

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.5740/Mum/2013  
(A.Y.2009-10)**

Shree Ram Urban Infrastructure Ltd. Shree Ram Mills Premises, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 013	Vs.	Income Tax Officer- Range-7(2)(3), Aayakar Bhavan, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCS0454P		
Appellant	..	Respondent

**ITA No.3510/Mum/2016  
(A.Y.2006-07)**

Shree Ram Urban Infrastructure Ltd. (Formerly Shree Ram Mills Ltd.), Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 013	Vs.	Commissioner of Income Tax(A)-14 Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCS0454P		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Tejinder Pal Singh Anand

Date of Hearing	03.10.2022
Date of Pronouncement	31.10.2022

## आदेश / O R D E R

### **Per Amarjit Singh (AM):**

These two appeals are filed by the assessee against the different order of Commissioner of Income Tax (A), Mumbai. At the time of hearing ld. D.R brought to our knowledge of the fact that the assessee has been referred to the corporate insolvency resolution as per IBC-2016 Laws. Since no one has attended from the side of the assessee, the Ld. D.R after referring the copy of order of NCLT, dated 06.11.2019 declaring moratorium which prohibits institution of suits or any continuation of pending suits or any judgment, decree, order in any court of law, Tribunal, arbitration panel or other authority against the respondent company, submitted that these appeals are required to be dismissed.

2. As per the provisions of section 14 of IBC-2016 till the conclusion of proceedings under IBC-2016 no suit or proceedings can be continued against the corporate debtor. Neither anyone from the side of the assessee has attended nor filed any copy of order u/s (1) of 31 or under Sec. 33 passed as laid down under the proviso to Section 14 of the IBC code 2016. On similar issue and facts we have also perused the decision of the coordinate bench of the ITAT vide ITA No. 1395/Mum/2021 to 1399/Mum/2021 dated 13.06.2022. The relevant operating para is reproduced as under:

*“4. Having heard both the Ld. representatives and perused the materials placed on record, we observe that the liquidation proceedings has commenced as per the order of the Hon’ble NCLT, Mumbai, in assessee’s case thereby appointing Official Liquidator. We are aware that from the time of appointment of Official Liquidator, the assessee company became defunct and the Official Liquidator steps into the shoes of the assessee. In the present case, it is seen that the Official Liquidator has not appeared before us so far to present the case of the assessee. Even during the moratorium period specified under section 14(1)(a) of*

the IBC Code, the Ld. representative for the AR made no representation on several hearings and the case was adjourned on various hearings. This being so, upon considering the provisions of section 33(5) of the IBC Code, which is reproduced hereinbelow:-

33. (1) Where the Adjudicating Authority, —  
(a), (b)(i) to (iii) xx  
(2) to (4) xx  
(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

5. Therefore, we are of the considered opinion that no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings and the Proviso to section 33(5) also provides prior approval of the Adjudicating Authority to be obtained by the Official Liquidator.

6. Pertinently, it is also to be observed that in case of parallel proceedings under Income-tax Act, 1961 and IBC, 2016, the IBC has an overriding effect over the provisions of the Income-tax Act which has been decided by Hon'ble Apex Court in Principal Commissioner of Income-tax Vs Monnet Ispat & Energy Ltd in Special Leave to Appeal (C) No(s). 6483/2018 & Ors dated 13/08/2018 wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. It is also trite to peruse section 178 of the Income-tax Act, 1961 which has been amended for the purpose of preventing any conflict with provisions of IBC Code which is reproduced as under:-

- “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 Income-tax Officer who is entitled to assess the income of the company.  
(2) The Income-tax Officer shall, after making such enquiries of 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 Income-tax 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 Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income tax 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 cost and expenses of the winding up of the company as are in the opinion of the 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 subsection (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 & Bankruptcy Code, 2016)."*

7. *From the above observation and also by the decisions of co-ordinate bench of this Tribunal, we hereby dismiss the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants / Official Liquidator to recall the present order when the occasion warrants. The issue of limitation in filing fresh appeal, if need be, has already been dealt with in the judgement of Hon'ble Supreme Court in New Delhi Municipal Corporation vs Minosha India Ltd in Civil Appeal No.3470 of 2022 (arising out of SLP (C) No.8302 of 2021), vide judgement dated 27/04/2022."*

Considering the facts and circumstances and non attendance of hearing by the assessee, we are of the opinion that there is no point in proceeding with the appeals filed by the assessee and also keeping the appeals pending is also a continuation of proceedings. Accordingly, following the decision of the coordinate bench of the ITAT, Mumbai in the case of ITAT vide ITA No. 1395/Mum/2021 to 1399/Mum/2021 dated

13.06.2022 we dismiss both the appeal filed by the assessee with the liberty to the appellant to recall the present appeal when the occasion warrants.

3. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 31.10.2022

Sd/-

(Kuldip Singh)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 31.10.2022

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.**