

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2669/Mum/2016
(A.Y.2008-09)**

The Dy. Commissioner of Income Tax 15(3)(1) Room No. 451, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020	Vs.	M/s Reliance Telecom Ltd., H-Block, 1 st Floor, DAKC, Koparkhairane, Navi Mumbai - 400710
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACR2658E		
Respondent	..	Appellant

**ITA No.1193/Mum/2016
(A.Y.2008-09)**

Reliance Telecom Ltd., “BHQ”, Block, 2 nd Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai – 400710	Vs.	The Dy. Commissioner of Income Tax 15(3)(1) Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACR2658E		
Respondent	..	Appellant

Appellant by :	Amit Khatiwala
Respondent by :	Ajay Chandra

Date of Hearing	11.10.2022
Date of Pronouncement	17.10.2022

आदेश / O R D E R

PER BENCH:

The present cross appeals filed by the assessee and the revenue against the order of Id. CIT(A)-24, Mumbai, for Assessment Year 2008-09.

2. During the course of hearing at the outset the Id. Counsel and Id. Departmental Representative have submitted that matter in this case is pending before the Insolvency Professional in terms of The Insolvency and Bankruptcy Code, 2016 ("the Code") and moratorium period has been declared as per Section 14 of the Code.

3. Both the counsel have further submitted that the appeal of the assessee for the assessment year 2009-10 to 2014-2015 vide ITA Nos. 476, 5098 & 479/Mum/2016 and ITA Nos. 736, 737 & 6887/Mum/2018 dated 14.07.2022 have been dismissed as not maintainable with the liberty that upon completion of the moratorium period, if it is so decided both the parties may seek recall of this order. With the assistance of the Id. Representative we have perused the aforesaid decision of ITAT in the case of assessee vide ITA Nos. 476, 5098 & 479/Mum/2016 and ITA Nos. 736, 737 & 6887/Mum/2018 dated 14.07.2022. The relevant operating part of the decision is reproduced as under:

"4. We have considered the submissions and perused the material available on record. It is pertinent to note that as per the provisions of section 14 of the Code, institution of a Suit or continuation of pending Suit or proceedings against the Corporate Debtor including execution of any judgment, decree, or order in any Court of law, Tribunal, Arbitration Panel or other authorities, 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 CIRP; or if, during the CIRP period, Hon^{ble} NCLT approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33 of the Code, moratorium

shall cease to have effect on date of such order. It has not been disputed by either of the parties that moratorium period is still continuing in the present case. We find that the Hon'ble Supreme Court in case of *Alchemist Asset Reconstruction Co. Ltd. v/s Hotel Gaudavan Pvt. Ltd.*, [2017] 88 taxmann.com 202 (SC) held that even arbitration proceedings cannot be initiated after imposition of the moratorium under section 14(1)(a) has come into effect and it is non est in law and could not have been allowed to continue.

5. The learned A.R. has placed reliance on the decision of the Hon'ble Calcutta High Court in *SREI Equipment Finance Limited (supra)*. We find that the issue before the Hon'ble Court, in aforesaid decision, was as under:-

"5. On going through the impugned order we find that the issue as to whether the proceedings had to be kept in abeyance by the assessing officer in the light of the insolvency proceedings which were pending and the effect of Section 14 of the Code have not been dealt with though that was the core issue which was canvassed in the writ petition..."

6. While deciding the aforesaid issue, Hon'ble Calcutta High Court observed as under:-

"7. At this juncture, it would be important to note the decision the Hon'ble Supreme Court in the case of *Alchemist Asset Reconstruction Company (supra)*. wherein the Hon'ble Supreme Court had pointed out that the mandate of the new insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. This legal principle should have been borne in mind by the assessing officer before he proceeded to pass the assessment order. Therefore, we are of the clear view that the assessment order dated 30th March, 2022 has to be set aside and the matter has to be restored to the file of the assessing officer and the matter shall be kept in abeyance till the completion of the insolvency resolution proceedings."

7. From the careful perusal of the aforesaid decision, we find that the issue before the Hon'ble Calcutta High Court was regarding the assessment order passed during the continuation of moratorium period. Thus, in the aforesaid decision, Hon'ble Calcutta High Court dealt with the assessment proceedings and not appeals as in the present case, therefore, aforesaid decision is factually distinguishable. We are of the view that in case of assessment proceedings, the only option available with the Assessing Officer is to keep the proceedings in abeyance during the continuation of moratorium period as per section 14 of the Code and there is no option to quash the same in totality. Since, if the assessment proceeding is dropped then same cannot be revived upon completion of the moratorium period and only remedy available with the Assessing Officer will be under the provisions of section 154/147/263 of the Act, provided the jurisdictional conditions as laid down in the said sections are satisfied. Insofar as filing/continuation of appeal under the provisions of the Act, during the continuation of moratorium period is concerned, we find that Hon'ble Delhi High

Court in *PCIT v/s Monnet Ispat & Energy Ltd.*, [2018] 304 CTR 234 (Del.), observed as under:-

"2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the Insolvency commencement date the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "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." That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31 August, 2017 of the Supreme Court in Civil Appeal No. 8337-8338/2017 (*Innoventive Industries Ltd. v. ICICI Bank*). 3. In the instant case, the National Company Law Tribunal (NCLT) [which by virtue of Section 5(1) of the Code is the AA] has by its order dated 18th July 2017 admitted the petition under Section 7 of the Code filed by the State Bank of India against the Respondent Assessee and prohibited, inter alia, "the institution of suits or continuation of pending suits or proceedings against the Respondent. This would include the present appeal by the Income Tax Department (Department) against the order of the Income Tax Appellate Tribunal (ITAT) in respect of the tax liability of the Respondent-Assessee.

4. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue, points out that unlike some of the earlier insolvency statutes the Code does not envisage permission being sought from the NCLT for continuation of the continuation of pending proceedings against the Respondent in other fora. In the order dated 18 July 2017 is clear that the moratorium continues "till the completion of the 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.

5. Consequently, these appeals are disposed of with liberty to the Appellant Department to revive them subject to the further orders of the NCLT."

8. The aforesaid decision of the Hon'ble Delhi High Court was affirmed by the Hon'ble Supreme Court in *PCIT v/s Monnet Ispat & Energy Ltd.*, [2018] 18 SCC 789. The Hon'ble Supreme Court also upheld the overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions by virtue of non obstante clause contained in section 238 of the Code. Thus, we are of the considered view that the present cross appeals are a continuation of pending Suit against the Corporate Debtor, which is prohibited under section 14 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.

9. We further find that appeal by the assessee have been filed by the Director of the assessee company, which after initiation of CIRP has become functus officio. We further find that the Resolution Professional has not been impleaded as a party in the appeals before us by filing revised Form No. 36. Similarly, in the appeal filed by the Revenue also revised Form No. 36 including the Resolution Professional has not been filed. Once the insolvency proceedings commenced under the Code, all the litigations are to be pursued by Resolution Professional appointed by the Committee of Creditors and not by the company. In view of the above we are of the considered view that the present appeals, in the present form, are not maintainable.

10. Thus, respectfully following the aforesaid decision in *Monnet Ispat & Energy Ltd.* (supra), which approach has also been adopted by various coordinate bench of the Tribunal, we dismiss the present cross appeals with a liberty that upon completion of the moratorium period, if it is so decided, both the parties may seek recall of this order by impleading Managing Director / Director, representing the new management of the assessee company, or the Official Liquidator, as the case may be.”

Following the decision of the ITAT in the case of assessee itself as supra both the appeals are dismissed with a liberty to both the parties to recall this order as directed above in the finding of the ITAT in the case of the assessee itself vide order dated 14.07.2022.

4. In the result, the appeal of the assessee and revenue are dismissed.

Order pronounced in the open court on 17.10.2022

Sd/-
(Aby T. Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.10.2022

Rohit: PS

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 DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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