

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.117/AHD/2021
नविर्धारण वर्ष/Asstt. Year: 2016-2017

M/s. Real Strips Limited, Survey No.245-246, Village Sari, Ahmedabad-Sanand Highway, Ahmedabad-382220. PAN: AABCR2893N	Vs.	Principal Commissioner of Income Tax-3, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri P.D. Shah, A.R
Revenue by	:	Shri Mohd Usman, CIT.D.R

सुनवाई की तारीख / **Date of Hearing** : **07/07/2021**
घोषणा की तारीख / **Date of Pronouncement**: **27/07/2021**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Principal Commissioner of Income Tax-3, Ahmedabad, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-2017.

2. The assessee has raised the following grounds of appeal:

1. *That the Id.PCIT has erred in law and facts by passing the order under section 263 as the order passed by the Id.PCIT is beyond Jurisdiction, against the law and facts and circumstances of the case and further against the directions of the Hon'ble CBDT and the provisions of the Insolvency and Bankruptcy Code 2016 and therefore the order passed by the Ld.PCIT is required to be quashed/annulled and assessment order passed u/s.143(3) of the Act is to be upheld.*
2. *That the Id.PCIT has erred in law and facts by considering the assessment order passed u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue and directing fresh assessment with regard to claim of reversal of the amounts and therefore the direction given by the Id.PCIT for the verification of issue are required to be quashed and the assessment order passed under section 143(3) of the Act is to be upheld.*
3. *That your appellant craves a leave to add, alter or amend any grounds at the time of hearing.*

3. At the outset, the learned AR for the assessee before us submitted that proceedings under section 7 of Insolvency and Bankruptcy code, 2016 has already been initiated against the assessee company by the Hon'ble Adjudicating Authority being National Company Law Tribunal, Ahmedabad vide order dated 9 March 2021. The learned AR in support of his contention also filed the copy of the order of National Company Law Tribunal before us.

4. As per the learned AR no fresh proceedings can be initiated against the assessee company subsequent to the order passed by the National Company Law Tribunal under section 7 of Insolvency and Bankruptcy code, 2016. The prohibitions for the institution of fresh proceedings have been provided under section 14 of the Code 2021 which overrides the provisions of Income Tax Act. Accordingly, it was contended by the learned AR that the order framed under section 263 of the Act vide order dated 31st March 2021 post to the order passed under section 7 of Insolvency and Bankruptcy code, 2016 is not maintainable and liable to be quashed.

4.1 On the other and the learned DR vehemently supported the order of the learned PCIT.

5. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the proceedings under section 7 of

Insolvency and Bankruptcy code, 2016 have been initiated by the National Company Law Tribunal in CP(IB) 307 of 2020 vide order dated 9 March 2021. The copy of the order is placed on record. There are prohibitions for the institution of fresh proceedings under section 14 of the Code 2016 against such company which overrides the provisions of Income Tax Act. As per section 14 of the Code, the order of the NCLT for initiation of liquidation of the Corporate Debtor would result in a moratorium on the initiation or continuation of legal proceedings by or against the corporate debtor being the assessee. The provisions of section 14 of the code reads as under:

"the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority."

5.1 In view of the above, we hold that the order passed under section 263 of the Act is not maintainable and liable to be quashed. Before parting, it is pertinent to note that AO is at liberty to make an application for re-institution of this appeal after the resolution process ends under IBC 2016. As appeal preferred by the assessee has been decided by us in its favour on technical ground i.e. the order passed under section 263 of the Act in itself is not maintainable, accordingly, we do not find any reason to adjudicate the issue raised by the assessee on merit. As such these issues become infructuous. Hence, the ground of appeal of the assessee is allowed.

6. In the result the appeal filed by the assessee **is allowed**.

Order pronounced in the Court on 27/07/2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
27/07/2021