

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)
ITA 2043/Mum/2020
(Assessment year : 2009-10)

Wizcraft International Entertainment Private Limited 5 th Floor, Satyadev Plaza Fun Republic Lane, Off New Link Road, Andheri (W), Mumbai-400 053 PAN : AAACW1931D	vs	Dy.CIT, CC-2(1), Mumbai Room No.804, 8 th Floor Pratishta Bhavan, Old CGO, M.K. Road, Mumbai-400 020
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Assessee represented by	Shri Siddharth Shrivastav
Department represented by	Shri Hoshang B Irani, DR

Date of hearing	26/05/2022
Date of pronouncement	22/07/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee as against the order of Ld.Commissioner of Income-tax (Appeals)-48, Mumbai dated 26/11/2020 pertaining to assessment year 2009-10.

2. During the appellate proceedings, the Ld.AR for the assessee has submitted that the assessee's case is pending before the Insolvency Professionals under the Insolvency & Bankruptcy Code 2016. The Ld.AR submitted that the assessee's case is pending before the Hon'ble NCLT, Mumbai Bench, wherein Mr. Sanjay Garg has been appointed as the Resolution Professional of the Corporate Debtor and moratorium period has been declared as per the provision of section 14 of the Insolvency and Bankruptcy Code 2016. The Ld.DR did not controvert the same.

3. It is observed that in assessee's case, where revenue had filed appeal in ITA No.1356/Mum/2021, the co-ordinate bench of this Tribunal vide order dated 06/06/2022 dismissed the appeal on the ground that the matter was pending before the Hon'ble NCLT and since the moratorium period was declared. Following are the observations of the co-ordinate bench :-

"5. It is pertinent to note that as per the provisions of section 14 of the Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority 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 the corporate insolvency resolution process. During the course of hearing, the learned A.R. submitted that moratorium period commenced pursuant to order dated 10.05.2021 passed by the Hon'ble NCLT and the present appeal has been filed by the Revenue on 30.07.2021 i.e. after commencement of moratorium period and thus the same is in contravention of provisions of section 14 of the Code. Learned DR could not produce any material before us to rebut the submission so made on behalf of the assessee. Thus, in the present case, we are of the considered view that the appeal filed by the Revenue is an institution of suit against the corporate debtor after commencement of moratorium period, which is prohibited under section 14 of the Code. Hon'ble Supreme Court in case of Alchemist Asset Reconstruction Co. Ltd, v. Hotel Gaudavan (P.) Ltd. [2017] 88 taxmann.com 202 held that even arbitration proceedings cannot be initiated after imposition of the moratorium u/s 14 (1) (a) has come into effect and it is non est in law and could not have been allowed to continue. Further Hon'ble Supreme Court in the case of Pr. CIT v. Monnet Ispat & Energy Ltd. [SLP (C) No.6487 of 2018, dated 10-8-2018] has upheld overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions, by virtue of a non-obstante clause contained in section 238 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.

6. *It is further pertinent to note the provisions of section 60(6) of the Code, which reads as under:*

"(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

7. Recently, while interpreting section 60(6) of the Code, Hon'ble Supreme Court in New Delhi Municipal Corporation v/s Minosha India Ltd., in Civil Appeal No.3470 of 2022 (arising out of SLP (C) No. 8302 of 2021), vide judgment dated 27.04.2022, observed as under:

"27. In other words, notwithstanding the period of limitation under the Limitation Act, the Law Giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during

which such moratorium was in place shall be excluded. 'For which an order of moratorium' cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used. We have already undertaken the task of understanding the purport of the Code and the context in which section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the Law Giver. The period of limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words 'any suit or application'. This is apart, no doubt, from the words 'by a corporate debtor'. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute.

28. Therefore, we are of the view that section 60(6) of the IBC does contemplate exclusion of the entire period during which the moratorium was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor."

9. In view of the above, we dismiss the present appeal filed by the Revenue in terms of the provisions of section 14 of the Code with the liberty to the assessee to fresh appeal after the expiry of the moratorium period."

3. In view of the above observations of the co-ordinate bench, we deem it necessary to dismiss the present appeal filed by the assessee with the liberty to the assessee to prefer a fresh appeal after the expiry of the moratorium period.

4. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 22nd day of July, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 22/07/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai