

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2435/Mum/2021

(Assessment Year 2011-12)

Income Tax Officer,
Ward 2(3)(1)
R. No. 581, Aaykar Bhavan,
MK Road,
Mumbai-400 020

Vs.

M/s Silverline Trading
Company
21, 1st Floor, Ashoka
Shopping Centre,
L.T. Marg, Near G.T. Hospital
Mumbai-400 001

(Appellant)

(Respondent)

PAN No. AAFCS 9706 H

Assessee by : None

Revenue by : Shri S. Anbuselvam, DR

Date of hearing: 12.07.2022

Date of pronouncement : 12.07.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Income Tax Officer, ward 2(3)(1), Mumbai against the order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2011-12 dated 1st November, 2021, wherein the appeal filed by the assessee against the assessment order passed under Section 147 read with section 144 of the Income-tax Act, 1961 (the Act), by ITO Ward, 2(3)(2), Mumbai (the learned Assessing Officer) was allowed, therefore the learned Assessing Officer is aggrieved with that order and has preferred this appeal raising following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was legally correct in allowing the appeal of the assessee by holding that the notice issued u/s 148 of the I.T. Act to a non-existing company is bad in law.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was legally correct in ignoring the ratio laid down by the decision of the Delhi High Court in Skylight Hospitality LLP v Assistant Commissioner of Income Tax. Circle-28(1), New Delhi 12 ("Skylight Hospitality LLP") which was confirmed by the Hon'ble Apex Court vide order dated 06/04/2018 wherein it was held that the defect in recording the name of a non-existent company in a notice under Section 148 was a procedural defect or mistake curable under Section 292B, since no prejudice was caused to the assessee."

02. The brief facts of the case shows that the assessee is a domestic company engaged in the business of ferrous and non ferrous metal. Assessee has not filed its return of income for A.Y. 2011-12. Notice under Section 148 of the Act was issued on 27th March, 2015. It was responded by filing return of income on 22nd January, 2016 at ₹ nil. The case of the assessee was reopened as assessee is non filer and the information was available that it has entered into a cash transaction exceeding ₹ 10 lacs. During the course of assessment proceedings, it was found that assessee is having a bank account in Sadar Bazaar Branch of ICICI Bank, whereas it disclosed only one bank account with

Central Bank of India. The learned Assessing Officer issued notice under Section 133(6) of the Act to the banker and found that total credit of ₹1,91,52,029/- is found in that bank account. Assessee submitted that these are all receipt from the debtors. The learned Assessing Officer after detailed analysis noted that as the books of account were not produced and vague information was submitted by the assessee, he considered total amount credited of ₹1,62,83,840/- of cash deposits and cheque deposits as unexplained money under Section 69 of the Act. Accordingly, he assessed the assessee at ₹1,70,00,000/- by passing an order under Section 144 read with section 144(3) and 147 of the Act by order dated 29th February, 2016. Assessee passed the assessment order in the name of 'Silver Line Trading Pvt. Ltd.'

03. Aggrieved with that assessee preferred an appeal before the learned CIT (A) and stated that learned Assessing Officer despite having knowledge that assessee is a non existing company passed an assessment order in the name of the company. It was stated before the learned CIT (A) that appellant is a dissolved and non existing company which was intimated to the learned Assessing Officer vide letter dated 15th December, 2015 along with certificate of Registrar of Companies dated 18th March, 2011. It was also stated that co-ordinate Bench in assessee's own case for A.Y. 2007-08, which was subjected to 263 proceedings has categorically held that company is not in existence on the date of order passed under Section 143(3) read with section 147 of the Act and

therefore, the order passed is null and void. Thus, assessee claimed that the assessment order passed by the learned Assessing Officer is not sustainable. The learned CIT (A) noted that and following the decision of co-ordinate Bench in assessee's own case in ITA No.6633/Mum/2017 dated 26th February, 2018 held that the order passed by the learned Assessing Officer is not sustainable under the law. Accordingly, he quashed the assessment order. Therefore, learned Assessing Officer is in appeal before us.

04. The learned Departmental Representative vehemently supported that the order of the learned Assessing Officer is correctly passed in the name of the assessee company.
05. Despite notice, none appeared on behalf of the assessee and therefore, the appeal is decided on the merits of the case as per information available on record.
06. We have carefully considered the contentions of the learned Departmental Representative. However, we note the fact that company has already been dissolved and is not in existence since 18th March, 2011. The copy of the registrar of companies certificate was also submitted before the learned Assessing Officer vide letter dated 15th December, 2015. Despite this, the notice under Section 27th March, 2015 culminated into the assessment order passed in case of a non existing company i.e. 'Silver Line Trading Pvt. Limited'. The issue has already been decided in assessee's own case by the ITAT which was followed by the learned CIT (A). This issue is also covered by the



decision of the Hon'ble Supreme Court in case of PCIT vs. Maruti Suzuki India Ltd. [107 taxmann.com 375]. In view of this, we do not find any infirmity in the order of the learned CIT (A) in quashing re-assessment order passed in the name of non existing company. Accordingly, both the grounds of appeal are dismissed.

07. In the result, appeal filed by the learned Assessing Officer is dismissed.

Order pronounced in the open court on 12.07.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.07.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai