



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	25.02.2021
Pronounced On	11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 41588 of 2016
and
W.M.P.No. 35601 of 2016

M/s.PVP Ventures Limited,
A Public Limited Company,
Represented by its Authorized Signatory,
Sivaramakrishnan,
having its office at
KRM Centre, 9th Floor,
No.2, Harrington Road,
Chetpet, Chennai - 600 031.

... Petitioner

Vs

- 1.The Income Tax Officer,
Corporate Ward-1, (1)
Room No.615, 6th Floor,
Wanaparthi Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Chennai - 600 034.
- 2.The Registrar of Companies,
Block No.6, B-Wing, 2nd Floor,
Shastri Bhawan,
26, Haddows Road,
Chennai - 600 034.
- 3.The Regional Director of Companies,
Southern Region,
5th Floor, Shastri Bhawan,
26, Haddows Road,
Chennai - 600 006.

(2nd and 3rd respondents are impleaded herein
vide order of this Court dated 11.06.2021 in
W.P.No.41588 of 2016)

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned notice issued under Section 148 of the Act in PAN: AAFCA0242C dated 16.03.2016 and consequently quash the proceedings order no.C.W.1(1)/AAFCA0242C/16-17 dated 11.11.2016.

For Petitioner : Mr.R.Sivaraman
For Respondent : Mr.Prabhu Mukunth Arun Kumar
Standing Counsel

ORDER

The present writ petition has been filed against the impugned order/proceedings dated 11.11.2016 passed by the respondent/Income Tax Officer for the Assessment Year 2009-2010 under Section 560 of the Companies Act, 1956.

2. The operative portion of the impugned order/proceedings reads as under:-

"4.

Vide this office letter dated 04.11.2016, the office of the Registrar of Companies was also requested to confirm whether any notice was issued and if so to send a copy of the acknowledgment.

In these circumstances, as no notice was received in this office, it is reiterated that M/s.AGS Hotels & Resorts Pvt. Ltd., is still an assessee in respect of the assessment year 2009-10. Every director, manager or other officer who were nominated by the holding company, M/s.PVP Ventures Limited are continuing and are being enforceable as if M/s.AGS Hotels & Resorts Pvt. Ltd has not been dissolved."

3. The petitioner had earlier challenged a notice dated 16.03.2016 seeking to reopen the assessment of a defunct company namely M/s.AGS Hotels and Resorts Private Limited for the Assessment Year 2009-2010 on the ground that the said company had been dissolved by the Deputy Registrar of Companies on 24.03.2014 under Section 560 (3) of the Companies Act, 1956.

4. It is submitted that the company was dissolved pursuant to a notice dated 24.02.2014 and that the said notice was also issued to the Chief Commissioner of Income Tax Office. The Notice dated 24.02.2014 of the Deputy Registrar of Companies, which is relied upon in support of the present writ petition, reads as under:-



"In the matter of the Companies Act, 1956 and of M/s.AGS Hotels & Resorts Private Limited, U55101TN2004PTC053848.

This is with respect to your application (Form FTE) dated 15/02/2014 vide SRN B96214788.

Notice is hereby given pursuant to sub-section (3) of section 560 of the Companies Act, 1956 that at the expiration of thirty days from the date hereof the name of the M/s.AGS Hotels & Resorts Private Limited unless cause is shown to the contrary, will be struck off from the Register and the said company will be dissolved."

5. The learned counsel for the petitioner submits that the petitioner was merely a holding company of the defunct AGS Hotels and Resorts Private Limited and that pursuant to the steps taken by the said company to dissolve itself and to strike off its name from the rolls of the companies, the name of the said company was also struck off from the list of registered companies.

6. It is further submitted that the share holders of the said company had passed a Board Resolution to file an application under Section 560 of the Companies Act, 1956, to dissolve the company under the Fast Track Exit Mode as the said company was not carrying on any business.

7. The learned counsel for the petitioner further submits that pursuant to the dissolution and striking off the name of the said company, the petitioner had also written off its assets namely, the investments made by the petitioner in the aforesaid company in its books of accounts as on 31.03.2014. It is submitted that though the petitioner had challenged the notice issued under Section 148 of the Income Tax Act, 1961 in W.P.No.24894 of 2016, this Court had specifically directed the respondent to pass a speaking order by its order dated 19.07.2016 in the aforesaid writ petition.

8. The attention is drawn to Paragraphs 14 & 15 of the said order:-

"14. If the respondent called for certain documents and sought clarifications, then simultaneously the respondent cannot proceed with the re-assessment proceedings under Section 144 of the Act. The petitioner is entitled to raise all issues before the respondent and after considering the contentions raised by the petitioner, the respondent shall pass a speaking order. If, in the hands of the respondent, the petitioner's explanation is not found satisfactory, then only he can proceed further in the matter. Therefore, the directions issued in paragraphs 5 and 6



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of the impugned communication dated 10.6.2016 have to be necessarily kept in abeyance till the respondent takes a decision on the clarifications to be given by the petitioner as called for by the respondent after producing the documentary evidence, which the respondent directed the petitioner to produce.

15. In the light of the above, this Court is not inclined to interfere with the impugned proceedings and accordingly, the writ petition is dismissed with a direction to the petitioner to appear before the respondent on the appointed date either in person or through an authorized representative, clarify all the issues and produce necessary documentary evidence. After taking note of the clarifications and perusing the documents and after hearing the authorized representative of the petitioner, the respondent shall pass a speaking order and communicate the same to the petitioner within a period of 15 days from the date, on which, personal hearing is concluded. Till such time, the re-assessment proceedings shall be kept in abeyance and plea of limitation cannot be raised in the event the assessment has to proceed further. This direction has been issued with a view to afford an opportunity to the petitioner to place facts before the respondent. No costs. Consequently, the above WMP is closed."

9. It is further submitted that once the company has been stuck off and dissolved under law, no notice can be served on its holding company. It is further submitted that under Section 560 (5) of the Companies Act, 1956, liability of the company, if any, will be that of the director or 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.

10. It is submitted that the petitioner has also given the details of the erstwhile directors of such company. However, the respondent has passed the impugned order by ignoring the proviso to Section 560 (5) of the Companies Act, 1956 and in defiance of the order passed by this Court in W.P.No.24894 of 2016. The content of the order which has been already extracted above.

11. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax Vs Maruti Suzuki India Ltd, 2019 SCC Online SC 928 and that of the Delhi High Court in Spice Entertainment Limited Vs Commissioner of Service Tax in I.T.A.Nos.475 & 476 of 2011 which was affirmed by the Hon'ble Supreme Court in C.A.No.285 of 2014.



12. Defending the impugned order, the learned counsel for the respondent/Income Tax Department submits that so called notice referred to in the notice issued under Section 560 (3) of the Companies Act, 1956, by the Deputy Registrar of Companies was never received by the Income Tax Department and therefore the dissolution of the said M/s.AGS Hotels and Resorts Private Limited Company was not binding on the Income Tax Department.

13. It is submitted that a letter dated 04.11.2016 was addressed to the Office of the Registrar of the Companies to confirm whether any notice was issued to the petitioner and if so, to send a copy of the same and since no notice was received by the revenue/Income Tax Department to dissolve the company under Section 560 of the Companies Act, 1956, the same was not binding on the Income Tax Department.

14. The learned counsel for the respondent/Income Tax Department relied on the decision of this Court rendered in the following cases:-

(i) M/s.Mando Automotive India Private Limited Vs The Deputy Commissioner of Income-tax, Chennai in W.P.No.2779 of 2017.

(ii) Oasys Green Tech (P.) Ltd. Vs Income-tax Officer, [2020] 115 taxmann.com 153 (Madras) in W.P.Nos.1759 & 21858 of 2018.

(iii) M/s.Oasys Green Tech Private Limited, Vs Income Tax Officer in W.A.Nos.534 & 535 of 2020.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel for the respondent/Income Tax Department. I have perused the records.

16. Section 560 of the Companies Act, 1956 merely gives the power to The Registrar of Companies to strike off the name of a defunct company from Register the Companies.

17. Under sub-clause (3) of Section 560 of the Companies Act, 1956, the Registrar of Companies is empowered to strike off the name of a company from its Register if it is found that such company is no longer carrying on business. However, such a company can be dissolved only if there is a publication in the official Gazette under Section 560(5) of the Companies Act, 1956. The petitioner has not filed any copy of the said Gazette Notification publishing factum of its dissolution under Section 560 (5) of the Companies Act, 1956.

18. The Notice issued under proviso to sub-section (5) of Section 560 of the Companies Act, 1956 is intended only to



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

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19. The said provision merely gives the right to the authorities to proceed against such officers who exercised the power of Management of the company which had been dissolved as if such company had not been dissolved. It is not intended to continue proceedings against the company which has been dissolved under the aforesaid provision against the holding company.

20. Under sub-clause (6) to Section 560 of the Companies Act, 1956, if any company or any member or creditor of such company feels aggrieved by the action of the Registrar striking off the name of the company from the Register, can file an application before expiry of 20 years from the date of publication of the Official Gazette. The Tribunal may if it is satisfied that the company was at the time of striking off carrying on business or an operation or otherwise that it is just to restore to the Register, the name of the company, restore it to the Register. The Tribunal may, by order, give such directions and make such provisions as seen just for placing the company and all other persons in the same position as nearly as may be, in the name of the company has not off. A similar provision exists in Chapter XVII of the Companies Act, 2013.

21. It is not clear from the records the actual date of publication in the Gazette. If there was indeed a Gazette publication to strike off the name of M/s.AGS Hotels and Resorts Private Limited, from the Register of Companies, by the Registrar of Companies, the remedy available to the Income Tax Department was under Section 560(6) of the Companies Act, 1956 read with Chapter XVII of the Companies Act, 2013.

22. On the other hand, if there was no publication, the name of the said company would still continue to exist notwithstanding the order of the Registrar of Companies striking off the name of the said company from its Register. In any event, proviso to Section 560(5) of the Companies Act, 1956 is not intended to continue proceedings against defunct company. It is merely intended to continue the liability, if any, of the director, manager or other officer who was exercising any power of management, and of every member of the company. Only such liability shall continue and may be enforced as if the company had not been dissolved. Therefore, only personal liability of the individual contemplated in clause (a) to proviso to sub-section (5) to Section 560 of the Companies Act, 1956 cannot be



invoked against the petitioner company. Petitioner can be held liable for the liability as a member of the said company in its capacity as a holding company.

23. Under these circumstances, I am inclined to remit the case back to the respondent to re-look at the issue afresh. The petitioner shall produce a Gazette notification, if any, that may have been published under sub-clause (5) to Section 560 of the Companies Act, 1956 publishing the decision to strike off the name of the said company from the Register of Companies. The petitioner shall file such document within a period of thirty (30) days from date of receipt of this order as the petitioner would have been aware of the same as it was in Management of the aforesaid company as its holding company.

24. Parallely, the Registrar of Companies, Chennai and the Regional Director of Companies, Chennai for Southern Region who are being impleaded as the second respondent, third respondent herein respectively, are directed to furnish the details of Gazette publication of the decision to dissolve M/S.AGS Hotels and Resorts Private Limited. In case, there was no publication in the Official Gazette as was contemplated under Section 560(3) of the Companies Act, 1956, it shall be deemed that the name of the said company has never been struck from the Register of Companies, in which case, the impugned proceeding shall be answered by the petitioner as it is the holding company of the said company M/S.AGS Hotels and Resorts Private Limited.

25. On the other hand, if the Gazette publication of the indeed effected, the respondent/Income Tax Department is not remedy less. It can take steps under Section 560 (6) of the Companies Act, 1956 read with Chapter XVII of the Companies Act, 2013 and then proceed in accordance with law. The entire exercise shall be carried out within a period of ninety (90) days from the date of receipt of this order.

26. This Writ petition stands disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

The Income Tax Officer,
Corporate Ward-1, (1)
Room No.615, 6th Floor,
Wanaparthi Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Chennai - 600 034.

2.The Registrar of Companies,
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Chennai - 600 034.

3.The Regional Director of Companies,
Southern Region,
5th Floor, Shastri Bhawan,
26, Haddows Road,
Chennai - 600 006.

+1CC to Mrs.Hema Muralikrishnan, Advocate, Sr.No.27696

Pre-delivery Order in
W.P. No. 41588 of 2016

SKY (CO)
K.RK. (27.08.2021)