

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "सी" अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.	AY	Appellant	Respondent
2096/Ahd/2014	2010-11	M/s. Doshion Pvt. Ltd., Building No. 12A (House No.13), Sigma Corporate, B/h. Rajpath Club, Off. S.G. Road, Bodakdev, Ahmedabad-380054 PAN : AAACD 8771 G	DCIT (OSD), Range-1, Ahmedabad
2412/Ahd/2014	2010-11	DCIT (OSD), Range-1, Ahmedabad	M/s. Doshion Ltd., Ahmedabad PAN : AAACD 8771 G
1408/Ahd/2018	2011-12	M/s. Doshion Pvt. Ltd., Ahmedabad PAN : AAACD 8771 G	ACIT, Range-1, Ahmedabad
284/Ahd/2017	2011-12	DCIT, Circle 1(1)(2), Ahmedabad	M/s. Doshion Pvt. Ltd., Ahmedabad PAN : AAACD 8771 G
1409/Ahd/2018	2012-13	M/s. Doshion Pvt. Ltd., Ahmedabad PAN : AAACD 8771 G	DCIT, Circle 1(1)(2), Ahmedabad
285/Ahd/2017	2012-13	DCIT, Circle 1(1)(2), Ahmedabad	M/s. Doshion Pvt. Ltd., Ahmedabad PAN : AAACD 8771 G
1468/Ahd/2013	2009-10	DCIT (OSD), Range-1, Ahmedabad	M/s. Doshion Ltd., 1015, 10th Floor, Atma House AW, Opp. Old RBI, Ashram Road, Ahmedabad PAN : AAACD 8771 G
1579/Ahd/2015	2014-15	M/s. Doshion Pvt. Ltd., Ahmedabad PAN : AAACD 8771 G	DCIT, TDS Circle, Ahmedabad
Assessee by :		Shri Sumit Parikh, Advocate	
Revenue by :		Shri A.P. Singh, CIT-DR	

सुनवाई की तारीख / **Date of Hearing** : **31/08/2022**
घोषणा की तारीख / **Date of Pronouncement**: **31/08/2022**

आदेश/O R D E R

PER BENCH :

Out of these eight appeals, three appeals filed by the assessee being ITA Nos. 2096/Ahd/2014, 1408/Ahd/2018 & 1409/Ahd/2018 and three appeals filed by the Revenue being ITA Nos. 2412/Ahd/2014, 284/Ahd/2017 & 285/Ahd/2017 are cross appeals for Assessment Years 2010-11, 2011-12 and 2012-13 which are directed against the orders of learned CIT(A)-VI, Ahmedabad dated 25.06.2014; CIT(A)-3, Ahmedabad dated 29.11.2016 and CIT(A)-3, Ahmedabad dated 29.11.2016 respectively; while the 7th appeal being ITA No. 1468/Ahd/2013 is an appeal filed by the Revenue for Assessment year 2009-10 which is directed against the order of learned CIT(A)-VI, Ahmedabad dated 21.03.2013 and the 8th appeal being ITA No.1579/Ahd/2015 is an appeal filed by the assessee for Assessment Year 2014-15 which is directed against the order of learned CIT(A)-4, Ahmedabad dated 26.03.2015.

2. At the time of hearing fixed in this case today, advocate Shri Sumit Parikh has appeared on behalf of Resolution Professional appointed by the National Company Law Tribunal (NCLT) in assessee's case and submitted that a petition under the Insolvency and Bankruptcy Code, 2016 filed against the assessee-company has been admitted by the National Company Law Tribunal (NCLT), Ahmedabad Bench vide order dated 31st August, 2021 passed in CP (IB) No. 59/NCLT/AHM/2019. A copy of the said order is also placed on record before us; the relevant portion of which reads as under:-

"1. Corporate Debtor M/s. Doshion Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.

2. We appoint Mr. Ramchandra Dallaram Choudhary, Registration No. IBBI/IPA-001/IP-P00157/2017-2018/10326, having address at: 9-C, Vardan Complex, Near Vimal House, Lakhudi Citcilc, Navrangpura, Ahmedabad-380014, under section 13(1)(c) of the IB Code as IRP.

3. That the Moratorium under Section 14 of the Code shall come to effect from 17.02.2021 till the completion of 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.

4. That the Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest, therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.

7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.

8. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-

operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

9 The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor Company and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation Imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 2,00,000/- (Rs. Two lakh) as fees & expenses till the COC decides about his fees / expenses.

11. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order."

3. As is evident from the order extracted above, a Resolution Professional has been appointed by the National Company Law Tribunal and as submitted by Shri Sumit Parikh, Advocate, the process of Corporate Insolvency Resolution Process (CIRP) is still pending. As per the said order, there is a Moratorium from 17.02.2021 till the completion of Corporate Insolvency Resolution Process which prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor, i.e. the assessee-company, including execution of any judgment, decree or order in any Court of law, Tribunals, Arbitration Panels or other Authority(s) in view of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 and consequently no proceedings can be continued including the present appellate proceedings under the Income-tax Act before this Tribunal in the case of the assessee during the Moratorium period.

4. It is observed that the Mumbai Bench of this Tribunal in the case of Mahavir Roads & Infrastructure Pvt.Ltd. vs. DCIT (ITA Nos. 646 to 651/Mum/2019 order dated 08.06.2022) dismissed the appeals of the assessee in the similar facts and circumstances of the case by observing as under:

“ 4. We find that the present appeals have been filed by the assessee against the order of Ld. CIT (A) whereby demands have been created in respect of the additions sustained /enhanced by the Ld. CIT (A). Once NCLT has passed the order in pursuance of petition filed u/s 7 of IBC for initiating insolvency process against the corporate debtor, i.e., the assessee company and there is moratorium imposed u/s 14 of IBC, then all the proceedings stands in abeyance. The relevant portion of the order reads as under:-

a) 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;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor. It is further directed that:

I. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

II. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector Regulator.

III. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, or until this Bench approves the resolution plan under sub-section (1) of Section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

IV. That the public announcement of the corporate insolvency resolution process, as specified under section 13 of I&B Code, should be made immediately.

V. That this Bench at this moment appoints Mr Ankur Kumar, registration number IBBI/IPA-002/IP-N00113/2017-18/10283, email id: ankur.srivastava@ezylaws.com, phone no. 9967011249 as Interim Resolution Professional to carry the functions as mentioned under IBC.

5. Thus, in view of the above, no proceedings can be initiated against the corporate debtor, that is, assessee company including the present proceedings before this tribunal, or the income tax proceedings and recovery of demand or giving effect of any order. It is well settled now that, IBC has overriding effect on all the acts including Income Tax Act which has been specifically provided u/s 178(6) of the I.T. Act as amended w.e.f. 01.11.2016.

6. Accordingly, the appeal filed by the assessee in the present circumstances, cannot be proceeded with, as revenue has also not sought any permission by the committee of creditors. Till the completion of moratorium period or upon the revival of corporate debtor as per the resolution plan approved by the adjudicating authority, the appeals filed by the assessee are treated as dismissed in limine. However, liberty is given to the parties to revive /restitute all the aforesaid appeals after the moratorium period expires or as approved by the adjudicating authority.

*7. In the result, all the appeals filed by the assessee are **dismissed** in limine."*

5. Having regard to all the facts of the case and keeping in view the decision of Co-ordinate Bench of this Tribunal at Mumbai in the case of Mahavir Roads & Infrastructure Pvt.Ltd. vs. DCIT (supra), all the appeals filed in this case are treated as dismissed *in limine*. Liberty, however, is

given to the parties to revive/restitute these appeals after the expiry of the moratorium period, if so advised, or as approved by the adjudicating authority.

6. In the result, all the eight appeals, four of the assessee and four of the Revenue, are dismissed.

Order pronounced in the open Court on 31st August , 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 31 /08/2022

✍

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad