

आयकरअपीलीयअधिकरण, बी,न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE HON'BLE SHRI MANU KUMAR GIRI, JM AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1602, 1603, 1604 & 1605/CHNY/2023
निर्धारण वर्ष/Assessment Years: 2006-07, 2012-2013, 2013-14 &
2017-2018

Aircel Cellular Limited,
769, Spencer Plaza,
Mount Road,
Chennai 600 002.

Vs.

The Deputy Commissioner of Income
Tax,
Corporate Circle 1(1)
Chennai.

PAN: AAACR 5136R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Mr. K. Venkatesh Prabhu, FCA

प्रत्यर्थीकीओरसे/Respondent by

: Mr. V. Nandakumar, IRS, CIT.

सुनवाईकीतारीख/Date of Hearing

: 02.07.2024

घोषणाकीतारीख/Date of Pronouncement

: 14.08.2024

आदेश /ORDER

PER MANU KUMAR GIRI (Judicial Member)

These four appeals filed by the assessee are directed against the separate orders of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] dated 17.10.2023 for Assessment Year 2006-2007, dated 27.10.2023

for assessment year 2012-2013, dated 25.10.2023 for assessment year 2013-14 and dated 30.10.2023 for assessment year 2017-2018.

2. First we take up ITA No.1602/Chny/2023 for assessment year 2006-2007 as lead case for adjudication wherein main issue is with regard to extinguishing of all liabilities of the pre-CIRP period by the approval order passed by the NCLT dated 09.06.2020. Our decision on this issue will equally apply to others appeals being ITA Nos. 1603, 1604 & 1605/CHNY/2023 also.

3. Brief facts of the case are that the assessee is an entity holding telecom license and providing cellular services. It filed return of income for on 29.11.2006 declaring total income at Rs.89,85,72,257/-. Subsequently, a revised return was filed on 31.7.2007 declaring taxable income at Rs.2,56,02,295/-. The case was selected for scrutiny and assessment order under section 143(3) of the Income Tax Act, 1961 (in short "the Act") was made on 28/11/2008 determining the total income at Rs.2,65,01,478/--. Subsequently, the assessment was reopened, against this assessee filed a writ petition challenging the reopening of assessment before the Hon'ble Madras High Court. The same was disposed off by the Hon'ble Madras High Court vide order dated April 27, 2021, that the assessment proceedings shall continue. The assessment order under section 143(3) r.w.s 147 read with section 260 was made on 29/08/2022 determining the total income at Rs.89,94,71,440/-.

4. Aggrieved with the assessment order, appeal has been filed before the Id.CIT(A). Before the Id.CIT(A), appellant submitted that the Assessee was undergoing corporate insolvency resolution process ("CIRP") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") and the rules and regulations framed there under vide an order dated March 19, 2018 of the Hon'ble National Company Law Tribunal ("NCLT"). On June 9, 2020, the resolution plan submitted by UV Asset Reconstruction Company Limited ("UVARC") was approved, which has been published and uploaded on the website of the ("NCLT") on June 18, 2020. The Id.CIT(A) after considering the facts of the case and the submissions as advanced by the A.R., case laws relied upon and the Insolvency and Bankruptcy Code, 2016 and Hon'ble Madras High Court order dated 27.04.2021 held as under:

The Hon'ble Madras High Court in its order dated April 27, 2021, as directed that the assessment proceedings shall continue. Further, it directed as follows "The learned counsel for the petitioner made a submission that a Resolution Plan has been sanctioned under IBC Code. The petitioner is at liberty to submit all the particulars regarding the resolution plan sanctioned before the Income Tax authorities, who can consider the said documents and take appropriate decision under the provisions of law."

As per section 31(1) of the Insolvency and Bankruptcy Code, 2016:

"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."

It is seen from the above that there is no bar on reopening of the assessment and/or passing of an assessment Order or a Re-assessment Order. The Impugned Re-assessment Order is not bad in law and in complete disregard of the Approval Order passed by the Hon'ble NCLT. Thus, ground no. 1 is dismissed.

5. The Id.CIT(A) in AY 2012-13 relied upon the judgment of the Hon'ble Jurisdictional High Court of Madras dated 17.06.2022 (W.P.No.34664 of 2018) passed in appellant's own case and held as under:

The Hon'ble Madras High Court in its order dated 17.06.2022 (W.P.No.34664 of 2018) has held in regards to the approval order passed by the Hon'ble NCLT approving the resolution plan "Corporate Insolvency Resolution Plan sanctioned and approved cannot impinge on the rights of the Income Tax Department to pass any fresh Assessment Order under Section 148 read with Sections 143(3) and 147 of the Income Tax Act, 1961."

The Id.CIT(A) in AY 2012-13, in respect to Ground No.3 regarding extinguishing of all liabilities of the pre-CIRP period by the Approval Order stated as under:

*"It is seen from the submissions of the appellant that an appeal has been filed by the appellant against the order dated June 17, 2022 before the Madras High Court and vide an order dated August 18, 2022, the Hon'ble Madras High Court has granted an **interim stay** on the order dated June 17, 2022. The Assessing officer is directed to monitor the outcome of the same. Further, this not being the right forum to claim relief with regards to the above ground, the same is not adjudicated upon, therefore, ground of appeal no.5 is dismissed."*

The Id.CIT(A) has also taken a similar view on this issue in AYs 2013-14 and 2017-18. Now assessee is in further appeal before us.

6. We have heard the rival submissions and perused the records of the appeal files, assessment orders, impugned orders and interim stay order of the Hon'ble Madras High Court dated 18.08.2022 passed by the Division Bench in W.A.Nos.1796, 1797, 1799, 1800, 1801 and 1802 of 2022ANDC.M.P.Nos.13166, 13178, 13174, 13180, 13181 and 13185 of 2022 against the order of the Hon'ble Madras High Court dated 17.06.2022.

7. We find it necessary to reproduce here the interim stay order of the Hon'ble Madras High Court dated 18.08.2022 in W.A.Nos.1796, 1797, 1799, 1800, 1801 and 1802 of 2022 which is as under:

"Mr.D.Prabhu Mukunth Arunkumar, learned standing counsel takes notice for the respondents and seeks time for getting instructions.

2.The sheet anchor argument of the learned senior counsel appearing for the appellants Mr.AR.L.Sundaresan is that in terms of clause 9.6.1 of the NCLT Approval Order and section 31 of the Insolvency and Bankruptcy Code, 2016, on approval of the Resolution Plan by the NCLT, the claims of the respondent viz., the impugned proceedings, stood extinguished and the said NCLT Approval Order is binding on all the creditors of the appellants including the respondents. However, the learned Judge erred in dismissing the writ petition, observing inter alia that the Resolution Plan did not contemplate any concession from the Income-tax department and hence, the respondent was not precluded from reopening the assessment proceedings. To substantiate his

contention, the learned senior counsel referred to a decision of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. and Others [(2021)9 SCC 657], wherein, it was held as follows:

“ 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) The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

(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.”

3. Having regard to the facts and circumstances of the case coupled with the submissions made by the learned senior counsel appearing for the appellants and also in the light of

the decision of the Hon'ble Supreme court as referred to above, there shall be an order of interim stay for a period of six weeks.

4.Post these appeals after six weeks. Copies of the affidavit along with the typed set of papers be served on the learned standing counsel taking notice for the respondents”.

8. We further note that despite the knowledge of the interim stay order of the Hon'ble Madras High Court dated 18.08.2022 passed in W.A.Nos.1796, 1797, 1799, 1800, 1801 and 1802 of 2022 against the order of the Hon'ble Madras High Court dated 17.06.2022, the Id.CIT(A) without waiting for the judgment in aforesaid appeals has dismissed the grounds of appellant on the issue of extinguishing of all liabilities of the pre-CIRP period by the Approval Order passed by NCLT dated 09.06.2020 and also proceeded to dismiss the appeals on merits of addition.

9. We are of the considered opinion that the Id.CIT(A) could have waited for the outcome in appeals W.A.Nos.1796, 1797, 1799, 1800, 1801 and 1802 of 2022 pending adjudication before the Hon'ble Madras High Court which have a direct bearing on these appeals. We have also noted that despite interim stay by the Hon'ble Madras High Court vide order dated 18.08.2022, reliance on the order dated 17.06.2022 by the Id.CIT(A) is not permissible in law.

10. We have further observed that in all appeals the Id.CIT(A) without giving proper and an adequate opportunity of being heard to the assessee on merits of additions has dismissed the appeals.

11. Therefore, in the light of entire conspectus of matter we set aside all the four appeals to the Id.CIT(A) to follow the judgment in appeals W.A.Nos.1796, 1797, 1799, 1800, 1801 and 1802 of 2022 referred supra which would have a direct bearing on the issue of extinguishing of all liabilities of the pre-CIRP period by the Approval Order passed by NCLT dated 09.06.2020. Now all the issues are kept open before the Id. CIT(A), wherein assessee can contest all such issues, if any.

12. In result, the appeals of the assessee in ITA Nos. 1602, 1603, 1604 and 1605/Chny2023 are allowed for statistical purposes.

Order pronounced in the open court on 14th August, 2024 at Chennai.

Sd/-

एस.आर. रघुनाथा

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 14th August, 2024

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER