

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
MS. SUCHITRA M. KAMBLE, JUDICIAL MEMBER

ITA No.87/Ahd/2019
Assessment Year : 2015-16

M/s.Oasis Textiles Ltd. 1 st Floor, Office No.62, 163, Patel Vas, Nr.Petrol Pump Memnagar Ahmedabad 380 052. PAN : AAACU 1997 K	Vs	DCIT, Cir.3(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Umesh Ved, AR
Revenue by :		Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **28/01/2022**
घोषणा की तारीख /**Date of Pronouncement**: **25/03/2022**

आदेश/O R D E R

PER PRAMOD M. JAGTAP, VICE-PRESIDENT:

This appeal is filed by the assessee against order dated 27.12.2018 passed by the Ld.Commissioner of Income-tax (Appeals)-9, Ahmedabad [for short "Ld.CIT(A)] in appeal No.CIT(A)-9/10371/DCIT Cir.3(1)(2),Abd/15-16 relating to the assessment year 2015-16.

2. Though the assessee has raised as many as six grounds, but solitary issue involved in this appeal is that the ld.CIT(A) has erred in confirming disallowance of Rs.1,13,65,136/- on account of loss incurred out of trading in shares.

3. Facts in brief, necessary for adjudication of this appeal are that the assessee-company was trading in shares. It has filed return of income for the assessment year 2015-16 on 30.9.2015 declaring income at a loss of (-) Rs.6,67,527/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. Ultimately, the assessment was concluded by the AO by making addition of Rs.1,13,65,136/- under section 68 of the Act on account of unexplained cash and unexplained income, and assessment order under section 143(3) of the Act was accordingly passed on 27/28.12.2017. Thereafter the addition was confirmed by the Id.CIT(A) by order dated 27.12.2018. Against the confirmation of addition, the assessee is in appeal before the Tribunal.

4. When the matter was called out for hearing, Shri Umesh Ved, AR and Liquidator of the assessee-company i.e. Oasis Textile Ltd., has filed a letter dated 21.10.2021 informing the Tribunal that the assessee-company was ordered to be liquidated by the National Company Law Tribunal, Ahmedabad on 22.11.2017, and thereafter, it was further ordered to be dissolved vide order dated 30.6.2020. Contents of the letter are as follows:

“.....

As directed by the Hon'ble Tribunal, we would like to submit as under:

M/s Oasis Textiles Limited i.e Corporate Debtor was admitted to Corporate Insolvency Resolution Process vide order dated 31st May, 2017 of Hon'ble National Company Law Tribunal, Ahmedabad r order)

In absence of any Resolution Plan it was ordered to be liquidated vide order dated 22nd November, 2017 of Hon'ble National Company Law Tribunal, Ahmedabad Bench.(02nd Order)

On completion of the distribution of assets to the stake holders, on application, it was ordered & declared to be Dissolved vide order dated 30'1' June, 2020 of Hon'ble National Company Law Tribunal, Ahmedbaad Bench.(03''' Order)

In view of what has been stated herein above the Company is non-existence as of today & has no assets available which is undistributed, which please note.

Further, letters dated 08th July 2017, 19th July, 2019 & 16th August, 2019 were submitted to the income under whose jurisdiction the Corporate Debtor was assessed intimating the appointment of resolution professional, appointment of liquidator and before making the application for of the Company.

In spite of intimation, public announcement published in newspaper and the letters as cited above there was no communication from Income Tax department nor any claim lodge at any point of time, which please note.

On Dissolution, Assistant Commissioner of Income Tax, circle 3(2)(1) was also intimated by the undersigned vide letter dated 02nd July, 2020.

The undersigned had submitted e-mail intimating above facts to the Hon'ble Tribunal on 06th July, 2021. (e-mail copy is attached herewith)

Further, the undersigned submitted the written submission as directed by Tribunal on 26th October, 2021. The copy of the same attached herewith.

The copies of orders and letters as mentioned hereinabove are also attached.

Further, please note that in Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited delivered in civil appeal no. 8129 of 2019 paragraph 130 and 132 state that:

"when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

"The respondents are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer date. Needless to state, that the consequences thereof shall follow."

The copy of judgment of Supreme Court in above case is attached herewith. You are requested to please find the above in order and do the needful."

5. In view of this development, Shri Umed Ved, former Liquidator of the assessee-company submitted that the assessee-company is non-existent as of today and has no assets available to be distributed. Jurisdictional Income Tax Officer has been appraised of

the development from time to time in writing but neither any communication nor any claim was lodged by the Department at any point of time. Therefore, relying upon the judgment of Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons Vs. Edeleiss Assets Reconstruction Company Limited, in Civil Appeal No.8129 of 2019 wherein Hon'ble Apex Court held that on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not part of the resolution plan. Since, the Income Tax Department was not before Adjudicating Authority, even not part of resolution plan, and the assessee-company being non-existent as of now, the claim of the department related prior to the approval of the plan stand extinguished, and any other proceeding thereto shall also stand terminated. Shri Umesh Ved has also filed copies of orders of the NCLT passed in this connection.

6. From the above letter of OL, we would take note of chronological events took place in the case of assessee-company as under:

- i) NCLT vide order dated 31.5.2017 admitted the assessee-company i.e. Corporate Debtor to Corporate Insolvency Resolution Process.
- ii) NCLT by order dated 22.11.2017 ordered to be wound up in the absence of Resolution Plan;
- iii) After completion of distribution of assets and liabilities, on application, the NCLT ordered the assessee-company to be dissolved vide order dated 30.6.2020, thereafter, the assessee-company became *non est* in the eyes of law
- iv) All these events were intimated to the jurisdictional Assessing Officer by the Liquidator of the assessee-company vide various letters viz. letter date 8.7.2017, 19.7.2019 and 16.8.2019

- v) Despite all the intimation in writings to the AO, there was no claim lodged not to speak of any reply from the Income Tax Department.
- vi) Dissolution of the company was ultimately intimated to the Asstt.Commissioner of Income-tax, Cir.3(2)(1) vide letter 2.7.2020 by the Liquidator.

7. We have heard both the parties and also gone through the materials placed before us. When we confronted the above letter of Shri Umesh Ved, former OL along with relevant annexures to the ld.Departmental Representative, he has not disputed factum of the matter, or the present legal status of the assessee-company as being a non-existent entity. This being so, issue for our adjudication is about maintainability of appeal of the assessee-company before the ITAT and enforceability of tax demand raised by the Department in the impugned order against the assessee-company which was ceased to exist in the eye of law, by virtue of the company being dissolved as per the order of the National Company Law Tribunal (in short hereinafter "NCLT") order.

8. Hon'ble Supreme Court in the case of Ghanasham Mishra & Sons P.Ltd. Vs. Edelweiss Asset Reconsruction Company Ltd. in Civil appeal No.8129 of 2019 has held that –

(i) once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31 of Insolvency and Bankruptcy Code, 2016, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.

(ii) on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of

resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, including tax authorities if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

9. In this connection, it is imperative upon us to extract relevant observation of the Hon'ble Supreme Court in the case of Ghanshyam Mishra & Sons Vs. Edelweiss Asset Reconstruction (supra) contained in para-130 and 132 of the judgments, which are as follows:

"130. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

131.

132. The appeal therefore is allowed. The impugned judgment and order dated 6.7.2020 passed by the Allahabad High Court is quashed and set aside. We hold and declare, that the respondents are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer date. Needless to state, that the consequences thereof shall follow.

10. In light of the above, if we examine the facts of the case on hand, assessment year involved is 2015-16, and the AO has passed

the assessment order on 27.12.2017, and the appellate order thereupon was passed on 27.12.2018. While NCLT has passed Resolution plan on 22.11.2017, and in the absence of any Resolution Plan, it was ordered to be liquidated vide order dated 22.11.2017. On completion of liquidation process, assessee-company was dissolved by the NCLT vide order dated 30.6.2020. The claim of the Department was prior to the date of Resolution Plan approved by the NCLT, and therefore, the present income tax proceedings is hit by section 31(1) of Insolvency and Bankruptcy Code, 2016, which has overriding effect vis-à-vis the Income Tax Act, 1961. All these events are within the knowledge of the Income Tax Department, as the OL of assessee-company has intimated the Department from time to time in writing, but no action has been taken by the Department. Once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Therefore, in view of overriding effect of IBC code to the Income Tax proceeding, we hold that Revenue is not entitled to recover the claim, if any arising from the present proceedings for Asst.year 2015-16, as the same is not part of the resolution plan.

11. In the result, the entire proceedings including the appeal have become *infructuous* and the same is liable to dismissed as *infructuous*.

Order pronounced in the Court on 25th March, 2022 at Ahmedabad.

**Sd/-
(SUCHITRA M. KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT**

Ahmedabad, dated 25/03/2022

*vk**