

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA  
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President (KZ)  
&  
Shri A.T. Varkey, Judicial Member**

**I.T.A. No.2404/KOL/2016  
Assessment Year: 2010-2011**

***Palogix Infrastructure (P) Limited,.....Appellant***  
***86-B/2, Gajraj Chamber,***  
***Topsia Road, Kolkata-700046***  
***[PAN:AAECP4568R]***

**-Vs.-**

***Assistant Commissioner of Income Tax,.....Respondent***  
***Circle-11(2), Kolkata***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square,***  
***Kolkata-700069***

**Appearances by:**

***Shri G.P. Shukla, Advocate, for the Appellant***  
***Shri Devi Shankar Singh, CIT, D.R., for the Respondent***

Date of concluding the hearing : September 30, 2021  
Date of pronouncing the order : October 27, 2021

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President:-**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-4, Kolkata dated 19.08.2016.

2. The relevant facts of the case giving rise to this appeal in brief are that the assessee is a Company, which is engaged in the business of Railway Siding Utilization Activity. The return of income for the year under consideration was filed by it on 27.09.2010 declaring total income of Rs.14,04,73,374/-. In the assessment completed under section 143(3) of the Act vide an order dated 19.03.2013, the total income of the

assessee was determined by the Assessing Officer at Rs.47,57,16,809/- after making various additions/disallowances.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the assessment made by the Assessing Officer under section 143(3) of the Act as well as disputing the various additions/disallowances made therein. The Id. CIT(Appeals) did not find merit in the preliminary issue raised by the assessee challenging the validity of the assessment made by the Assessing Officer under section 143(3) of the Act and rejecting the same he upheld the validity of the said assessment. He also confirmed substantially the various additions/disallowances made by the Assessing Officer while computing the total income of the assessee. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. During the course of pendency of this appeal before the Tribunal, certain developments took place and the same as brought to the notice of the Tribunal by the assessee-company in writing from time to time were as under:-

The assessee-company was in default with Banks and taken before National Company Law Tribunal (NCLT) under Bankruptcy and Insolvency Code 2016. Old Management was suspended and new management was taken up and Resolution Process started. After deliberation, resolution plan of the applicant was approved by the Committee of Creditors and the same was also proved by NCLT, Kolkata Bench on 12<sup>th</sup> February, 2018. As per the said order read with Resolution Plan, all dues under the provisions of the Income Tax Act, 1961 including taxes, duty, penalties, interest, fines, cesses, unpaid tax deducted at source/tax collected at source,

whether admitted or not, due or contingent, whether part of above claim of income tax authorities or not, whether part of tax due diligence finding or not, asserted or unasserted, crystallized or un-crystallized, known or known, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the resolution applicant over the company pursuant to this plan shall extinguished by virtue of the order of the adjudicating authority and the company should not be liable to pay any amount against such demand. All assessments or other proceedings pending in case of the company, on the date of the order of the adjudicating authority relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the company by virtue of the order of the adjudicating authority. All notices proposing to initiate any proceedings against the company in relation to the period prior to the date of adjudicating authority order and pending on that date, shall be considered deleted and should not be proceeded against. Post the order of the adjudicating authority, no reassessment/revision or any other proceedings under the provisions of the Income Tax Act should be initiated on the company in relation to period prior to acquisition of control by the resolution applicant and any consequential demand should be considered non-existing and as not payable by the company. Any proceedings which were kept in abeyance in view of process under the Code or otherwise should not be revived post the order of adjudicating authority.

5. Keeping in view the developments as mentioned above, the assessee-company initially moved an application seeking admission of the following additional ground:-

*“That in light of the order of the Hon’ble National Company Law Tribunal, Hon’ble Income Tax Appellate Tribunal must be pleased to issue a mandamus order to the Income Tax Department to act in accordance to terms of the said order. That all demand or claims of Income Tax Department prior to the abovementioned order whether disputed or undisputed, known or unknown including the disputing demand mentioned in this appeal in the name of assessee-company and its Permanent Account Number be extinguished/deleted/not realisable/non-existing and as not payable by the company and any proceedings which are pending or kept in abeyance regarding period prior to 12<sup>th</sup> February, 2018 be dropped or not to be revived post the order of adjudicating authority”.*

Thereafter the assessee-company moved another application withdrawing the abovementioned additional ground and seeking admission of the following additional ground:-

*“That in the light of the order of the Hon’ble National Company Law Tribunal and peculiar facts of the case, Hon’ble Income Tax Appellate Tribunal shall ascertain that realisable tax liability of assessee for the assessment year under consideration i.e. A.Y. 2010-11 is NIL”.*

6. When the application of the assessee for admission of the abovementioned additional ground was taken up for consideration by the Tribunal at the time of hearing fixed on 12.02.2020, the Id. CIT, D.R. sought time in order to prepare the case of the revenue on the issue involved in the additional ground including especially the effect and implications of the NCLT’s order and also to call for the report of the Assessing Officer. However, it is now for more than one and half years, there is no communication received on behalf of the Department to assist the Bench in order to adjudicate the issue raised by the assessee in the additional ground. Moreover, as submitted on behalf of the assessee-company, the order of the NCLT was also served on the concerned

Assessing Officer vide communication dated 22.02.2018 but there is no response from the Assessing officer also in the matter. We, therefore, are left no other alternative but to proceed ex-parte qua the respondent revenue and to dispose of the matter, which is pending for a long time, on the basis of material available on record and the submissions made on behalf of the assessee-company from time to time.

7. The issue involved in the additional ground raised by the assessee relates to the effect of the order delivered by the National Company Law Tribunal, Kolkata Bench on 12.02.2018 approving the resolution plan on the proceedings in the case of the assessee for AY 2010-11, which is involved in the present appeal. The said order is passed under the Insolvency and Bankruptcy Code 2016, Section 238 of which reads as under:-

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law”.*

8. The provisions of the Insolvency and Bankruptcy Code 2016 thus are given overriding effect and as held by the Hon'ble Supreme Court while disposing petition for Special Leave to Appeal(C) Nos. 6483/2018 in the case of Principal Commissioner of Income Tax -vs.- Monnet Ispat and Energy Ltd., it is obvious that the Insolvency and Bankruptcy Code 2016 going by section 238 will override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961. A reference in this regard was made by the Hon'ble Supreme Court to Their Lordships earlier decision in the case of Dena Bank -vs.- Bhikhabhai Prabhudas Parekh & Co. & Others (2000) 5 SCC 694, wherein it was clarified that Income Tax dues, being in the nature of crown debts, do not take precedence over secured creditors, who are private persons.

9. In the case of Swiss Ribbons –vs.- Union of India, Hon’ble Supreme Court held that the core objective of the Code is to readapt the corporate debtor monetarily and for that purpose to protect the corporate debtor’s assets from further dilution. But to fully accomplish the said purpose, the creditors must be barred from bringing up belated claims against a successful resolution applicant striving to resurrect the corporate debtor. Elaborating further, Their Lordships observed that if the Government Departments are just going to bring up their claims after the company is transferred over to a successful resolution applicant, then intent with which the Code was incorporated will never be achieved.

10. In the case of Ghanashyam Mishra & Sons Private Limited –vs.- Edelweiss Asset Reconstruction Company & Others, it was held by the Hon’ble Supreme Court that a bare reading of section 31(1) of the Code is enough to establish that once the resolution plan receives the assent of adjudicating authority, it shall be binding on all the respective entities, including corporate debtor and its employees, members, creditors, guarantors and other stakeholders. The said section 31 was subsequently amended in 2019 to clarify that the term “other stakeholders” include Central Government, State Government, and other local bodies, and this amendment has been held by the Courts as having retrospective effect being clarificatory and declaratory in nature.

11. Keeping in view the legal position emanating from the discussion made above in the light of judicial pronouncements of the Hon’ble Supreme Court, it is thus clear that the order passed by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code 2016 has overriding effect over anything inconsistent contained in the Income Tax Act and it shall be binding on all the respective entities including other stakeholders, which include Central Government, State Government and other Local Bodies. As per the said order delivered in the case of the assessee-company affirming the

Resolution Plan, all dues under the provisions of the Income Tax Act including taxes, duty, penalties, interest, fines, cesses, unpaid tax deducted at source/tax collected at source, whether admitted or not, due or contingent, whether part of above claim of income tax authorities or not, whether part of tax due diligence finding or not, asserted or unasserted, crystallized or un-crystallized, known or known, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the resolution applicant over the company pursuant to this plan shall extinguished by virtue of the order of the adjudicating authority and the company should not be liable to pay any amount against such demand. Further, all assessments or other proceedings pending in case of the company, on the date of the order of the adjudicating authority relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the company by virtue of the order of the adjudicating authority. Furthermore, all notices proposing to initiate any proceedings against the company in relation to the period prior to the date of adjudicating authority order and pending on that date, shall be considered deleted and should not be proceeded against. Post the order of the adjudicating authority, no reassessment/revision or any other proceedings under the provisions of the Income Tax Act should be initiated on the company in relation to period prior to acquisition of control by the resolution applicant over the Company pursuant to this plan shall stand extinguished by virtue of order of the National Company Law Tribunal and the assessee-company should not be liable to pay against such demand.

12. Since the present appeal involving AY 2010-11 relates to the period prior to the acquisition of control by the Resolution Applicant over the company pursuant to this plan, all dues under the provisions of the Income Tax Act 1961 including taxes, duty, penalties, interest fines, cesses, etc. shall stand extinguished by virtue of the order of the National

Company Law Tribunal and all proceedings including the appellate proceedings pending on the date of the order of the National Company Law Tribunal including the present proceedings relating to the prior period to the date of order shall stand extinguished and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the Company. In the light of the order of the National Company Law Tribunal (NCLT) dated 12.02.2018 passed in assessee's case, we deem it fit to restore the case for the assessment year under consideration before us to Assessing Officer for taking necessary action in accordance with law.

**13. In the result, the appeal of the assessee is treated as allowed for statistical purposes as indicated above.**

Order pronounced in the open Court on October 27, 2021.

<b>Sd/-</b> <b>(A.T. Varkey</b> <b>Judicial Member</b> <b>Kolkata, the 27<sup>th</sup> day of October, 2021</b>	<b>Sd/-</b> <b>(P.M. Jagtap)</b> <b>Vice-President</b>
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- Copies to :
- (1) **Palogix Infrastructure (P) Limited,**  
**86-B/2, Gajraj Chamber,**  
**Topsia Road, Kolkata-700046**
  - (2) **Assistant Commissioner of Income Tax,**  
**Circle-11(2), Kolkata,**  
**Aayakar Bhawan,**  
**P-7, Chowringhee Square, Kolkata-700069**
  - (3) **Commissioner of Income Tax (Appeals)-4, Kolkata,**
  - (4) **Commissioner of Income Tax- ,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

*Senior Private Secretary/DDO*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**