**Legal principles surrounding service of notice on a non-existing entity**

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**Introduction**

A non-existing entity in the context of income-tax law is one which has ceased to exist in the eyes of law[[1]](#footnote-1). It is one which although once was fully operational, it is deemed non-existent having been either amalgamated with another entity, or in the case of individuals, where the individual has died. The treatment given to such non-existing persons insofar as their tax assessments are concerned depends on the facts and circumstances of each case which is elaborated in the ensuing parts of this article.

Litigation in this area of law has arisen primarily in cases where the entity has amalgamated with another entity, and being the amalgamating company, any notice served upon it would be invalid and illegal in terms of law for the simple reason that the entity is not in existence on the date of service of the notice. The same applies to individuals. Therefore, what is proposed is the quashing of all subsequent proceedings that have followed the issue of the notice, or in cases where there are no such proceedings, the notice itself. Almost all the cases before the High Courts in this area of law relate to reassessment notices issued under Section 148 upon the non-existing entity.

**Case Laws**

1. In *PCIT v. Maruti Suzuki India Ltd.[[2]](#footnote-2)*, the issue of service of notice upon a non-existent entity was almost entirely put to rest with the Hon’ble Apex Court almost conclusively deciding this issue pursuant to discussion of a plethora of judgments on the subject. It was held that service of the jurisdictional notice on a non-existing entity went to the root of the matter and any further proceedings were null and void inasmuch as even after informing the Assessing Officer about the amalgamation of the erstwhile entity with the assessee, the jurisdictional notice was issued in the name of the erstwhile entity only. In my view, much emphasis needs to be given to the fact that the Assessing Officer was informed of the amalgamation and the deemed non-existence of the erstwhile entity and it still proceeded to issue the jurisdictional notice on the non-existing entity. It is in my view, chiefly due to this reason that the notice as well as the subsequent proceedings which followed the notice were quashed.
2. At this juncture, it is important to consider another Apex Court judgment in *Maharaja of Patiala vs.* *CIT[[3]](#footnote-3)* which was elaborately dealt with in *Maruti Suzuki.* The facts in this case were that two notices were issued in the name of the deceased Maharaja requiring him to file a return, but were served upon the legal representative of the Maharaja. The legal representative never objected to the said notices and thereafter the assessment order was passed correctly in the name of the deceased Maharaja. However, the legal representative filed a petition contending that the assessment orders were illegal since the notices were issued in the name of a deceased person viz. the Maharaja. The Hon’ble Bombay High Court upheld the notices and the assessment order since the service of notice was rightly carried out on the name of the legal representatives only and it was a mere error that the notice was issued in the name of the deceased Maharaja.

From the above, it can be gleaned that informing the Assessing Officer of the amalgamation/death of the deceased can alter the face of the proceedings, since but for this intimation to the officer, the facts in both the cases are almost identical.

1. In *Dharamraj vs. ITO[[4]](#footnote-4)*, the Hon’ble Delhi High Court after quoting with approval its own decision in *Savita Kapila v. Asst. CIT*[[5]](#footnote-5), held that there is no statutory obligation for the assessee to intimate the Department about death or change of address of the assessee. Therefore, the arguments of the Revenue that the factum of death of the assessee was never communicated to it and that the assessee was intimated at the address available with the Income-tax Department were rejected and the reassessment proceedings were quashed on the basis that issuance of notice in the name of a dead person was a jurisdictional error going to the root of the matter. On the narrow reasoning that ‘*there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity’* the argument that there is an obligation to intimate the Revenue was not accepted.

**Authors views**

As noted above, the landmark decision in Maruti Suzuki is an authority for the proposition that if the Revenue is intimated prior to the issue of the jurisdictional notice, the Revenue must adhere to the same and proceed accordingly and be circumspect before inadvertently issuing the notice in the name of a deceased entity. However, at the same time, I am of the view that if the Revenue is not intimated about the factum of death of the assessee, and all other procedures have been complied with, it can hardly be said that the there is a jurisdictional error in issuing the notice in the name of a deceased person. This is for the reason, that it is squarely impossible for the Revenue to know that the person upon whom a tax assessment is to be made is dead or alive and ofcourse that person would be presumed to be alive by the Revenue. The doctrine of impossibility is a well known concept under civil law(*Impossibilium nulla obligatio est*: *The impossible is no legal obligation*) and I am of the view that in such circumstances, this doctrine is squarely applicable even in the realm of income-tax cases and on account of it being impossible for the Revenue to know whether the person is dead or alive and there is always a presumption that the person is alive, the Revenue cannot be faulted for issuing the notice in the name of a deceased person under these circumstances. Thus, one important yardstick to determine the legality of the notice issued in the name of the deceased is whether the Revenue has been intimated or not prior to the service of the notice on the assessee or his legal representative.

**Conclusion**

From the above, it is amply clear that one cannot be expected to carry out the impossible, in fact there are umpteen cases where the Revenue has not been intimated either about the amalgamation of the assessee with another company or the death of an individual. In such circumstances, the narrow reasoning provided in *Savita Kapila* and *Dharamraj* cannot override the legal maxim *Impossibilium nulla obligatio est* and the legality must be ascertained from the standpoint of the Revenue only, otherwise if the *ratio decidendi* of the two judgments is sustained, every notice would be quashed since nobody would intimate the Revenue at all, and the proceedings would be undertaken in the name of the deceased entity and be liable to be quashed on this ground alone. This, in my view, amounts to manifest arbitrariness and a wholesome precedent in this grey area of the law is desired soon.

1. I deliberately use the phrase ‘ceased to exist’ which implies that the entity was once fully operational [↑](#footnote-ref-1)
2. [2019] 107 taxmann.com 375 (SC) [↑](#footnote-ref-2)
3. [1943] 11 ITR 202 (Bom.) [↑](#footnote-ref-3)
4. [2022] 441 ITR 462 (Del) [↑](#footnote-ref-4)
5. [2020] 426 ITR 502 (Delhi) [↑](#footnote-ref-5)