

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA No.1087 & 1088/Hyd/2019 and ITA No.663/Hyd/2020		
Assessment Years: 2011-12 & 2012-13		
DCIT, Circle-1(2) Room No.724, 7 <sup>th</sup> floor, 'B' Block, Income Tax Towers Hyderabad-500 004	Vs.	M/s. Coastal Projects Pvt.Ltd. Plot No.304-O, Road No.78 Film Nagar, Jubilee Hills Hyderabad-500 033  PAN: AABCC1907E
(Appellant)		(Respondent)

**&**

CO.Nos.23 & 24/Hyd/2019 (In ITA No.1087 & 1088/Hyd/2019) and CO.No.7/Hyd/2021 (In ITA No.663/Hyd/2020)		
Assessment Years: 2011-12 & 2012-13		
M/s. Coastal Projects Pvt.Ltd. Plot No.304-O, Road No.78 Film Nagar, Jubilee Hills Hyderabad-500 033  PAN: AABCC1907E	Vs.	DCIT, Circle-1(2) Room No.724, 7 <sup>th</sup> floor, 'B' Block, Income Tax Towers Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:	Shri H.Srinivasulu, Advocate	
Revenue by:	Shri Y.V.S.T.Sai, CIT-DR	
Date of hearing:	02.08.2022	
Date of pronouncement:	03.08.2022	

**ORDER****PER BENCH :**

The captioned appeals are filed by the Revenue feeling aggrieved by the orders passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 24.08.2020 for the A.Y 2011-12 and 2012-13. Similarly, C.Os. are filed by the assessee in respect of the same orders for both the assessment years.

2. Ld.DR had submitted that the Revenue learnt about the appointment of liquidator only on the last date of hearing i.e., on 01.08.2022. This fact was not known to the Revenue prior thereto, therefore, the Revenue had not filed Form 36 impleading the company through its official liquidator as Respondent in the present appeal. It was also submitted that the Revenue had also not taken the ground about the maintainability of the appeal filed by the assessee before ld.CIT(A). He had submitted that the grounds for maintainability of the appeal filed before ld.CIT(A), is permitted to be taken on the basis of the oral submission, which is in tune with the decision of the hon'ble Supreme Court in the case of Hukum Chand Mills reported in 63 ITR 232.
3. In response thereto, ld.AR had submitted that the Revenue is required to raise the grounds in accordance with the rules framed for that purposes and raising of oral grounds by the Revenue is not permissible.
4. We have heard the rival contentions of the parties and perused the material on record. Since the assessee has not disclosed the fact of appointment of liquidator by NCLT vide its order

dt.08.12.2018, even prior to 01.08.2022 i.e. the last date of hearing before us, Therefore, the Revenue is within its right to raise the ground of maintainability of the appeal filed by the assessee before the Id.CIT(A). Accordingly, we frame the following preliminary ground.

“Whether the appeal filed by Ch. Mohan Rao on behalf of the company before the Id.CIT(A) was maintainable in the eyes of the law or not ?”

5. During the course of hearing, it came to our notice that the assessee company was wound up in view of the order of the National Company Law Tribunal (hereinafter referred as “NCLT”) dated 06.12.2018 and as per the said order Shri Ravi Sankar Devrakonda was appointed as liquidator of the company.
6. The Id. DR for the revenue has brought to our notice that the petition was admitted u/s. 7 of the Insolvency and Bankruptcy code vide order dated 05.01.2018 against the assessee company as efforts made to revive the company failed therefore, the liquidator was appointed under Chapter III r.w.s. 33 I&B code upon the following terms.

#### O R D E R

- i. *Mr.Ravi Shankar Devarakonda is appointed as the Liquidator*
- ii. *Issue notice of appointment to the Liquidator forthwith via E-mail, calling him to produce written consent within one week of receipt of the order.*
- iii. *Mr.Ravi Sankar Devarkonda is directed to issue public announcement in one of the leading English newspaper as well as in one vernacular newspaper having wide circulation where the registered office of the corporate debtor is situated as per Section 33(1)(b)(ii) of the Code read with Reg. 12(1) of IBBI (Liquidation Process) Regulations, 2016.*

- iv. *The Registry is directed to communicate this order to the Registrar of companies, West Bengal and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi*
- v. *The Order of Moratorium passed under section 14 of the I&B Code, 2016 shall cease to have effects and a fresh moratorium under section 33(5) shall commence.*
- vi. *This order is deemed to be a notice of discharge to the offices, employees and the workmen of the Corporate Debtor as per section 33(7) of I&B code, 2016*
- vii. *The Liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of the Insolvency and Bankruptcy Code, 2016*
- viii. *Upon proceeding with the liquidation the Liquidator shall file a preliminary report as per regulation 5 read with Reg.13 of the IBBI (Liquidation) Regulations, 2016 at the registry within 75 days from the liquidation commencement date and continue to file progress reports as per Reg.15(1) within 15 days after the end of the quarter in which he is appointed.*
- ix. *The fee payable to the Liquidator shall form part of the liquidation cost as provided under Reg.4(1) of the IBBI (Liquidation Process) Regulations, 2016*
- x. *CA (IB) NO.965/KB/2018 is dismissed. However, no order as to cost.*
- xi. *The CA (IB) No.955/KB/2018 is dismissed, however with a liberty to submit its claim if any to the liquidator in accordance with I&B code and Regulations*
- xii. *The CP (IB) No.593/KB/2017 is disposed of accordingly.*

7. It was submitted by the ld. DR that the appeals filed before Ld.CIT(A) were not maintainable as the same were filed through one Shri. CH.Mohan Rao. The ld. DR submitted that once the company had gone into liquidation and liquidator was appointed then the appeal was required to be filed by the official liquidator. Therefore, the appeal filed before ld.CIT(A) on behalf of the company by Shri CH. Mohan Rao was not maintainable in the eyes of the law.

8. The ld.DR further submitted that the above said fact of appointment of the official liquidator by NCLT was not brought to the notice of ld.CIT(A) and hence, no objection was raised by him

in respect of the institution of appeal by a person who was not authorized as per law. It was submitted that once the appeal had been filed by a person other than the liquidator, then the said appeal as well as the order passed by the Id.CIT(A) on such non-est appeal is void.

9. Per contra, the learned counsel appearing on behalf of the official liquidator submitted that Shri. CH. Mohan Rao was the authorized official liquidator to appear in the matter. It was the contention of the learned counsel for the official liquidator that the appointment of the official liquidator was brought to the notice of Id.CIT(A) after filing the appeal before him. Though Id.CIT(A) had information on record with regard to the appointment of official liquidator, however, for the reasons best known to him, he did not mention the same in his order. Even otherwise, it was submitted that the mistake in not filing the appeal by the liquidator is a rectifiable mistake u/s. 292B of the Act. In support of his contention, Id.AR referred to the decision of Hon'ble Supreme Court passed in the case of Ghanshyam Mishra & Sons vs Edlweiss asset Reconstruction vide Civil Appeal No.8129 of 2019 order dated 13.04.2021. It was submitted that no demand could be enforced against the assessee company since the company went into liquidation.
10. In rebuttal, Id.DR submitted that he has to verify from the Assessing Officer whether the Revenue department filed any objection / objections in response to the notice calling for objections from the official liquidator to protect the interests of the Revenue. Further, it was submitted that the demand continues to exist for all practical purposes, even if the assessee is wound

up. Nonetheless, it was submitted that the appeal filed before the Id.CIT(A) is not maintainable and the issue of maintainability of the appeal before the Id.CIT(A) can always be examined by this Tribunal.

11. We have heard the rival contentions of the parties and perused the material available on record. Before we go into the merits of the arguments of the parties, it is essential to mention the scheme of Income Tax Rules, 1962 and Income Tax Act, 1961, which provide how the appeal has to be filed by the assessee against the order passed by the AO. In this regard, Rule 45 of Income Tax rules, 1962 provides the requirement of filing of the appeal as per Form 35. Rule 45 of I.T.Rules, 1962 provides as under:-

**PART X**  
**APPEALS**

**3[Form of appeal to Commissioner (Appeals)]4.**

**45.** (1) An appeal to the Commissioner (Appeals) shall be made in Form No. 35.

(2) Form No. 35 shall be furnished in the following manner, namely:—

(a)	<i>in the case of a person who is required to furnish return of income electronically under sub-rule (3) of rule 12,—</i>	
	(i)	<i>by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;</i>
	(ii)	<i>by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);</i>
(b)	<i>in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule (2) or in paper form.</i>	

(3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.

(4) Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.

(5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

(i)	specify the procedure for electronic filing of Form No. 35 and documents;
(ii)	specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (2), for the purpose of verification of the person furnishing the said form; and
(iii)	be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished.]

12. Section 140(C) of the Act provides as under:-

(c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director thereof [or any other person, as may be prescribed for this purpose] :

**Provided** that where the company is not resident in India, the return may be verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return :

**Provided further** that,—

(a) **where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be verified by the liquidator referred to in sub-section (1) of section 178;**

(b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be verified by the principal officer thereof; or

(c) where in respect of a company, an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

13. Section 178 of I.T.Act provides as under:-

**Company in liquidation.**

**178. (1) Every person—**

- (a) *who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or*
- (b) *who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the income of the company.*
- (2) *The Assessing Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.*
- (3) *The liquidator—*
- (a) *shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2) ; and*
- (b) *on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :*
- Provided** *that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.*
- (4) *If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay :*
- Provided** *that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.*
- (5) *Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.*
- (6) *The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force except the provisions of the Insolvency and Bankruptcy Code, 2016.*

14. The conjoint reading of Rule 45 of I.T.Rules, 1962, Form-35, Sections 140 and 178 of the I.T.Act, 1961 makes it abundantly clear that if a company has wound up by order of the Court / NCLT then the appeal is required to be filed and verified

by the liquidator, so appointed by the Court. In the present case, the relevant portion of Form 35 wherein the Form of Verification was provided as under:-

**Form of Verification**

I, **CH.MOHAN RAO** the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place : **HYDERABAD**  
Date : **22/01/2019**

This form has been digitally signed by **MOHAN RAO CHINNAMSETTY** having PAN **ADHPC1767E** from IP Address **210.212.216.49** on **2019-01-22 12:28:16.0**.  
Dsc SI No and issuer **16011337CN=e-Mudhra Sub CA for Class 2 Individual 2014,OU=Certifying Authority,O=eMudhra Consumer Services Limited,C=IN**

15. Thus, it is clear that the appeal before Id.CIT(A) was filed by Shri Ch.Mohan Rao who was not the official liquidator appointed by the NCLT. Since the appeal was not filed by the authorized person namely, the liquidator i.e. Ravi Shankar Devarakonda, before the Id.CIT(A), then it cannot be held that the appeal was duly instituted by the authorized person as contemplated u/s. 140 r.w.s. 178 of the Act. Therefore, the said appeal in our opinion is non-est in the eyes of law and no order can be passed on such appeal by the Id.CIT(A). In the light of the above, we are of the opinion that since the appeal was instituted not by the official liquidator but by some other person, hence, the same will become a fatal defect which goes to the root of the appeal and accordingly, the order passed by Id.CIT(A) based on such a non-est appeal is required to be set aside. Having held that the appeal itself was instituted wrongly by Mr. Ch. Mohan Rao being not filed by the competent person, we are of the opinion that the matter is required to be remanded back to the file of Id.CIT(A) with a direction to the assessee to remove the defects by filing the correct Form 35 before the Id.CIT(A). The Id.CIT(A) is directed to decide the appeal afresh after examining the merits of

the case, and while doing so, he shall keep in mind that the company has already gone into liquidation and the liquidator was already appointed by the NCLT. Needless to say, while doing so, he will not be affected by our observation and also the earlier findings of Id.CIT(A).

16. In the result, the appeals filed by the Revenue are allowed for statistical purposes, hence, Cross-Objections filed by the assessee becomes infructuous.

Order pronounced in the Open Court on 03<sup>rd</sup> August, 2022.

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 03<sup>rd</sup> August, 2022.

*Thirumalesh/sps*

Copy to:

S.No	Addresses
1	DCIT, Circle-1(2) Room No.724, 7 <sup>th</sup> floor, 'B' Block, Income Tax Towers Hyderabad-500 004
2	M/s. Coastal Projects Pvt.Ltd. Plot No.304-O, Road No.78 Film Nagar, Jubilee Hills Hyderabad-500 033
3	CIT(A)-1, Hyderabad
4	Pr.CIT-1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*