

A COMMISSIONER OF INCOME TAX, JAIPUR

v.

M/S GOPAL SHRI SCRIPS PVT. LTD.

(Civil Appeal No.2922 of 2019)

B MARCH 12, 2019

[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]

C *Income Tax Act, 1961 – s.260A and Chapter XV – Companies Act, 1956 – s.560 – High Court dismissed the appeal on the ground that it had become infructuous as the name of the respondent-assessee (company) was struck off from the register of the company u/s.560(5) of the Companies Act, 1956 – Propriety of – Held: High Court was wrong in dismissing the appeal rendering it infructuous as it did not decide the appeal keeping in view the two relevant provisions i.e. s.560(5) proviso (a) of the Companies Act and Chapter XV of the Income Tax Act which deals with ‘liability in special cases’ and its clause (L) which deals with ‘discontinuance of business or dissolution’ – These provisions specifically deal with the cases of the Companies, whose name has been struck off u/s. 560(5) of the Companies Act – Thus, order of the High Court not legally sustainable – Accordingly, case remanded to the High Court for deciding the appeal afresh.*

Remanding the matter to the High Court, the Court

F **HELD: 1. The High Court failed to notice Section 560 (5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with “liability in special cases” and its clause (L) which deals with “discontinuance of business or dissolution”. [Para 13] [707-D]**

G **2. The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the Companies, whose name has been struck off under Section 560 (5) of the Companies Act. [Para 14] [707-E]**

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3. These provisions provide as to how and in what manner the liability against such Company arising under the Companies Act, 1956 and under the Income Tax Act, 1961 is required to be dealt with. [Para 15] [707-F] A

4. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside. [Para 16] [707-F] B

5. The case is remanded to the High Court for deciding the appeal afresh on merits in accordance with law keeping in view the relevant provisions of Companies Act and the Income tax Act. [Para 17] [707-G-H; 708-A] C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2922 of 2019.

From the Judgment and Order dated 09.08.2016 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in Income Tax Appeal (ITA) No. 53 of 2000. D

A. N. S. Nadkarni, ASG, Ms. Purnima Bhat Kak, Ms. Nisha Bagchi, Mrs. Anil Katiyar, Advs. for the Appellant.

T. R. B. Sivakumar, Adv. for the Respondent.

The Judgment of the Court was delivered by E

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 09.08.2016 passed by the High Court of Judicature for Rajasthan at Jaipur in DBITA No.53 of 2000 whereby the High Court dismissed the appeal as having become infructuous filed by the appellant herein. F

3. The appeal involves a short question as would be clear from the facts stated *infra*.

4. The appellant is the Union of India-Income Tax Department. The respondent is the assessee in the appeal out of which this appeal arises. G

5. The appellant herein filed an appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) in the High Court of Rajasthan (Jaipur bench) against the order dated 28.04.2000 of Income Tax Appellate Tribunal (ITAT) in ITA No 226/JP/1999. H

- A 6. By impugned order, the High Court dismissed the appeal as having rendered infructuous giving rise to filing of this appeal by way of special leave by the Income Tax Department in this Court.

The impugned order reads as under:

- B **On the last date of hearing when the matter cam up before the Court on 05.07.2016, counsel for the appellant was directed to seek instructions about the present status of the Respondent-assessee (Company) whether it is in existence or has become non operational or defunct by passage of time.**

- C **Sh. Anuroop Singhi, Adv., appearing for the appellant has placed for our perusal a communication issued from the office of Registrar of Companies dated 07.04.2011 indicating that pursuant to sub-section(5) of Section 560 of the Companies Act, 1956 the name of Gopal Shri Scripts Pvt. Ltd., has been struck off from the register and the said company is dissolved.**
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- In the light of the communication placed for our perusal dated 07.04.2011, no purpose is going to be served in examining the substantial question of law which has been raised for consideration in the instant appeal and on account of these change in circumstances, the present appeal has become infructuous and accordingly stands dismissed. However, the appellant is still at liberty to file application if any occasion arises in future.”**
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- F 7. The short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appeal filed by the Income Tax Department on the ground that it has rendered infructuous.

8. Mr. A.N.S. Nadkarni, learned ASG appeared for the appellant. None appeared for the respondent (assessee) though served.
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9. Having heard the learned counsel for the appellant (Income Tax Department) and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and remand

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the case to the High Court for deciding the appeal afresh on merits in accordance with law. A

10. Mere perusal of the impugned order quoted supra would go to show that the High Court dismissed the appeal on the ground that it has rendered infructuous because it was brought to its notice that the name of the company- the respondent-assessee has been struck off from the Register of the Company under Section 560(5) of the Companies Act, 1956. B

11. In other words, the High Court was of the view that since the respondent-Company stands dissolved as a result of the order passed by the Registrar of the Companies under Section 560 (5) of the Companies Act, the appeal filed against such Company which stands dissolved does not survive for its consideration on merits. C

12. In our view, the High Court was wrong in dismissing the appeal as having rendered infructuous.

13. The High Court failed to notice Section 560(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with “liability in special cases” and its clause (L) which deals with “discontinuance of business or dissolution”. D

14. The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the Companies, whose name has been struck off under Section 560(5) of the Companies Act. E

15. These provisions provide as to how and in what manner the liability against such Company arising under the Companies Act and under the Income Tax Act is required to be dealt with. F

16. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside.

17. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the appeal afresh on merits in accordance with law keeping in view the relevant provisions of G

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- A Companies Act and the Income tax Act uninfluenced by any observations made by us on merits.

18. Indeed, having formed an opinion to remand the case for the reasons mentioned above, we refrain ourselves from making any observation on merits of the controversy involved in this appeal. Since the appeal is quite old, we request the High Court to decide the appeal preferably within six months.
- B

Ankit Gyan

Matter remanded to High Court