

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA Nos. 372 to 382/Srt /2022
(Assessment Year: 2010-11 to 2017-18, 2019-20 & 2020-21)
(Physical hearing)

Garden Silk Mills Pvt. Ltd., 1 st Floor, Tulsi Krupa Arcade, Aai Mata Chowk, Parvat Patia Road, Surat, Gujarat-395010 PAN No. AAACG 8932 C	Vs.	D.C.I.T., Circle-1(1)(2), Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Nitin Gheewala, CA with Nancy Vankawala
Revenue represented by	Shri Ashish Pophare, CIT-DR with Shri Vinod Kumar, Sr. DR
Date of hearing	21/09/2023
Date of pronouncement	22/09/2023

Order under Section 254(1) of Income Tax Act

PER: BENCH:

1. This bunch of eleven (11) appeals by the assessee are directed against the separate orders of learned National Faceless Appeal Centre, Delhi (in Short NFAC)/learned Commissioner of Income Tax (in short, the Id. CIT(A) all dated 14/10/2022 for the Assessment Year (AY) 2010-11 to 2017-18, 2019-20 and 2020-21. In all these appeals, the assessee has raised similar grounds of appeal. Facts in all these years are identical, therefore, with the consent of parties all these

appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision.

2. Initially, all these appeals were adjudicated vide order dated 27/02/2023. However, order dated 27/02/2023 was recalled on finding certain mistake apparent in the order vide Misc. Application No. 19 to 29/Srt/2023 dated 17/08/2023. Thus, all the appeals were fixed for hearing afresh.
3. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that Garden Silk Mills Limited (erstwhile company) went in liquidation/insolvency proceedings before the National Company Law Tribunal (NCLT). The NCLT vide its order dated 01/01/2021 passed in I.A. No. 661 of 2020 with I.A. No. 759 of 2020 in Company Petition i.e. CP(IB) No. 453 of 2018, approved the resolution plan vide order dated 20/09/2020 of successful resolution applicant i.e. the present appellant in all the present appeals, in exercise of its jurisdiction under Section 31 of Insolvency and Bankruptcy Code (in short, IBC). As per resolution plan, the Income Tax Department was not an operational creditor/ secured creditor. Copy of order of Id. NCLT passed in I.A. No. 661 of 2020 with I.A. No. 759 of 2020 in CP(IB) No. 453 of 2018 is placed on record. The Id. AR of the assessee submits that on the basis of order of Id. NCLT under Section 31 of IBC, once the revenue/Income Tax Department was not

recognized as secured creditor, all the liabilities qua the Income Tax Department has been extinguished. The Id. AR of the assessee further submits that after passing the order dated 19/09/2020 under Section 31 of Insolvency and Bankruptcy Code, the Central Government, State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as the authorities to whom statutory dues are owed, came to be included in Section 31 of Insolvency and Bankruptcy Code. Since the Central Government/Income Tax Department was not adjudged as secured credit, therefore, as per Section 156A, all the demand of tax is liable to be reduced/cancelled against the assessee-appellant.

4. The Id. AR of the assessee submits that the Hon'ble Supreme Court in Ghanshyam Mishra & Sons Private Limited Vs Edelweiss Asset Reconstructions Company Limited (2021) 126 taxmann.com 132 (SC) has also held that once a resolution plan is approved by adjudicating authority under Sub-Section (1) of Section 31 of the Insolvency and Bankruptcy Code, the claim as provided in resolution has been stand frozen and will be binding on the corporate debtor, its employee, members, creditors, Central Government, State Government or any local authority or any other stake holder. On the date of approval of resolution plan by 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 proceeding in respect of claim which is not a part of resolution plan.

5. The Id. AR of the assessee further submits that on the basis of similar submission, on similar set of facts, the appeal of Garden Silk Mills Limited for A.Y. 2003-04 to 2009-10, 2011-12 and 2012-13 was allowed and those cross appeals by revenue in different assessment years was dismissed by the Tribunal vide order dated 08/05/2022. Similar appeal of Garden Silk Mills was allowed by the Hon'ble Jurisdictional High Court on the basis of similar set of facts in Tax Appeal No. 875 of 2013 dated 24/01/2022. The Id. AR of the assessee prayed for allowing all the appeals by giving appropriate directions to the assessing officer.
6. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue jointly submits that interest of revenue may be protected by giving liberty to them to move appropriate application before the NCLT or the Hon'ble High Court as the case may be, for protection of their interest. And in the event, the revenue is held as secured creditor, the revenue may be allowed to move appropriate application before this Tribunal. The Id. CIT-DR for the revenue submits that the Hon'ble Apex Court in State Tax Officer Vs Rainbow Papers Limited in Civil Appeal No. 1661

of 2020 and 2568 of 2020 held that Section 3(30) of Insolvency and Bankruptcy Code defines secured creditor as a creditor in favour of whom security interest is credited by operation of law and it does not exclude any Government or Governmental Authority and, thus, if resolution plan ignores statutory demands payable to a secured creditor, which includes State under Gujarat Value added Tax or any legal authority, NCLT is bound to reject said plan. It was further held that if the resolution plan ignored the statutory demand payable to any State Government or a legal authority altogether, the adjudicating authority is bound to reject the resolution plan. It was also held that the Committee of Creditors including Financial Institutions or other financial creditor, cannot secure their own dues at the cost of statutory dues owed to any government or government authority or for that matter, any other dues. On the basis of the aforesaid submissions, the Id DRs jointly prayed that in the event, the revenue is held as secured creditor, the revenue may be allowed to move appropriate application before this Tribunal to get all the appeals revive for adjudication of the issue on merit.

7. We have considered the rival submissions of both the parties and have gone through the order of this bench dated 18/05/2022 and the order of Hon'ble Jurisdictional High Court on similar set of facts dated 24/11/2022 in Tax Appeal no. 875 of 2013. We find that there is no

dispute that the Id. NCLT approved the resolution plan under Section 31(1) of Insolvency and Bankruptcy Code. It is an admitted fact that in the resolution plan, Central Government/Income Tax Department, does not find place. It is admitted position in law that once resolution plan is approved by adjudicating authority, the claim provided in the resolution plan has been stand frozen and will be binding on the corporate debtor and its employee, member, creditors, Central Government, State Government or any local authority. Further, all such claims which are not the part of resolution plan stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not a part of resolution plan. It is not the case of revenue / Id DRs for revenue that income tax department placed their claim before resolution professional or their claim was repudiated and /or they are hesitating such claim before superior legal forums.

8. We find that the Hon'ble Gujarat High Court in assessee's own case in Tax Appeal no. 875 of 2013 by following the decision of Hon'ble Apex Court in Ghanshyam Mishra & Sons Private Limited Vs Edelweiss Asset Reconstructions Company Limited (supra) has held that amendment to Section 31 of the Insolvency and Bankruptcy Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. Considering the decision of Hon'ble Supreme Court in the

case of Ghanshyam Mishra & Sons P Ltd. Vs Edelweiss Asset Reconstruction Co. Ltd. (supra), we are of the view that all the appeals filed by the assessee is liable to be succeed, without expressing any opinion on merit as statutory dues owed to Central Government (income tax department), 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 could be continued. Therefore, all the appeals of the assessee are allowed as all the dues owed to the Central Government, which is not part of resolution plan stand extinguished. Accordingly, all the appeals of the assessee are allowed and the Assessing Officer is directed to modify/reduce/cancel the demand according to provisions of Section 156A of the Act.

9. In view of the aforesaid factual and legal position, all the appeals of assessee are allowed with the direction to Assessing Officer to pass order for modifying/cancelling the demand in accordance with provisions of Section 156A.
10. So far as reliance of the Id. CIT-DR for the revenue in case of State Tax Officer Vs Rainbow Paper Limited (supra) is concerned, we find that the said decision is not helpful to the revenue at this stage unless and until the claim of Central Government/Income Tax Department is not made a part of resolution plan or approved by Id. NCLT. No step is

stated to have been taken or contemplated by the revenue, to include them as a secured creditor. The revenue is at liberty to take appropriate steps in accordance with law, if so advised and if law so permits. And in the event of such modification in the resolution plan, the revenue may seek revival of these appeal in accordance with law.

11. In the result, all these appeals of the assessee are allowed.

Order pronounced in the open court on 22nd September 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 22/09/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat