

IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.476/Mum./2016
(Assessment Year : 2009-10)

ITA No.5098/Mum./2016
(Assessment Year : 2011-12)

ITA No.737/Mum./2018
(Assessment Year : 2013-14)

ITA No.479/Mum./2016
(Assessment Year : 2010-11)

ITA No.736/Mum./2018
(Assessment Year : 2012-13)

ITA No.6887/Mum./2018
(Assessment Year : 2014-15)

Reliance Communications Limited
BHQ Block, 2nd Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai 400 710 PAN – AACCR7832C

..... Appellant

v/s

Addl. Commissioner of Income Tax
Circle-10(3), Mumbai
(Now Addl. Commissioner of Income Tax
Circle-15(3), Mumbai)

.....Respondent

ITA No.644/Mum./2016
(Assessment Year : 2009-10)

ITA No.5087/Mum./2016
(Assessment Year : 2011-12)

ITA No.735/Mum./2018
(Assessment Year : 2013-14)

ITA No.1502/Mum./2016
(Assessment Year : 2010-11)

ITA No.734/Mum./2018
(Assessment Year : 2012-13)

ITA No.7112/Mum./2018
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax
Circle-15(3), Mumbai

..... Appellant

v/s

Reliance Communications Limited
BHQ Block, 2nd Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai 400 710 PAN – AACCR7832C

.....Respondent

Assessee by : Shri Rishabh Jaisani a/w
Shri Jitendra Sanghvi, Shri Amit Khatiwala
Revenue by : Ms. Samruddhi D. Hande, Sr. AR

Date of Hearing – 12/07/2022

Date of Order – 14/07/2022

ORDER

PER BENCH

The present cross appeals have been filed by either parties challenging the orders passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), for the assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.

2. During the course of hearing, at the outset, we noticed that in case of the assessee, the matter is pending before the Insolvency Professional in terms of The Insolvency and Bankruptcy Code, 2016 ("*the Code*") and moratorium period has been declared as per section 14 of the Code. We further noticed that a Petition was filed by the Ericson India Pvt. Ltd. against the assessee i.e., Reliance Communications Ltd. ('Corporate Debtor'), before the Hon'ble National Company Law Tribunal ('*Hon'ble NCLT*'), Mumbai Bench, in terms of section 9 of the Code r/w rules and regulations framed therein. The said Petition was admitted by the Hon'ble NCLT, and Corporate Insolvency Resolution Process ('*CIRP*') of the Corporate Debtor was ordered to be commenced vide order dated 15/05/2018, passed by the Hon'ble NCLT. The Hon'ble NCLT appointed Interim Resolution Professional for the Corporate Debtor vide its order dated 18/05/2018. Subsequently, the Committee of Creditors of

Corporate Debtor, pursuant to their meeting and in accordance with the provisions of the Code, appointed Resolution Professional for the Corporate Debtor, who was substituted for the Interim Resolution Professional by the Hon'ble NCLT, vide its order dated 21/06/2019. Vide aforesaid order dated 15/05/2018, the Hon'ble NCLT declared moratorium period under section 14 of the Code w.e.f. 15/05/2018.

3. During the course of hearing, the learned Authorised Representative ('learned A.R.') appearing for the assessee submitted that in view of the CRIP and consequent moratorium being imposed on the continuation of pending Suit or proceedings, in respect of the assessee company, the present cross appeals be adjourned for a longer date. In support of its submissions, the learned A.R. placed reliance upon the decision of the Hon'ble Calcutta High Court in SREI Equipment Finance Limited v/s Additional/Joint/Deputy/Assistant CIT And Others in Writ Petition no.1839 of 2022, judgment dated 10/05/2022.

4. We have considered the submissions and perused the material available on record. It is pertinent to note that as per the provisions of section 14 of the Code, institution of a Suit or continuation of pending Suit or proceedings against the Corporate Debtor including execution of any judgment, decree, or order in any Court of law, Tribunal, Arbitration Panel or other authorities, shall be prohibited during the moratorium period. The period of moratorium shall have the effect from the date of

such order till the completion of CIRP; or if, during the CIRP period, Hon'ble NCLT approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33 of the Code, moratorium shall cease to have effect on date of such order. It has not been disputed by either of the parties that moratorium period is still continuing in the present case. We find that the Hon'ble Supreme Court in case of Alchemist Asset Reconstruction Co. Ltd. v/s Hotel Gaudavan Pvt. Ltd., [2017] 88 taxmann.com 202 (SC) held that even arbitration proceedings cannot be initiated after imposition of the moratorium under section 14(1)(a) has come into effect and it is non est in law and could not have been allowed to continue.

5. The learned A.R. has placed reliance on the decision of the Hon'ble Calcutta High Court in SREI Equipment Finance Limited (supra). We find that the issue before the Hon'ble Court, in aforesaid decision, was as under:-

"5. On going through the impugned order we find that the issue as to whether the proceedings had to be kept in abeyance by the assessing officer in the light of the insolvency proceedings which were pending and the effect of Section 14 of the Code have not been dealt with though that was the core issue which was canvassed in the writ petition..."

6. While deciding the aforesaid issue, Hon'ble Calcutta High Court observed as under:-

"7. At this juncture, it would be important to note the decision the Hon'ble Supreme Court in the case of Alchemist Asset Reconstruction Company (supra). wherein the Hon'ble Supreme Court had pointed out

that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. This legal principle should have been borne in mind by the assessing officer before he proceeded to pass the assessment order. Therefore, we are of the clear view that the assessment order dated 30th March, 2022 has to be set aside and the matter has to be restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings.”

7. From the careful perusal of the aforesaid decision, we find that the issue before the Hon'ble Calcutta High Court was regarding the assessment order passed during the continuation of moratorium period. Thus, in the aforesaid decision, Hon'ble Calcutta High Court dealt with the assessment proceedings and not appeals as in the present case, therefore, aforesaid decision is factually distinguishable. We are of the view that in case of assessment proceedings, the only option available with the Assessing Officer is to keep the proceedings in abeyance during the continuation of moratorium period as per section 14 of the Code and there is no option to quash the same in totality. Since, if the assessment proceeding is dropped then same cannot be revived upon completion of the moratorium period and only remedy available with the Assessing Officer will be under the provisions of section 154/147/263 of the Act, provided the jurisdictional conditions as laid down in the said sections are satisfied. Insofar as filing/continuation of appeal under the provisions of the Act, during the continuation of moratorium period is concerned, we

find that Hon'ble Delhi High Court in PCIT v/s Monnet Ispat & Energy Ltd., [2018] 304 CTR 234 (Del.), observed as under:-

"2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything Inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the Insolvency commencement date the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "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." That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31 August, 2017 of the Supreme Court in Civil Appeal No. 8337-8338/2017 (Innoventive Industries Ltd. v. ICICI Bank). 3. In the instant case, the National Company Law Tribunal (NCLT) [which by virtue of Section 5(1) of the Code is the AA] has by its order dated 18th July 2017 admitted the petition under Section 7 of the Code filed by the State Bank of India against the Respondent Assessee and prohibited, inter alia, "the institution of suits or continuation of pending suits or proceedings against the Respondent. This would include the present appeal by the Income Tax Department ('Department) against the order of the Income Tax Appellate Tribunal (ITAT) in respect of the tax liability of the Respondent-Assessee.

4. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue, points out that unlike some of the earlier insolvency statutes the Code does not envisage permission being sought from the NCLT for continuation of the continuation of pending proceedings against the Respondent in other fora. In the order dated 18 July 2017 is clear that the moratorium continues "till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.

5. Consequently, these appeals are disposed of with liberty to the Appellant Department to revive them subject to the further orders of the NCLT."

8. The aforesaid decision of the Hon'ble Delhi High Court was affirmed by the Hon'ble Supreme Court in PCIT v/s Monnet Ispat & Energy Ltd., [2018] 18 SCC 789. The Hon'ble Supreme Court also upheld the overriding nature and supremacy of the provisions of the Code over any

other enactment in case of conflicting provisions by virtue of non obstante clause contained in section 238 of the Code. Thus, we are of the considered view that the present cross appeals are a continuation of pending Suit against the Corporate Debtor, which is prohibited under section 14 of the Code. It is further pertinent to note that under section 178(6) of the Act, as amended w.e.f. 01/11/2016, the Code shall have overriding effect.

9. We further find that appeal by the assessee have been filed by the Director of the assessee company, which after initiation of CIRP has become *functus officio*. We further find that the Resolution Professional has not been impleaded as a party in the appeals before us by filing revised Form No. 36. Similarly, in the appeal filed by the Revenue also revised Form No. 36 including the Resolution Professional has not been filed. Once the insolvency proceedings commenced under the Code, all the litigations are to be pursued by Resolution Professional appointed by the Committee of Creditors and not by the company. In view of the above we are of the considered view that the present appeals, in the present form, are not maintainable.

10. Thus, respectfully following the aforesaid decision in Monnet Ispat & Energy Ltd. (supra), which approach has also been adopted by various coordinate bench of the Tribunal, we dismiss the present cross appeals with a liberty that upon completion of the moratorium period, if it is so

decided, both the parties may seek recall of this order by impleading Managing Director / Director, representing the new management of the assessee company, or the Official Liquidator, as the case may be.

11. In the result, cross appeals are dismissed.

Order pronounced in the open court on 14/07/2022

**Sd/-
PRAMOD KUMAR
VICE PRESIDENT**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 14/07/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai