesciences Private Limited with effect from 07.05.2015, in compliance with provisions of Chapter XXI of the Companies Act, 2013. The Board of Directors of Intas Lifesciences

Private Limited and Intas Pharmaceuticals Limited - the petitioner herein in their meeting held on 12.03.2015 granted in principle approval for amalgamation of Intas Lifesciences Private Limited with the petitioner. The scheme of amalgamation was approved by the Board of Directors in their meeting held on 09.07.2015 with appointed date being 01.04.2014. Thereafter the said scheme of amalgamation was filed before this Court. This Court while admitting the petition of Intas Lifesciences Private Limited and the petitioner seeking sanctioning of scheme of amalgamation, directed issuance of notice/serving notice of hearing to Central Government i.e., Regional Director to whom power of Central Government are delegated and Official Liquidator. In terms of General Circular No.1 of 2014 dated 15.01.2014 issued by Ministry of Corporate Affairs, Government of India, invited

views/objection/specific comments from the Income Tax Department on the proposed scheme of amalgamation vide his letter dated 14.08.15. This Court sanctioned the scheme of amalgamation of Intas Lifesciences Private Limited with the petitioner, vide its order dated 28.09.2015, after taking into account the clearance/no objection given by the Regional Director and the Official Liquidator.

6.2) Thereafter vide letter dated 30.10.2015, it was intimated to the Department that name of M/s Intas Pharmaceuticals was changed to M/s. Intas Lifesciences, which was then converted into private limited company as per the provisions of Companies Act, 2013 as M/s Intas Lifesciences Private Limited. Later, as per the scheme of amalgamation approved by this Court, M/s Intas Lifesciences Private Limited

merged/amalgamated with Intas Pharmaceuticals Limited - the petitioner herein. As per the scheme approved/ sanctioned by this Court, the appointed date was 01.04.2014. It is the case of the petitioner that the income of M/s Intas Lifesciences Private Limited was merged with the income of Intas Pharmaceuticals Limited with effect from 01.04.2014.

6.3) It is the case of the petitioner that it is on the record of the department that as per the scheme of amalgamation approved by this Court, M/s Intas Lifesciences Private Limited (Intas Lifesciences/ Intas Pharmaceuticals) merged/ amalgamated with Intas Pharmaceuticals Limited with effect from 01.04.2014.

6.4) The assessee i.e. Intas Lifesciences was engaged in manufacturing of drugs and pharmaceuticals. It is the case of the

petitioner that the then Assessing Officer framed assessment under section 143(3) read with section 92CA(3) of the Act vide order dated 06.02.2017 in the case of the assessee for the Assessment Year 2013-2014 in the name of M/s. Intas Pharmaceuticals which is a non-existent entity. Eventually, the matter travelled right up to the Income Tax Appellate Tribunal (For short "Tribunal") and vide order dated 04.06.2020, the Tribunal held that such assessment order passed by the Assessing Officer was not sustainable in the eye of law since it was passed in the name of a non-existent entity.

6.5) The respondent thereafter issued the impugned notice dated 31.03.2021 under section 148 of the Act in the name of the assessee i.e. Intas Lifesciences seeking to reopen the case of the assessee.

6.6) The petitioner, vide letters dated 01.07.2021 and 19.07.2021 brought to the notice of the respondents the facts as to the change in the name of the assessee and subsequent merger. It was also stated therein that vide letter dated 30.10.2015, Department was already intimated about the merger. In view of the same, the respondent was requested to drop the proceedings since the same were initiated in the name of a non-existent entity.

6.7) The Respondent thereafter issued notice dated 15.11.2021 under section 142(1) of the Act calling upon the petitioner to furnish return of income in response to the impugned notice.

6.8) The petitioner, vide letter dated 29.11.21, raised objections against the reopening of the assessment.

6.9) It is the case of the petitioner that though it was categorically pointed out that the impugned notice has been issued in the name of non-existent company, the respondent issued notice dated 15.12.2021 under section 142(1) of the Act calling upon the petitioner to furnish various details in relation to the reassessment proceedings.

6.10) Being aggrieved by such action of the respondents, the petitioner has preferred the present petitions.

7. Learned Senior Advocate Mr.Tushar Hemani for the petitioner submitted that the impugned notices issued by the respondent are patently bad, illegal, contrary to law as the impugned notices are issued in the name of a non-existent entity and as such are

absolutely non-est, hence, on this ground itself, the impugned notice issued by the respondent deserves to be quashed.

7.1) Learned Senior Advocate Mr. Hemani submitted that earlier Intas Pharmaceutical was in existence in the form of a partnership firm and thereafter, name of Intas Pharmaceuticals was changed to Intas Lifesciences with effect from 28.02.2015 and thereafter Intas Lifesciences was converted into a private limited company, in the name of Intas Lifesciences Private Limited with effect from 07.05.2015. The Board of Directors of Intas Lifesciences Private Limited and Intas Pharmaceuticals Limited, the petitioner herein in their meeting held on 12.03.2015 granted in principle approval amalgamation of Intas Lifesciences Private Limited with the petitioner. The scheme of amalgamation was approved by the Board of

Directors in their meeting held on 09.07.2015 with the appointed date being 01.04.2014.

Thereafter the said scheme of amalgamation was filed before this Court and this Court sanctioned the scheme of amalgamation of Intas Lifesciences Private Limited with the petitioner, vide its order dated 28.09.2015.

It was submitted that vide letter dated 30.10.2015, it was even intimated to the Department that name of M/s Intas Pharmaceuticals was changed to M/s. Intas Lifesciences, which was then converted into private limited company as per the provisions of Companies Act, 2013 as M/s Intas Lifesciences Private Limited. Later, as per the scheme of amalgamation approved by the this Court, M/s Intas Lifesciences Private Limited merged/amalgamated with Intas Pharmaceuticals Limited, the petitioner herein. It was therefore, submitted that it is on the record of the Department that as

per the scheme of amalgamation approved by this Court M/s Intas Lifesciences Private Limited merged/amalgamated with Intas Pharmaceuticals Limited with effect from 01.04.2014.

7.2) It was submitted that the said facts have not at all been disputed by the respondent and therefore, it is clear that the assessee in question was no more in existence when the impugned notices were issued by the respondent.

7.3) Learned Senior Advocate Mr. Hemani further submitted that it is a settled law that no notice can be issued in the name of a non-existent entity and therefore, on this ground, the impugned notice issued by the Respondent deserves to be quashed. In support of such submission, reliance was placed on the decision of the Apex Court in case of

PCIT vs. Maruti Suzuki India Ltd. reported in (2019) 416 ITR 613 (SC) and the decision of this Court in case of **Gayatri Microns Ltd.**

v. Assistant Commissioner of Income-tax reported in (2020) 424 ITR 288 (Gujarat).

8. Having heard the learned advocates for the respective parties and having gone through the documents on record, it appears that this Court under the provisions of the Companies Act, 2013 vide order dated 28.09.2015 sanctioned the scheme of amalgamation between M/s. Intas Lifesciences Private Limited with Intas Pharmaceuticals Limited, the petitioner herein. The amalgamation took place much prior to the issuance of notice dated 31.03.2021 (in SCA No.19683/2021) and similar is the case in rest of the petitions. The petitioner on 30.10.2015 informed the respondent department about the said amalgamation. The petitioner also vide letter

dated 29.11.2021 while raising the objections against the reopening of the assessment pointed out the facts as to the change in the name of the petitioner and subsequent merger and requested the respondent to drop the proceedings as the same was initiated in the name of a non-existent company.

9. Inspite of the same the notices have been issued under section 148 of the Act in the name of Intas Lifesciences in the respective petitions, though the same company had amalgamated with the petitioner long back and ceased to have its own existence so as to render it amenable for reassessment proceedings under the provisions of section 147 of the Act.

10. Moreover, the respondent was duly informed by the petitioner about the amalgamation and despite the said factum

having been brought to the notice of the respondent, notices under section 148 came to be issued to Intas Lifesciences for reopening the assessment on the ground that the respondent has reason to believe that income chargeable to tax has escaped the assessment within the meaning of section 147 of the Act.

11. The controversy involved in the present petitions is no longer res *integra*. The Hon'ble Apex Court in case of **Maruti Suzuki India Ltd.** (*supra*) has held that if the company has ceased to exist as a result of the approved scheme of amalgamation then in that case, the jurisdictional notice issued in its name would be fundamentally illegal and without jurisdiction.

12. This Court also in case of **Gayatri Microns Ltd.** (*supra*) held that upon amalgamation, the transferor company ceases

to exist and becomes extinct and it would no longer be amenable to the assessment proceedings considering the fact that the extinct entity would not be covered within the ambit of the provisions of the Act.

13. For the foregoing reasons impugned notices in the respective petitions are quashed and set aside. The petitions are accordingly disposed of. Rule made absolute to the aforesaid extent. No order as to costs.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR