

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

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

आ.अपी.सं / ITA Nos. 1166, 307, 1167, 1168 & 1169/Hyd/2016
(निर्धारण वर्ष / Assessment Year: 2002-03, 2003-04, 2004-05,
2005-06 & 2006-07)

GVK Industries Limited, Vs. Dy. Commissioner of Income Tax,
Secunderabad Circle-2(2), /
[PAN: AAACG7499J] Asst. Commissioner of Income Tax,
Circle-2(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri V.Siva Kumar, AR

राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 07/11/2022

घोषणा की तारीख/Pronouncement on: 07/11/2022

आदेश / ORDER

PER BENCH :

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax (Appeals)-2 & 9, Hyderabad ("Ld. CIT(A)"), in the case of M/s.GVK Industries Ltd., ("the assessee") for the assessment years 2002-03 to 2006-07, assessee preferred these appeals. For the sake of convenience, we dispose-of these appeals by this common order.

2. At the outset it is represented by the Learned AR that the Corporate Insolvency Resolution Proceedings (CIRP) are initiated by admitting the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) and moratorium under section 14 of the Code was declared by the National Company Law Appellate Tribunal (NCLAT) by order dated 21/04/2022. In terms of the moratorium, the institution and continuance of the proceedings against the assessee are prohibited. Learned DR submitted that the state of affairs obtaining as on today are not available and it is not known at what stage the CIRP are pending. Learned AR also submits that such facts are yet to be ascertained. There is no representation for the Corporate Insolvency Resolution Professional.

3. We have considered the issue in the light of the provisions of Insolvency and Bankruptcy Code, 2016 (“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.

4. 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 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. Under identical circumstances, in assessee's own case for the assessment years 2010-11 & 2011-12, a Co-ordinate Bench of this Tribunal, while taking cognizance of the proceedings under the Code dismissed such appeals in limine in ITA No. 1752 & 1753/Hyd/2017 by order dated 22/07/2022.

5. In the result, all these appeals of assessee are dismissed in limine.

Order pronounced in the open court on this the 7th day of November, 2022

Sd/-

(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Hyderabad,

Dated: 07/11/2022

TNMM

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. GVK Industries Limited, 156-159, Paigah House, S.P.Road, Secunderabad.
2. Dy. Commissioner of Income Tax, Circle-2(2), Hyderabad.
3. Asst. Commissioner of Income Tax, Circle-2(2), Hyderabad.
4. CIT(A)-2 & 9, Hyderabad.
5. Pr.CIT-2, Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD