

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माजनीय श्री वी. दुर्गा रॉ, न्यायिक सदस्य एवं
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.3339/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)
&

आयकर अपील सं./ ITA No.3534/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Trade Line Enterprises Pvt. Ltd. No.8, L and M Century Plaza, Teynampet, Chennai-600 018.	बनाम/ Vs.	ACIT Corporate Circle-3(1), Chennai-600 034.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCT-5078-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri B.Ramakrishnan (CA)- Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri AR.V Sreenivasan (Addl. CIT)-Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	26-10-2022
घोषणाकी तारीख / Date of Pronouncement	:	26-10-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 & 2015-16 arise out of separate orders of first appellate authority.
2. The Ld. AR, at the outset, submitted that the assessee is subjected to proceedings under Insolvency and Bankruptcy Code, 2016 and

Interim Resolution Professional (IRP) has been appointed in assessee's case. Accordingly, Ld. AR seek withdrawal of the appeals with a liberty to the assessee on same lines as given by Mumbai Tribunal in **DCIT vs. Global Softech Ltd. (140 Taxmann.com 103)** as well as in **Pratibha Industries Ltd. vs. DCIT (142 Taxmann.com 295)**. The copies of the orders have been placed on record. The Ld. Sr. DR raised no objection for dismissal of the appeals.

3. We find that Mumbai Tribunal, on identical facts, in the case of **DCIT vs. Global Softech Ltd. (140 Taxmann.com 103)** gave following directions: -

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] 88 taxmann.com 202/[2018] 145 SCL 428 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. 1-11-2016, 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 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. Stanbic 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 a 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 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.

11. In the result, appeal filed by the assessee and the revenue are dismissed.

4. The directions of Tribunal in **Pratibha Industries Ltd. vs. DCIT (142 Taxmann.com 295)** are as under: -

4. Having heard both the Ld. representatives and perused the materials placed on record, we observe that the liquidation proceedings has commenced as per the order of the Hon'ble NCLT, Mumbai, in assessee's case thereby appointing Official Liquidator. We are aware that from the time of appointment of Official Liquidator, the assessee company became defunct and the Official Liquidator steps into the shoes of the assessee. In the present case, it is seen that the Official Liquidator has not appeared before us so far to present the case of the assessee. Even during the moratorium period specified under section 14(1)(a) of the IBC Code, the Ld. representative for the AR made no representation on several hearings and the case was adjourned on various hearings. This being so, upon considering the provisions of section 33(5) of the IBC Code, which is reproduced herein below:-

33. (1) Where the Adjudicating Authority,
(a) (b)(i) to (ii)

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(2) to (4) **

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(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

5. Therefore, we are of the considered opinion that no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings and the Proviso to section 33(5) also provides prior approval of the Adjudicating Authority to be obtained by the Official Liquidator.

6. Pertinently, it is also to be observed that in case of parallel proceedings under Income-tax Act, 1961 and IBC, 2016, the IBC has an overriding effect over the provisions of the Income-tax Act which has been decided by Hon'ble Apex Court in *Pr. CIT v. Monnet Ispat & Energy Ltd* [2019] 107 taxmann.com 481 wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. It is also trite to peruse section 178 of the

Income-tax Act, 1961 which has been amended for the purpose of preventing any conflict with provisions of IBC Code which is reproduced as under:

"178. (1) Every person-

(a) who is the liquidator of any company which is being wound up whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company; (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries of calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator-

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income-tax Officer under sub-section (2) ; and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force (except the provisions of the Insolvency & Bankruptcy Code, 2016)."

7. From the above observation and also by the decisions of co-ordinate bench of this Tribunal, we hereby dismiss the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants/Official Liquidator to recall the present order when the occasion warrants. The issue of limitation in filing fresh appeal, if need be, has already been dealt with in the judgment of Hon'ble Supreme Court in *New Delhi Municipal Council v. Minosha India Ltd.* [2022] 138 taxmann.com 73.

8. In the result, appeals filed by the Revenue and Assessee are dismissed.

5. Accordingly, accepting the plea of Ld. AR, both the appeals are dismissed with a liberty to the assessee / official liquidator to seek recall of the order when the occasions warrants.

6. Both the appeals stand dismissed.

Order pronounced on 26th October, 2022.

Sd/-
(V. DURGA RAO)
न्यायिकसदस्य /JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 26.10.2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF