# Principal Commissioner of Income Tax, New Delhi v. M/s Mahagun Realtors (P) Ltd.

*An income-tax search assessment framed in the name of an amalgamated company whose merger had been concealed at the return stage and never disclosed until cross-objections were filed. At issue: whether corporate death on amalgamation invalidates an assess*

**Date of Order:** April 5, 2022
**Case Law No:** GIB-SC-2022-05
**Source:** GST INDIA Biz (www.gstindia.biz)

## CASE DESCRIPTION / SUMMARY

### Background.

A search assessment for AY 2006-07 was framed in the name of Mahagun Realtors (P) Ltd., which had amalgamated into Mahagun India Pvt. Ltd. The plea that the assessment was a nullity for having been made on a non-existent company was raised for the first time in cross-objections before the ITAT, after the assessee had participated fully throughout.

### Observations of the Court.

The Court found that the amalgamation was known to the assessee from the stage of search and seizure; the return filed pursuant to notice suppressed the amalgamation, the response to Query 27(b) being "N.A."; appeals before the CIT and the cross-objection before the ITAT were filed by the transferor "represented by" the transferee; and even the counter affidavit before the Supreme Court was affirmed by a director described as of the transferor company. The assessment order attributed specific surrendered amounts to the transferor and was expressed to be of the transferor as assessee, represented by the transferee. The assessing officer's choice of expressing the liability in that form could not nullify the order.

The Court held, before concluding, that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 and its equivalent in the 2013 Act, but would depend on the terms of the amalgamation and the facts of each case.

### Final verdict.

The appeal was allowed, the judgment of the High Court was set aside, and the matter was restored to the file of the ITAT to be heard on the merits of the appeal and cross-objections, on issues other than the nullity of the assessment order. This decision is the principal authority the revenue may be expected to press against the line of cases set out above.