

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No. 3484 /Mum/2016
(निर्धारण वर्ष / Assessment Year:2006-07)
&
आयकर अपील सं/ I.T.A. No. 3478 /Mum/2016
(निर्धारण वर्ष / Assessment Year:2007-08)
&
आयकर अपील सं/ I.T.A. No. 3480 /Mum/2016
(निर्धारण वर्ष / Assessment Year:2008-09)
&
आयकर अपील सं/ I.T.A. No. 3479 /Mum/2016
(निर्धारण वर्ष / Assessment Year:2009-10)
&
आयकर अपील सं/ I.T.A. No. 3482/Mum/2016
(निर्धारण वर्ष / Assessment Year:2010-11)
&
आयकर अपील सं/ I.T.A. No. 3481/Mum/2016
(निर्धारण वर्ष / Assessment Year:2011-12)
&
आयकर अपील सं/ I.T.A. No. 3483/Mum/2016
(निर्धारण वर्ष / Assessment Year:2012-13)

M/s. Unity Infraprojects Ltd. 1252,Pushpanjali Apartments, Old Prabhadevi Road, Prabhadevi, Mumbai- 400025.	बनाम/ Vs.	ACIT, Central Circle-8(2) (Erstwhile, ACIT, Central Circle-45) Aayakar Bhavan, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACU4560E		
..		(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Prabhat Kumar Gupta (DR)

सुनवाई की तारीख / Date of Hearing: 12/07/2022
घोषणा की तारीख /Date of Pronouncement: 20/07/2022

आदेश / ORDER

PER BENCH:

These appeals have been filed by the assessee company against the order of the Ld. Commissioner of Income Tax (Appeals) - 48,



Mumbai [hereinafter referred to as the “CIT(A)”] dated 31.03.2016 for A.Ys. 2006-07 to 2012-13.

2. When the appeals were called for hearing, none appeared on behalf of the assessee and note that no application seeking adjournment has been filed by the assessee. It is noted that this appeal has been filed in the year 2016 and since then is pending before us. Considering the fact that the assessee is not appearing before this Tribunal for a long time, we proceed to dispose off the appeals *exparte qua* the assessee, after hearing the departmental representative.

3. It has been brought to our notice that Corporate Insolvency Resolution Process u/s 10 of the relevant Code has been initiated against the assessee (“Corporate debtor”) and Interim Resolution Professional (IRP) has been appointed by the National Company Law Tribunal (NCLT). It has been brought to our notice that the matter is pending before the NCLT. Even though, the Interim Resolution Professional has been appointed as (IRP) for the “Corporate Debtor” replacing the IRP, no letter of authority has been issued by IRP in favour of the authorized signatory of the assessee for continuing the appeals. And the assessee did not furnish any permission obtained from the Hon’ble NCLT as held by the Hon’ble Madras High Court in *Mrs. Jai Rajkumar Vs. Standic Bank Ghana Ltd.* (2019) 101



taxman.com 329. Accordingly, in the light of the aforesaid facts, we are of the opinion that there is no point in keeping the appeals pending before this Tribunal. Therefore, taking note of similar actions/orders passed by the Co-ordinate Bench of this Tribunal in the case of DCIT Vs. Global Softech Ltd. ITA. No. 2394/Mum/2017 and others for the AY 2012-13 dated 16.03.2022 wherein the Tribunal has held as under:

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“6. 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. In the present case, the appeal filed by the Revenue is an institution of suit against the corporate debtor, 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] 88taxmann.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 nonobstante 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.

7. Further, as per section 31 of the Code, resolution plan as approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Thus, this will prevent State authorities, Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan. Therefore, there is no reason to keep this appeal pending.

8. In view of the above, we dismiss the appeal filed by the Revenue with the liberty to the Assessing Officer to file the appeal afresh after completion of moratorium period upon the revival of the Corporate Debtor as per Resolution Plan as approved by the Adjudicating Authority or upon appointment of the Liquidator, as the case may be.

9. Further, the appeal filed by the assessee also cannot be sustained as the assessee did not furnish any permission obtained from Hon'ble NCLT as held by the Hon'ble Madras High Court in Mrs. Jai Rajkumar v. Standic Bank Ghana Ltd. [2019] 101 taxmann.com 329. Further, no letter of authority issued by the Interim Resolution Professional in favour of the Authorised Signatory of the assessee, in respect of present cross-appeals before us, has been filed. Nor it has been brought on record whether the Interim Resolution Professional has been authorised by the Committee of Creditors.

10. Accordingly, the appeal filed by the assessee is also dismissed with the liberty to file the appeal afresh by the Interim Resolution Professional / Resolution Professional, as may be substituted by the Hon'ble NCLT, on behalf of the Corporate Debtor with prior



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permission of the Hon'ble NCLT; or after completion of moratorium period upon the revival of the Corporate Debtor as per Resolution Plan as approved by the Adjudicating Authority or upon appointment of the Liquidator, as the case may be.

4. Respectfully following the order of the Co-ordinate Bench of this Tribunal, the aforesaid captioned appeals filed by the assessee stands dismissed with the liberty to file the appeal afresh by the Interim Resolution Professional/Resolution Professional, as may be substituted by the Hon'ble NCLT on behalf of the "Corporate Debtor" with prior permission of the Hon'ble NCLT; or after completion of moratorium period upon the revival of the "Corporate Debtor" as per Resolution Plan as approved by the adjudicating authority or upon appointment of the Liquidator, as the case may be in accordance with law.

5. In the result, the appeals filed by the assessee stands dismissed.

Order pronounced in the open court on 20/07/2022

Sd/-

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 20/07/2022.
Vijay Pal Singh, (Sr. PS)

Sd/-

(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**