

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3812/Mum./2017
(Assessment Year : 2011-12)

M/s. Satra Properties (India) Ltd.
Dev Plaza, 2nd Floor,
Opp. Andheri Fire Station
S.V. Road, Andheri (West)
Mumbai 400 058 PAN AAACE1835C

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-33, Mumbai

.....Respondent

ITA no.4796/Mum./2017
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Central Circle-5(2), Mumbai

..... Appellant

v/s

M/s. Satra Properties (India) Ltd.
Dev Plaza, 2nd Floor,
Opp. Andheri Fire Station
S.V. Road, Andheri (West)
Mumbai 400 058 PAN AAACE1835C

.....Respondent

Assessee by : None
Revenue by : Shri Prabhat Kumar Gupta

Date of Hearing - 08/09/2022

Date of Order - 05/12/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross-appeals have been filed by the assessee and the Revenue challenging the impugned order dated 31/03/2017, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-53, Mumbai [*'learned CIT(A)'*], for the assessment year 2011-12.

2. When the present cross-appeals were called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. On perusal of the record, it is observed that on previous occasions also no one appeared on behalf of the assessee, apart from some intermittent representation on a few dates of hearing on behalf of the assessee. Therefore, in view of the above, we proceed to dispose off the present cross-appeals ex-parte, qua the assessee after hearing the learned Departmental Representative (*'learned DR'*) and based on the material available on record.

3. Pursuant to conclusion of hearing, the learned DR vide letter dated 13/09/2022 filed a copy of service of notice on the Interim Resolution Professional (*'IRP'*) appointed in the case of the assessee by the Hon'ble National Company Law Tribunal (*'Hon'ble NCLT'*). Along with the aforesaid letter, the learned DR also filed the reply received from the appointed IRP. From the perusal of the aforesaid, we find that Mr. Devarajan Raman has been appointed as IRP of the assessee vide order dated 03/08/2020 in CP (IB) No.

1632 of 2019 passed by the Hon'ble NCLT, Mumbai. It has further been mentioned that the assessee is admitted to Corporate Insolvency Resolution Process ('CIRP') and moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 ("*the Code*") has commenced.

4. 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. As noted above, it has been admitted that the moratorium period has commenced 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. We find that as regards filing / continuation of appeal under the provisions of the Act, during the continuation of moratorium period is concerned, the 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."

6. 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.

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

8. Thus, respectfully following the aforesaid decision in Monnet Ispat & Energy Ltd. (supra), which approach has also been adopted by various co-ordinate bench of the Tribunal, we dismiss the present appeals with a liberty that upon completion of the moratorium period, if it is so decided, the assessee and the Revenue 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.

9. To sum up, the cross-appeals by the assessee and the Revenue are dismissed.

Order pronounced in the open Court on 05/12/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/12/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai