

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.599/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2009-10

M/s.Aircel Cellular Ltd., 769, Spencer Plaza, Mount Road, Chennai-600 002.	v.	The DCIT, Corporate Circle-1(1), Chennai.
[PAN: AAACR 5136 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से /Respondent by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	06.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.06.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 08.01.2024 for the Assessment Year (hereinafter in short "AY") 2009-10.

2. At the outset, we note from perusal of the grounds of appeal filed by the assessee that Ground Nos.1 to 1.3 raises a legal issue (infra) which has been touched upon by the Ld.CIT(A) but has neither been examined nor adjudicated by him. Since the legal issue has not been decided by the Ld.CIT(A), which had been raised by the assessee at the



:: 2 ::

First appellate stage and had not been adjudicated by the Ld.CIT(A), it needs to be adjudicated by him. The legal issues raised by the assessee in Ground Nos.1 to 1.3 read as under:

1. That on the facts and circumstances of the case and in law, the order passed by Commissioner of Income Tax, Appeals, National Faceless Appeal Centre(NFAC). Delhi ('Ld. CITA') is bad in law because:

1.1. The Appellant submits that in respect of the provisions of the Insolvency and Bankruptcy Code, 2016 ('the Code') and as per the order of Hon'ble National Company Law Tribunal (NCLT) dated June 09, 2020 ('Approval Order'), the resolution plan submitted by UV Asset Reconstruction Company Limited has been approved in the corporate insolvency resolution process ("CIRP") of the Appellant. No demand can be made for pre-CIRP period dues and no proceedings (including penalty proceedings) can be initiated/ continued for recovery of any such amounts.

1.2. That on the facts and circumstances of the case and in law and facts that a resolution plan, upon being approved by the adjudicating authority is binding on all stakeholders (including income tax authorities) as per Section 31(1) of the Code.

1.3. That on the facts and circumstances of the case and in law and facts as per Section 238 of the Code, the provisions of the Code shall have an overriding effect not withstanding anything inconsistent contained in any other law for the time being in force.

**3.** On perusal of the impugned order, it is noted that the Ld.CIT(A) has taken note of the following facts (i) that the assessee Company was undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the insolvency and Bankruptcy Code, 2016 (Code) and the rules regulations framed there under. (ii) On June 9, 2020, the resolution plan was submitted by UV Asset Reconstruction Company Limited (UVARC) which has been approved. (iii) And the assessee has enclosed a copy of NCLT order dated 09.06.2020.

**4.** In the light of the aforesaid facts noted by the Ld.CIT(A), we presume that the assessee has raised the aforesaid legal grounds at the



ITA No.599/Chny/2024 (AY 2009-10)  
M/s.Aircel Cellular Ltd.

:: 3 ::

time of first appellate stage itself by way of submission which has not been answered by the Ld.CIT(A). Therefore, we admit the legal issue and restore the appeal back to the file of the Ld.CIT(A) with a direction to decide the aforesaid legal issue in accordance to law and especially keeping in mind sub-sec.(6) of sec.250 of the Income Tax Act, 1961 (hereinafter in short 'the Act'). Needless to say, proper opportunity of hearing be given to the assessee and the Ld.CIT(A) to pass a speaking order.

**5.** In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 25<sup>th</sup> day of June, 2024, in Chennai.

**Sd/-**  
**(एस. आर. रघुनाथा)**  
**(S.R.RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 25<sup>th</sup> June, 2024.

**TLN, Sr.PS**

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF