

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.516/M/2020
Assessment Year: 2008-09**

M/s. Kaushal Silk Mills Pvt. Ltd., 2A, 2 nd Floor, Jai Sing Estate, Dr. A.M. Road, Bhuleshwar, Mumbai – 400 002 PAN: AAACK1811G	Vs.	Income Tax Officer- 4(2)(2), R.No.644, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Teena Jain, A.R.
Revenue by : Mr. P.D. Chougule, Sr. A.R.

Date of Hearing : 05 . 01 . 2024
Date of Pronouncement : 10 . 01 . 2024

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Kaushal Silk Mills Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 18.11.2019 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2008-09 on the grounds inter-alia that :-

“1. On the facts and circumstances of the Appellant's case and in law the Ld. A.O. erred in reopening the assessment u/s 147 by issue of

notice u/s 148 which is merely due to change of opinion and therefore the re- opening is bad in law.

2. On the facts and circumstances of the Appellant's case and in law the Ld. A.O. erred in reopening the assessment u / s 147 by issue of notice u / s 148 which is barred by limitation in view of the first proviso to section 147 of the Income Tax Act, 1961.

3. On the facts and circumstance of the Appellant's case and in law the Ld. CIT (A) erred in confirming the action of ld. A.O. in rejecting the books of accounts of an assessee u/s 145(3) of the Income Tax Act, 1961.

4. On the facts and circumstance of the Appellant's case the Ld. CIT(A) erred in confirming the action of ld. A.O. in holding that the appellant has entered into accommodation transactions of bogus purchases with Pravin kumar Jain Group without any material evidence on record.

5. On the facts and circumstance of the Appellant's case the Ld. CIT(A) erred in confirming the action of ld. A.O. in making an addition of Rs.62,57,528/- being 12.5% of alleged bogus purchases in an arbitrary manner.

6. The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.

The appellant prays this Hon'ble Tribunal to delete the addition made by the Learned Assessing Officer, which is confirmed by the Learned CIT (A).

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of dyeing and processing of textile products and trading. Return of income filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently on the basis of information received from Directorate General of Income Tax (investigation) [DGIT](Inv.)], Mumbai that a search and seizure action was carried out in case of Shri Pravin Kumar Jain on 01.10.2013 wherein Shri Pravin Kumar Jain had admitted that his only activity is to provide accommodation entries for bogus investments/share applications, long term capital gains,

unsecured loans, bogus sales bills etc. and the assessee is one such beneficiary to the tune of Rs.5,00,60,229/-. So the assessee's case was reopened by initiating the proceedings under section 147/148 of the Act. The Assessing Officer (AO) after declining the contentions raised by the assessee made an addition of Rs.62,57,530/- being 12.5% of the bogus purchases of Rs.5,00,60,229/- and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and order passed by Hon'ble National Company Law Tribunal (NCLT) and documents available on record in the light of the facts and circumstances of the case.

5. At the very outset, it is brought to the notice of the Bench that Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, Court-1 passed the order dated 22.11.2023 in petition bearing No.CP(IB) No.374 of 2023 in case of appellant namely M/s. Kaushal Silk Mills Pvt. Ltd. which is available on the file, to the following effect:

"15. The above CP(IB) No. 374 of 2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kaushal Silk Mills Private Limited.

16. There shall be a moratorium under Section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein,
- iii. 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 (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

17. Notwithstanding the above, during the period of moratorium:-

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

18. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

19. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Mr. Bhavesh Mansukhbhai Rathod having Registration No. IBBI/IPA-001/IP- P01200/2018-2019/11910, Email Id: bhavesh76@gmail.com, is hereby appointed as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17,

18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

21. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

22. The Corporate Applicant shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

23. The Registry is directed to communicate this Order to the Corporate Applicant and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

24. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra. for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.”

6. In view of the order passed by the Hon'ble NCLT (supra), we are of the considered view that since proceedings under I&B code have already been initiated/decided and moratorium has been declared by prohibiting all the proceedings against the corporate debtors including execution of any judgment, decree or order of any court of law, tribunal, arbitration panel or other authority, present appeals in the present format are not maintainable having not been filed by the Interim Resolution Professionals (IRP) who can file appeal with approval of committee of creditors. Moreover, none has come present on behalf of IRP to assist the Bench to proceed further in these appeals, hence aforesaid appeals are liable to be dismissed being not maintainable at this stage.

7. Resultantly, aforesaid appeal filed by the assessee company is disposed of with liberty to file fresh appeal in the proper format, duly verified by the person authorized to file the return of income or to get the present appeal restored by moving an application. However, nothing expressed herein shall affect the aforesaid appeals on merits.

Order pronounced in the open court on 10.01.2024.

**Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 10.01.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.