

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**

*(Conducted Through Virtual Court)*

**BEFORE S/SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.2289/Ahd/2014**

**With**

**Cross Objection No.269/Ad/2014**

**Assessment Year : 2008-09**

DCIT, Cir.4 Ahmedabad.	Vs	Elephant Enterprises (In Liquidation) PAN : AAACE 3477 C Office of the Official Liquidator Ground Floor "Jivabhai Chambers Ashram Road, Nr.Income Tax Circle Ahmedabad 380 014.
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**अपीलार्थी/ (Appellant)**

**प्रत्यर्थी/ (Respondent)**

Assessee by :

None

Revenue by :

Shri Urjit Shah, Sr.DR

सुनवाई की तारीख/Date of Hearing : 28/02/2022

घोषणा की तारीख /Date of Pronouncement: 28/02/2022

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the Revenue and cross objection filed by the assessee against order dated 5.5.2014 in appeal no. CIT(A)-VIII/DCIT/Cir.4/86/13-14 passed by the Ld.Commissioner of Income-tax (Appeals)-VIII, Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2008-09.

2. Revenue's solitary ground before this Tribunal is that the ld.CIT(A) has erred in law and on facts in deleting the disallowance of set off of speculation loss from the current years speculation

business income of Rs.3,96,60,345/- without properly appreciating the facts of the case and the material brought on record.

4. At the outset, it is informed to the Bench that the assessee-company is under liquidation and hence notice was served to the Official Liquidator (“OL”) attached with Hon’ble High Court of Gujarat. The ld.OL vide his letter dated 15.6.2021 informed the Tribunal that the assessee-company has already been ordered to be dissolved vide order dated 8.7.2019 passed by the Hon’ble High Court in OL Report No.66 of 2019. Along with the letter, OL has also enclosed copy of High Court’s order in this regard. It is stated in the letter that once dissolution order has been passed under section 481 of the Companies Act, 1956, the OL shall stand discharged as Official Liquidator of the company. This letter along with copy of judgment of Hon’ble High Court was circulated to the ld.DR for getting appropriate instructions from the Department.

5. This is 36<sup>th</sup> hearing of the above case before the Tribunal. In the previous hearing i.e. on 15.2.2022, the Bench has passed the following order:

*“At the outset it was noticed that the assessee company has been liquidated by the judgment of Hon’ble Gujarat High Court vide order dated 18/07/2019. The copy of the Hon’ble Gujarat High Court is placed on record. Thus the query was posted to the ld.DR about the maintainability of the impugned appeal filed by the Revenue. The ld.DR sought some time to get the instruction from the higher authorities. Thus, the matter was adjourned to 28/02/2022 treating the same as part heard. (A.W.C.O.269/A/2014).”*

6. When the matter was taken up for hearing as part heard, the ld.DR could not produce any instruction from the department, but informed that Rule 26 of Income Tax (Appellate Tribunal) Rule, 1963

is to be applied in the facts and circumstances of the case. There was no appearance on behalf of the Official Liquidator.

7. We have considered submissions of the ld.DR and also gone through the letter of OL dated 15.6.2021 and also order of the Hon'ble Gujarat High Court dated 18.7.2019 passed in Company Petition No.85 of 2015. Since there is no contest or persecution on behalf of the Revenue or from the OL pursuant to the above order of the Hon'ble Court, no useful purpose will be served, if the matter keeps pending for final decision. It is pertinent to take note of observation and finding of the Hon'ble High Court in the matter, which are as follows:

*"1. This is a report of Official Liquidator, seeking dissolution of the Company under section 481 of the Companies Act, 1956("the Act" for short). The Official Liquidator is appointed as liquidator of M/s Elephant Enterprises Ltd., the Company in liquidation (to be referred to hereinafter as "the said Company").*

*2. Company Petition No. 85 of 2015 came to be preferred and this Court, by order dated 14.09.2015, ordered the said Company to be wound up and while so ordering, the Official Liquidator, attached to the Court, came to be appointed as the Liquidator with all the powers provided under the Act. Consequential upon such order of winding up, the Official Liquidator directed his officials at the office of Registrar of Companies ("the ROC" for short) to inspect the record of the Company maintained by the office of the ROC to know the assets and properties, liabilities, address of the office, factory premises, secured creditors, names and addresses of the Directors and, the date of order of winding of up.*

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*5. The Official Liquidator also submits that in response to the letter dated 05.12.2018 of the Official Liquidator, the Registrar of Companies vide letter dated 22.02.2019 have informed that have no objection, if the Company in liquidation is directed to be by this Court. The Income Tax department demanded outstanding amount of tax of Rs. 1,00,000/- vide letter dated 25.01.2019. In reply thereto, the Official Liquidator submitted that there is no assets from which any amount could be realized from the company in liquidation since*

*the Official Liquidator is not having any fund to settle the demand as claimed by the Income Tax Department.*

6. *The Official Liquidator submits that half yearly statement of accounts have been filed by the Company in liquidation under rule 298 of the Companies (Court) Rules, 1959.*

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9. *Prior intimation of dissolution of the said company also had been sent to the Income-Tax Department. No objection also has been raised by the I.T. Department, as no communication, so far, has been received by the office of the Official Liquidator.*

12. *Having been satisfied that there are no assets inexistence of the company and it is just and reasonable in the circumstances as no prejudice is caused to the interest of the member of the company nor is the public interest jeopardized and thus, when the winding up process cannot be further proceeded with, this Court deems it appropriate to accede to request of dissolution under section 481 of the Companies Act.*

8. As per para-5 of the above judgment, Income-tax Department has demanded outstanding amount of Rs.1,00,000/- vide letter dated 25.01.2019. However, it is not discernible from the letter of the department or from the appeal filed by the Department as to which assessment year this demand relates to and how the demand is arrived at by the department. The ground raised before us also does not indicate any clue about the quantum of demand *qua* the demand of Rs.1,00,000/- submitted to the Official Liquidator. The Revenue has filed the present appeal on 8.8.2014, however, the Department was not able to reconcile the demand of Rs.1,00,000/- as pertained to which asstt.year.

9. Even going by Rule 26 of ITAT Rules, in the case of a company being wound up, the appeals shall not get abated. If the assessee is respondent, the legal proceedings is to be continued during the liquidation. In this case, the liquidator has given notice to the

Income Tax Department as early as 5.12.2018, but IT Department has not seemed to have given pendency of the above cases before the OL. In accordance with Rule 26 of the ITAT Rules, appeal is not maintainable as income-tax department has not given full details to the OL appointed by the Hon'ble High Court. The fact is that the company having been wound up, and Official Liquidator appointed by the Hon'ble High Court has discharged and relieved as OL, the assessee-company as such does not legally exist in the eyes of law.

10. We draw support of the judgment of Hon'ble Supreme Court in the case of pr.CIT Vs. Maruti Suzuki India Ltd., 107 taxmann.com 375 (SC) where it was held that during pendency of assessment proceedings, assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside. Similarly, Hon'ble Supreme Court in the case of ITO Vs. Durlabhbai Kanubhai Rajpara, (2020) 114 taxman.com 482 (SC) has held that where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a "Dead Person", SLP filed against said order was also dismissed.

11. For the above reasons and judicial precedents, the appeal filed by the Revenue is not maintainable as against the respondent-company which is dissolved by order of the High Court of Gujarat cited (supra). We therefore dismiss the same as in *limine*.

12. Similarly, cross objection filed by the assessee is also not maintainable for the reasons that if the assessee is appellant before the Tribunal, as per second proviso to Rule 26 of the ITAT Rules, the assessee is required to modify the name of the appeal in Form

No.36, which was not done in the present case. Therefore, the CO filed by the assessee is equally not maintainable, and we dismiss the same in *limine*.

13. In the result, both appeal of the Revenue and CO of the assessee are dismissed.

**Order pronounced in the Court on 28<sup>th</sup> February, 2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 28/02/2022  
*vk\**