

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No. 201/SRT/2022

निर्धारण वर्ष/Assessment Year: (2017-18)

(Virtual Court Hearing)

The DCIT, Central Circle-2, Surat.	Vs.	Sumeet Industries Ltd., 504, Trividh Chambers, Opp. Fire Station, Ring Road, Surat-395002.
(Assessee)/(Revenue)		(Respondent)/(Assessee)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEC52583B		

Assessee by	Shri Rasesh Shah, CA
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	13/03/2023
Date of Pronouncement	13/03/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue pertaining to assessment year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], which in turn arises out of an assessment order passed by the Assessing Officer under section 154 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. At the outset, Shri Rasesh Shah, Ld. Counsel for the assessee stated that Ld. National Company Law Tribunal (in short ‘NCLT’), Ahmedabad, vide its order dated 20.12.2022, passed in CP(IB) 38/NCLT/AHM/2020, approved by the resolution plan of IDBI Bank Limited (successful resolution applicant), in exercise of its power under section 31(1) of Insolvency and Bankruptcy Code, 2016 (in short, “I & B Code”) for the insolvency resolution of the corporate debtor i.e. applicant/assessee (Sumeet Industries Limited) copy of which is placed on record. On the basis of aforesaid order, the applicant/assessee submitted and prayed that all the appeals filed by the assessee are liable to be allowed and also prayed for direction to the Assessing Officer to modify / revise / reduce / cancel

the demand according to provision of section 156A of the Act. The Ld. Counsel also relied on the judgment of Hon'ble Gujarat High Court in Civil Application No. 01 of 2021, in Tax Appeal No. 875 of 2013 (Revenue's appeal) wherein it was held that appeal filed by Revenue does not survive and dismiss the same without expressing opinion on merit and granted liberty to the Revenue to file an appeal under section 61 of I & B Act before the NCLT.

3. The Ld. Counsel further pleaded that Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (2021) 126 taxmann.com 132 (SC) has held that once a resolution plan is approved by adjudicating authority under sub-section (1) of Section 31, the claim as provided in the resolution plan stand frozen and will be binding on the corporate debtor and its employees, members, creditors, Central Government, any State Government or any local authority, guarantors and other stake holders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not 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 a part of resolution plan. The ld Counsel further states that Hon'ble Supreme Court further held that amendment in Section 31 of I & B Code is clarificatory in nature and therefore will be effective from the date on which I&B Code has come in effect. It was also held that all dues including statutory dues owed by the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceeding 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. The ld. Counsel submits that recently section 156A is inserted in Income Tax Act by the Finance Act, 2022, and by virtue of a new section 156A, which is inserted for modification and revision of notice in certain cases wherein sub-Section (1) specified that: *"Where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Assessing*

Officer shall modify the demand payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall accordingly, apply in relation to such notice. Further sub-Section (2) of Section 156A of the Act specified that “Where the order referred to in sub-section (1) is modified by the National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the modified notice of demand as referred to in sub-section (1), issued by the Assessing Officer shall be revised accordingly.”

4. The Ld Counsel has placed on record the order passed by the Id. NCLT in CP(IB) 38/NCLT/AHM/2020, dated 20.12.2022 for approving the resolution plan in assessee`s case. The Id Counsel also submitted before the Bench, the order of Hon`ble Supreme Court in Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. (supra) and the order passed by the Hon`ble Jurisdictional High Court in Tax Appeal No. 875 of 2013 dated 24/01/2022.

5. Learned CIT-DR for the Revenue, vehemently argued that the interest of revenue may be protected and revenue may be given liberty to move appropriate application/ appeal either before this Tribunal or before NCLT. He further submits that a suitable instruction may be given to the assessing officer to modify the demand under section 156A of the Act as per the NCLT order and as per its further direction.

6. We have heard both the parties and perused the material available on record. We note that section 14 of the I & B Code, 2016 provides as follows:

“Section 14: Moratorium:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to--

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

7. Section 14 of I & B code, 2016, clearly states that adjudicating authority shall by an order declared moratorium for prohibiting the institutions of suits transferring or disposing by corporate debtor of its assets, an action to foreclose, recover or enforce any security and the recovery of any property by an owner. Section 14 of the I & B Code also states that the moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process. Therefore, we note that section 14 of I & B code, 2016, is a self-explanatory provision. Hence, we note that the claims including statutory dues owned to the Central Government any State Government, if not part of resolution plan is also extinguished and no proceeding in respect of such dues prior to the date which the adjudicating authority grants its approval under section 31(1) could be continued.

8. We note that Hon`ble High Court of Telangana in the case of Sirpur Paper Mills Ltd [2022] 135 taxmann.com 188 (Telangana), held that where NCLT by order had admitted resolution plan in case of corporate debtor, which provided that all assessments or other proceedings relating to period prior to completion date shall stand terminated and all consequential liabilities would stand abated, hence, notices issued by the Income tax Department which sought to initiate assessment proceedings under section 143 (3) of Income-tax Act on corporate debtor for a period which was squarely covered by resolution plan as approved by NCLT were wholly unsustainable in law and deserved to be quashed. The findings of the Hon`ble Court is reproduced below:

“95. In the result, we answer the questions framed by us as under :

(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)** ** **

(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.”

9. From the above findings of Hon`ble High Court of Telangana in the case of Sirpur Paper Mills Ltd (supra), it is vivid that all 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 a part of the resolution plan. We also note that provisions of section 238 of the IBC which clearly says that provisions of IBC shall have an overriding effect over all other laws. This, if there is any doubt, section 238 IBC makes it abundantly clear that provisions of the IBC would prevail over the Income Tax Act.

10. The Id. Counsel for the assesses has already filed order of Id NCLT dated 20.12.2022 showing the fact that the assessee has been impleaded as Corporate Debtor before the Hon`ble National Company Law Tribunal (NCLT) Ahmedabad by the Financial Creditor. As noted above the said petition has been admitted by NCLT and we find NCLT had declared moratorium u/s.14 of the I & B code and has prohibited continuation of pending suits or proceedings against the assessee including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority, till the completion of the corporate insolvency resolution process or until the Bench approves the resolution plan under sub-section (1) of Section 31 of I & B Code. In the order the Id NCLT has already appointed Interim Resolution Professional (IRP). We find that Id IRP had not impleaded himself to represent the assessee-company in the present appeal, hence, in view of Section 14 of I & B code there cannot be any continuation of any pending proceedings before this Tribunal.

11. Hence, we deem it fit to dismiss the appeal of the Revenue, as not maintainable in the present format. However a liberty is given to Revenue to file Miscellaneous Application before us, if the Revenue so desires, at later stage, in which event this appeal shall be restored. With these observations, the appeal of the Revenue is hereby dismissed as not maintainable in the present format.

12. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 13/03/2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सुरत /Surat

दिनांक/ Date: 13/03/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat