

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.6113/Del/2019
Assessment Year: 2014-15

SRS Real Infrastructure Ltd., Vs DCIT,
C/o SRS Mall, 3rd Floor, Sec.12, CC-II,
Faridabad, Faridabad.
Haryana – 121 001.
PAN: AABCM2396R

ITA No.6114/Del/2019
Assessment Year: 2014-15

SRS Real Estate Ltd., Vs. DCIT,
SRS Multiplex, City Centre, CC-II,
Sec.12, Faridabad.
Faridabad, Faridabad.
Haryana – 121 001.
PAN: AAJCS5656C

(Appellant)

(Respondent)

Assessee by : Shri Shrey Jain, Advocate
Revenue by : Shri Ravi Kant Choudhary, Sr. DR

Date of Hearing : 13.06.2024
Date of Pronouncement : 27.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the Assessee against the orders dated
15.03.2019 & 31.03.2019 of the Commissioner of Income Tax (Appeals)-3,

Gurgaon, (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeals No.630/CIT(A)-3/GGN/2016-17 and No.631/CIT(A)-3/GGN/2016-17 arising out of the appeals before it against the order dated 26.12.2016 and 27.12.2016, respectively, passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Central Circle-II, Faridabad (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. The only submission made by the ld. Counsel for the assessee was that the assessee companies are under insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) and by order dated 16/08/2022 in CP(IB) No. 266/Chd/Hry/2020, Interim Resolution Professional has been appointed and a moratorium in terms of section 14 of the IBC stands issued.

3. Ld. departmental representative could not dispute the aforesaid submissions of the Ld. AR.

4. It is now a settled proposition of law that after the moratorium order in the insolvency proceedings and appointment of interim resolution professional, no claim can be entertained by any court or other authorities. The Hon'ble Delhi High Court had in the case of **Pr. Commissioner of Income Tax-6, New Delhi Vs. Monnet Ispat & Energy Ltd.:** [ITA No. 533 to 552 & 554 of 2017], vide order dated 04/09/2017, held that on admission of petition under Section 7 of

the Code, 'the institution of suits or continuation of pending suits or proceedings' against the corporate debtor was not permitted and the same would include income tax appeals. In Special Leave Petition arising from the aforesaid order [SLP (C).No. 6487 of 2018, dated 10/08/2018], the Hon'ble Supreme Court upheld overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions by virtue of Section 238 of the Code by holding as follows:-

“Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.

We may also refer in this Connection to Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.”

5. However, Clause (a) of Sub-section (1) of Section 14 of the IBC only prohibits 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. It does not prohibit any proceedings by the debtor. Reliance can be placed on the judgment of Hon'ble Bombay High Court in case of in **Reliance Communication Ltd. v. Rajendra P. Bansal, (2023) 143 taxmann.com 156 (Bombay)** and of Hon'ble Supreme Court in **New Delhi Municipal**

Corporation v. Minosha India Ltd. 2 (2022) 138 taxmann.com 73,(SC), which have been relied by Hon'ble Bombay High Court in case of **Imperial Consultants And Securities vs Asst. Commissioner Of Income Tax, vide order dated 6 February, 2024 in Writ Petition No. 26105 OF 2023**. Thus on admission of the insolvency petition filed by the financial creditor under Section 7 of the IBC, the Directors of assessee have become *functus officio* and IRP or the RP, as the case may be, only can pursue the appeal, pertaining to Assessee Company in consultation with the Committee of Creditors.

6. In the light of the aforesaid, we are inclined to dismiss the appeals, with liberty to the IRP or the RP, as the case may, to apply for recall of the this order and restoration of appeal for hearing on merits.

Order pronounced in the open court on 27.06.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 27th June, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi