

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND

SHRI RAHUL CHAUDHARY, JM

**ITA No. 2253/Mum/2023**

(Assessment Year: 2009-10)

**ITA No. 2234/Mum/2023**

(Assessment Year: 2008-09)

Income Tax Officer  
Ward 2(3)(1)  
Room No.581 A,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400 020

Vs.

M/s Silverline Trading  
Company Ltd.  
[Company Struck off in ESS  
2010]  
B-47, Sunil Niwas,  
89-90, Off JP Road,  
Four Bungalow, Andheri West,  
Mumbai-53

**(Appellant)**

**(Respondent)**

**PAN No. AAFCS9706H**

**Assessee by** : Shri Gaurav Kabra, AR  
**Revenue by** : Shri Ajudiya Manish, DR

**Date of hearing:** 06.12.2023  
**Date of pronouncement :** 08.12.2023

**ORDER**

**PER BENCH:**

01. ITA No. 2234/Mum/2023 is filed for A.Y. 2008-09 and ITA No.2253/Mum/2023 for A.Y. 2009-10, filed by the income tax officer, 2(3)(1), Mumbai, against the appellate order passed by the National Faceless Appeal Centre, Delhi for both these assessment years separately on 20<sup>th</sup> April, 2023, wherein the appeal filed by the assessee against the assessment orders dated 29<sup>th</sup> February, 2016, passed under Section 147 read with section 144 of the Income-tax Act, 1961 (the Act) by the income tax officer, Ward 2(3), Mumbai are allowed for the reason that the



assessment order is passed in the name of the company (assessee) has been struck off as per the certificate dated 18<sup>th</sup> March, 2011 issued by MCA , wherein the application made by the assessee from Easy Exit Scheme [EES] , 2010 dated 28<sup>th</sup> August, 2010, was accepted and in terms of Section 560(5) of the Companies Act, 1956, the name of the assessee company has been struck off from the register and the company was dissolved from that date and despite this fact available with the learned Assessing Officer, the assessment orders were passed in the name of 'Silverline Trading Company Ltd.' and therefore, such orders are bad and not sustainable. The learned Assessing Officer is aggrieved with this appellate order and is in appeal before us.

02. The learned Departmental Representative relied upon the decision of the Hon'ble Delhi HC in Sky Light Hospitality Llp Vs. ACIT.
03. The learned Authorized Representative relied upon the orders of the co-ordinate Bench in assessee's own case on identical facts and circumstances for A.Y. 2011-12 and for earlier years i.e. A.Y. 2007-08.
04. On careful consideration of the facts and rival contention, we find that the above appellant entity is not in existence since 18<sup>th</sup> March, 2011, as per the certificate issued by the Registrar of Companies, Maharashtra, Mumbai as its name has been struck off under Section 560 (5) of the Companies Act, 1986, in easy exist Scheme, 2010. The co-ordinate Benches in assessee's own case in ITA no.

2435/Mum/2021, for A.Y. 2011-12 and further in ITA No. 6633/Mum/2017, for A.Y. 2007-08 has already quashed the assessment orders. The issue is now also squarely covered by the decision of Hon'ble Jammu and Kashmir and Ladakh High Court in ITA No. 21 of 2014 dated 3<sup>rd</sup> November, 2013, **M/S. RAINAWARI FINANCE & INVESTMENT COMPANY PVT. LTD. VERSUS INCOME TAX OFFICER, JAMMU 2023 (11) TMI 812 - JAMMU AND KASHMIR AND LADAKH HIGH COURT** wherein it has been categorically held that once a company is dissolved under Section 560(5) of the Companies Act, it ceases to exist and therefore, no order of assessment could be validly passed against it under the Income Tax Act and if it is so passed, it would be a nullity. The Hon'ble High Court also took support of the judgment of Hon'ble Delhi HC dated 17<sup>th</sup> September, 2009, passed in ITA No.273 of 2009 in case of CIT vs. Vivid Marketing Services Pvt. Ltd. The Honourable High court held as under :-

“5. Having heard learned counsel for the parties and perused the material on record, on facts, we find that the appellant-company was struck off from the Register of Companies and stood dissolved from the date of publication of a notice in The Gazette of India issued for 22nd to 28th April, 2006.

6. Indisputably, the order of assessment against the appellant-company was made on 21.12.2006. The status of the appellant-company on the date of making assessment was that the appellant-company stood struck off from the Register of Companies and



dissolved w.e.f. the publication of notice in the Official Gazette. For the sake of clarity, we set out Section 560 of the Companies Act herein below:-

***“560. Power of Registrar to strike defunct company off register.---***

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company



mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in subsection (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette ; and on the publication in the Official Gazette of this notice, the company shall stand dissolved :

Provided that –

(a) the liability, if any, of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved ; and



(b) nothing in this sub-section shall affect the power of the 2 [Tribunal] to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the Tribunal may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, manager or other



officer of the company, or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his own place of business.”

7. From a reading of Section 560 of the Companies Act, it clearly transpires that after the requisite procedure prescribed under Subsections (1) to (4) is followed and the time mentioned in the notice referred to in Subsections 3 or 4 expires, the Registrar may strike off the name of the company concerned from the Register of Companies. If it does so, it shall publish a notice thereof in the Official Gazette and on publication of the notice in the Official Gazette, the company shall stand dissolved. However, proviso to Subsection (5) of Section 560 further provides that notwithstanding dissolution of the company, liability of every director, manager or other officer who was exercising any power of management and of every member of the company shall continue and may be enforced as if the company had not been dissolved. Proviso (b) further provides that nothing provided in Subsection (5) in respect of dissolution of company whose name has been struck off from the Register,

shall affect the power of the competent Court to wind up a company.

8. The provisions of Subsection (6), if read carefully, would indicate that if a company or any member or creditor of the company feels aggrieved by the decision of the Registrar to strike off registration of the company, it can move an application before the Court before the expiry of twenty years from the publication in the Official Gazette of the notice under Subsection (5) and if the Court is satisfied that the company was, at the time of striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, it may order the name of the company to be restored to the register. The Court may also order such directions and make such provision as may be seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

9. In terms of Subsection (7), once a certified copy of the order passed under Subsection (6) is delivered to the Registrar of Companies for registration, the dissolved company shall be deemed to have continued in existence as if its name had not been struck off.

10. On careful circumspection of Section 560 of the Companies Act, we clearly find that striking off

company from the Register of Companies and its resultant dissolution under Subsection (5), remains under suspended animation and by having recourse to Subsections (6) & (7), it can be resuscitated back to life and continued as if its name had not been struck off. It is, thus, evident that for the purpose of challenging the action of the Registrar striking off registration of the company and effecting its dissolution by publication in the Official Gazette, the company is conferred a juridical personality and may in its own name file an application before the Court for setting aside the order passed by the Registrar under Subsection (5) of Section 560 of the Companies Act.

11. Similarly, under Section 226(3) of the Income Tax Act, it is clearly provided that if there is any tax due from the struck off company, same can be recovered from any person who holds or may subsequently hold money for or on account of the assessee company. Section 226(3) of the Income Tax Act is also relevant for the purpose of discussion we have undertaken and the same is reproduced herein below:-

**“226. Other modes of recovery**

(1) .....

(2) .....



(3) (i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer, and in the case of a joint account to all the joint-holders at



their last addresses known to the Income-tax Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this subsection is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to



pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.



(x) If the person to whom a notice under this subsection is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.”

12. Section 179 of the Income Tax Act also assumes importance in the point we are discussing and stipulates that if the tax due from a private company in respect of any income of previous year become unrecoverable against the company for any reason, then every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. Section 179 of the Income Tax Act reads thus:-

**“179. Liability of directors of private company in liquidation.—** (1) [Notwithstanding



anything contained in the Companies Act, 1956 (1 of 1956), where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962."



13. From a reading of the aforesaid provisions together, it clearly comes out that notwithstanding dissolution of a struck off company in terms of Subsection (5) of Section 560 of the Income Tax Act, liability of any person who holds or may subsequently hold money for and on account of the assessee company or a director of the private company in respect whereof any tax is due in respect of any income of the previous year, as is provided under Section 226(3) and Section 179 of the Income Tax Act, still remains and such person or director shall have the locus standi to challenge the assessment order, if any, passed by the assessing officer against such struck off and dissolved company in respect of any income of the previous year.

14. The aforesaid discussion would lead us to a conclusion that in the instant case any director of the company could have filed an appeal challenging the assessment order on the ground that the liability arising out of the impugned assessment order, under the circumstances pointed out in Section 179 of the Income Tax Act, could be fastened upon him. Interestingly, all proceedings, in the first appeal before the Commissioner Income Tax (Appeals) and second appeal before the Tribunal were filed in the name of the company suing through its director Jeane Fernades.



15. We are not in agreement with the argument of Mr. K.S. Johal, learned senior counsel that in terms of Section 250 of the Companies Act, 2013, the dissolved company is competent in its name to file first and second appeal as also the instant appeal. We do not agree with the learned senior counsel for the simple reason that Section 250 of the Companies Act, 2013 was not in existence in the year 2006 nor do we find any provision parallel to and in *pari materia* with Section 250 of the Companies Act, 2013 in the Companies Act, 1956, as was applicable at the relevant point of time.

16. True it is that in terms of Section 250 of the Companies Act, 2013, where a company stands dissolved under Section 248 of the Companies Act, 2013 (which is in *pari materia* with Section 560 of the Companies Act, 1956) the certificate of incorporation issued to such company shall be deemed to have been cancelled except for the purpose of realizing the amount due to the company or for payment or discharge of the liability or obligation of the company.

17. It is equally true that after promulgation of the Companies Act, 2013 and in view of the specific provision made in Section 250 thereof, the dissolved company is by fiction of law conferred the juridical personality and may, therefore, be competent to challenge the assessment order, if any, passed against it when it stood dissolved by the Registrar



under Section 248 of the Companies Act, 2013. In the absence of similar provision under the Companies Act, 1956 and in view of the discussion made herein above, we are of the considered opinion that in the instant case the company was given fictional juridical personality only for the purpose of laying challenge before the Court to the order of the Registrar striking it off from the Register and effecting its dissolution upon publication of the notice in the Official Gazette and no more. The directors of the company who under some circumstances may be held liable to pay the dues owned by the company to the department are competent in law to take proceedings against the assessment order passed against a dissolved company, if they feel aggrieved.

18. We are, thus, of the view that all the proceedings by the company before the Commissioner, Income Tax (Appeals) and the Tribunal were not maintainable in law. Similarly, instant appeal by the company is not maintainable. The company having ceased to exist was not competent to challenge the assessment order, though, the director may have. Since the company all along is represented by the director, as such, in the larger interest of doing justice and putting an early quietus on the matter, we hold that all proceedings taken in the name of the company shall



be treated to be the proceedings by the director of the company.

19. The discussion so far made by us would now lead us to the determination of the substantial question of law framed in this appeal. Although, it is not in dispute that the appellant company never brought the notification published in Government Gazette issued in respect of the company under Section 560(5) of the Companies Act to the notice of the assessing authority, Commissioner of Income Tax (Appeals) and the Tribunal and, as such, all the three authorities aforesaid committed no illegality in law in coming to the conclusion that merely because the company is defunct, the assessing authority cannot be restrained from passing the assessment order against it. The authorities have concurrently held that there is distinction between the company which is rendered defunct because of stoppage of operations of the company and the company which is formally struck off and dissolved in terms of Subsection (5) of Section 560 of the Companies Act. We, however, cannot lose sight of the fact that on the date of passing of the assessment order, the company stood struck off from the Register and formally dissolved on the publication of the notice in the Official Gazette.

20. It is true that the appellant-director, who was apprehending that the liability for the tax due for the previous year assessed by the assessing



authority against the company could be fastened on him should have been diligent enough to prosecute his appeal and bring true facts to the notice of the concerned authorities, however, we are also aware that when a company becomes defunct and its management goes haywire, there is nobody to take the responsibility of the affairs of the company. Even mice leave the ship when it is sinking. It is in these circumstances, perhaps, the director of the company could not lay his hand on the Official Gazette and was under a bona fide impression that the application for striking off the company from the Register of the Companies and effecting dissolution by publication was still pending before the Registrar of Companies.

21. Be that as it may, now it has come to light that on the date the assessment order was passed, the appellant-company stood dissolved under Section 560(5) of the Companies Act and, therefore, could not have been assessed. In terms of Section 143 of the Income Tax Act, assessment can be made by the assessing authority only against the assessee, who has filed a return under Section 139 of the Income Tax Act or in response to a notice issued under Subsection (1) of Section 142 of the Income Tax Act. The term "assessee" is defined in Subsection (7) of Section 2 of the Income Tax Act to mean that a person by whom any tax or any other sum of money is payable under the Income Tax Act

and the term "person" used in Subsection (7) is defined in Subsection (31) of Section 2 of the Income Tax Act to include an individual, a Hindu undivided family, a company, a firm, an association of person or a body of individuals, whether incorporated or not, a local authority, and every artificial juridical person, not falling within any of the aforesaid clauses etc.

22. From a reading of Sub-section (7) along with Subsection 31 of Section 2 of the Income Tax Act, it becomes abundantly clear that the assessee to be assessed for income tax under Section 143 of the Income Tax Act must be a person in existence. Indisputably, a company is a juridical person but the moment it is struck off from the Register of Companies and is dissolved, it ceases to exist. Making of an assessment order against a non-existent company would be like passing a decree by a civil court against a dead person. Such order of assessment made against a non-existent entity would be nullity and would not give rise to any right or liability under such assessment order. The view we have taken is supported by a judgment of the **High Court of Delhi dated 17.09.2009 passed in ITA No. 273/2009 titled Commissioner of Income Tax v. Vived Marketing Servicing Pvt. Ltd.** One paragraph judgment rendered by the Delhi High Court has upheld the decision of **ITAT in Impsat Pvt. Ltd. v. ITO**

**276 ITR 136 (AT).** One paragraph judgment reads thus:-

“When the Assessing officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. The Tribunal relied upon its earlier decision in **Impsat Pvt. Ltd. v. ITA 276 ITR 136 (AT)**. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law. No substantial question of law arises. Dismissed.”

23. The relevant observations of the ITAT Delhi Bench in *Impsat (P) Ltd. v. Income Tax Officer* are also worth taking note of and are, thus, set out below:-

“17. A reference to page 1901 of A. Ramaiya’s commentary on the Companies Act, 1956 (12th Edition) by Hon’ble Justice Y.V. Chandrachud (former Chief Justice of India) shows the following extract from



Halsbury's Laws of England, fourth ediction, Vol.7, para 1448, page 809 under the heading

"Effecting of dissolution".

"The dissolution puts an end to the existence of the company. Unless and until it has been set aside, it prevents any proceedings being taken against promoters, directors or officers of the company to recover money or property due or belonging to it or to prove a debt due from it. When the company is dissolved, the liquidator's statutory duty towards the creditors and contributories is gone; but, if he has committed a breach of his duty to any creditor by distributing the assets without complying with the requirements of the Companies Act, 1948, he is liable in damages to him."

.....

.....

21. That takes us to the next question regarding the validity of an assessment on a non-existent person. It is a nullity. Reference may be made to the judgments of the **Supreme Court in Amarchand N. Shroff's case (supra) and ITA v. Ram Prasad [1972] 86 ITR 145.** These are cases of an individual and a joint



family respectively, but the ratio is that there can be no assessment on a dead person. Just as an individual ceases to exist on death and a joint Hindu family ceases to exist on being disrupted, a company ceases to exist on being dissolved under section 560 of the Companies Act.

We have already noted the judgment of the Supreme Court in Hari Prasad Jayantilal's case (supra) as to the effect of dissolution and the treatise of A. Ramaiya on Company Law in this behalf. If the company is not in existence at the time of making the assessment, no order of assessment can be validly passed upon it under the Income Tax Act and if one is passed, it must be a nullity."

24. We, thus, answer the question by holding that once a company is dissolved under Section 560(5) of the Companies Act, it ceases to exist and, therefore, no order of assessment could be validly passed against it under the Income Tax Act and if it is passed, it would be a nullity. Having answered the aforesaid question, we allow the appeal and set aside the order of assessment dated 21.12.2006, order of the Commissioner of Income Tax (Appeals), Jammu dated 01.04.2013 and the order of the Tribunal dated 30.01.2014."



05. Coming to the decision of the Hon'ble Delhi High Court in case of Skylight Hospitality Ltd, the issue was that the private limited was converted to limited liability partnership under the limited liability partnership Act, 2008 and that was not the case of dissolution of the company. Therefore, that decision does not apply to the facts of this case.
06. Therefore respectfully following decision of coordinate benches in assessee's own case as well as the decision of Honourable J & K High court, Both the assessment orders passed in the name of non existing company are not sustainable and correctly quashed by Id CIT (A). Thus, orders of the Id CIT (A) are upheld for both the years.
07. Accordingly, both the appeals filed by the learned Assessing Officer are dismissed.

Order pronounced in the open court on 08.12.2023.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.12. 2023

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//



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