

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA (TP) Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1732/Hyd/2019	2012-13	M/s.Aster Private Limited, Hyderabad [PAN: AACCA5469L]	Assistant Commissioner of Income Tax, Central Circle-3(2), Hyderabad
1733/Hyd/2019	2013-14		
1734/Hyd/2019	2014-15		
1735/Hyd/2019	2015-16		
1736/Hyd/2019	2016-17		

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Shri Solge Jost Kottaram, CIT-DR

सुनवाई की तारीख/Date of hearing: 08/08/2022
घोषणा की तारीख/Pronouncement on: 08/08/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) passed by the Learned Asst.
Commissioner of Income Tax, Central Circle-3(2), Hyderabad ("Ld. AO") in

the case of M/s. Aster Private Ltd., (“the assessee”) for the AYs.2012-13, 2013-14, 2014-15, 2015-16 & 2016-17 under section 143(3) r.w.s. 153A r.w.s. 144C of the Income Tax Act, 1961 (for short “the Act”), consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru (“DRP”), assessee filed these appeals.

2. At the outset it is represented by both the sides that the Corporate Insolvency Resolution Proceedings (CIRP) are pending against the assessee and as of now, Hon'ble National Company Law Appellate Tribunal (NCLAT) is seized with the jurisdiction.

3. On a perusal of the order dated 19/11/2019 in CP(IB) NO. 199/7/HDB/2019 we noticed that the NCLT admitted a petition by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) and declared moratorium in terms of section 14 of the Code prohibiting the institution and continuance of proceedings against the assessee with all other attendant consequences.

4. We have considered the issue in the light of the provisions of the Code and the decision of the Hon'ble Apex Court in the case of Ghanashyam Mishra And Sons vs Edelweiss Asset Reconstruction (2021) 126 taxmann.com 132 (SC). Under section 13 of the Code, the adjudicating authority after admission of the application under section 7 or 9 or 10 of the Code shall declare a moratorium which shall include the prohibition of the institution of suits or continuation of pending suits or proceedings against the corporate debtor in any court of law or tribunal. In Ghanashyam Mishra And Sons (supra), it was held that, (i) That once a resolution plan is duly approved by the Adjudicating Authority under sub

section (1) of Section 31, 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. 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; (ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect; and (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, 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.

5. A reading of the provisions under section 13 and 14 of the Code along with the decision in Ghanashyam Mishra And Sons (supra), clearly shows that once the proceedings have commenced by institution of application under section 7 or 9 or 10 of the Code, the continuance of the pending proceedings is prohibited and when once they reach the logical conclusion with due approval of the resolution plan by the Adjudicating Authority under sub section (1) of Section 31, 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. At any rate, for the time being, these appeals cannot be proceeded with during the continuance of the proceedings under the Code. However, depending upon the result of such proceedings before the adjudicating authority in respect of the corporate debtor, appropriate steps if any, may be taken by the appellant/respondent. We, therefore, granting leave to the appellants/respondents in all these appeals to seek the restoration of the appeals, if necessitated by the orders in the Corporate Insolvency Resolution Proceedings, dismiss the appeals in limine. We derive support for the above proposition from the decision of the Mumbai Bench of the Tribunal in the case of Mahavir Roads & Infrastructure Pvt. Ltd., Vs. DCIT in ITA Nos. 646 to 651/Mum/2019 (AYs.2008-09 to 2013-14), dt.08/06/2022.

6. In the result, all these appeals are dismissed in limine.

Order pronounced in the open court on this the 8th day of August, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 08/08/2022

TNMM

Copy forwarded to:

1. M/s.Aster Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.
2. Assistant Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD