

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.7607/Mum/2012
(Assessment Year :2008-09)**

**ITA No.2790/Mum/2018
(Assessment Year :2011-12)**

**ITA No.2791/Mum/2018
(Assessment Year :2012-13)**

**&
ITA No.28/Mum/2018
(Assessment Year :2009-10)**

Dy. Commissioner of Income Tax-5(2)/ 5(2)(2) Mumbai Maharashtra	Vs.	M/s. Mercator Ltd. Shri Girish S. Juneja (Liquidator in the case of M/s. Mercator Limited) 22, Dignity Apartments Bon Lane 7, Bungalows, Versova Andheri (W) Mumbai - 400 053 Maharashtra
PAN/GIR No.AAACM5007A		
(Appellant)	..	(Respondent)

**ITA No.99/Mum/2013
(Assessment Year :2008-09)**

**CO No.183/Mum/2013
(Arising out of ITA No.7607/Mum/2012)
(Assessment Year :2008-09)**

**ITA No.7280/Mum/2017
(Assessment Year :2009-10)**

CO No.120/Mum/2019
(Arising out of ITA No.2791/Mum/2018
(Assessment Year :2012-13)

CO No.119/Mum/2019
(Arising out of ITA No.2790/Mum/2018
(Assessment Year :2011-12)

CO No.20/Mum/2019
(Arising out of ITA No.28/Mum/2018
(Assessment Year :2009-10)

ITA No.1035/Mum/2019
(Assessment Year :2014-15)

ITA No.3367/Mum/2018
(Assessment Year :2011-12)

ITA No.3368/Mum/2018
(Assessment Year :2012-13)

ITA No.120/Mum/2019
(Assessment Year :2013-14)

M/s. Mercator Ltd. Shri Girish S. Juneja (Liquidator in the case of M/s. Mercator Limited) 22, Dignity Apartments Bon Lane 7, Bungalows, Versova Andheri (W) Mumbai – 400 053 Maharashtra	Vs.	Dy. Commissioner of Income Tax-5(2) / 5(2)(2) / 5(2)(1) / Addl. Commissioner of Income Tax-5(2) Mumbai Maharashtra
PAN/GIR No. AAACM5007A		
(Appellant)	..	(Respondent)

Assessee by	Shri Mangesh Bhosle
-------------	---------------------

Revenue by	Shri Alok Kumar-CIT DR
Date of Hearing	05/08/2024
Date of Pronouncement	05/08/2024

आदेश / O R D E R

PER BENCH:

These are the cross appeals filed by the erstwhile company and the department for various assessment years starting from A.Y.2008-09 to 2014-15.

2. It has been brought on record that this company has gone into liquidation and proceedings u/s.7 of IBC Code, 2016 has been initiated. The NCLT vide its order dated 21/02/2023 had approved the corporate debtor company into liquidation as a going concern as per IBC code and also has appointed liquidator, Mr. Girish S Juneja. Following order has been passed:-

“The above I.A. No. 959 of 2022 is allowed and the Corporate Debtor, Mercator Limited is ordered to be liquidated as a going concern.

a. Mr. Girish S. Juneja (Regn No: IPA-001/IP-P00999/ 2017-2018/11646) and having office at 22 Dignity Apartments, Bon Lane, 7 Bungalows, Versova, Andheri (W) Mumbai: 400 053 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

b. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.

c. *The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

d. *The Liquidator appointed under section 34(1) of the Code will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.*

e. *That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.*

f. *All the powers of the Board of Directors, Key Managerial Persons, the Partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.*

g. *That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.*

h. *That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.*

i. *This liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.*

j. *The Registry is directed to communicate this order to the Liquidator*

3. Once the liquidation process has been initiated then, subject to Section 52 of the IBC, no suit or other legal proceedings shall be instituted or against the corporate debtor save and except the liberty of the liquidator. Since there is a bar for initiating any suit or any other legal proceedings during moratorium, it also includes the income tax proceedings. Therefore, under these circumstances, it is premature to decide these appeals on merits. Accordingly, all these appeals are consigned to records and the parties shall be at liberty to reconstitute the appeal, once the committee of creditors or NCLT directs the Liquidator or corporate creditors (including Income Tax department) to pursue the appeal; or the liquidator after completion of process may approach to get the appeal disposed after filing revised Form 36. Accordingly, all the appeals are dismissed in limine, subject to above liberty given to the parties.

4. In the result, all the appeals are dismissed in limine.

Order pronounced on 5th August, 2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Mumbai; Dated 05/08/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai