

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.276 and 277/Chny/2022
निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15

M/s. Orchid Pharma Ltd. [Formerly
M.S. Orchid Chemicals &
Pharmaceuticals Ltd.] 313, Orchid
Towers, Valluvarkottam High Road,
Nungambakkam, Chennai 600 034.
[PAN: AAACO0402B]

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 1(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by . Shri B. Ramakrishnan, F.C.A. &
: Shri Shrenik Chordia, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, CIT
सुनवाई की तारीख/ Date of hearing : 29.08.2024
घोषणा की तारीख /Date of Pronouncement : 25.09.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against separate common order both dated 28.02.2022 passed by the Id. Commissioner of Income Tax (Appeals)-18, Chennai for the assessment years 2013-14 and 2014-15 under section 271(1)(c) of the Income Tax Act, 1961 ["Act" in short].

2. Since the issue raised in both the appeals are similar based on the same identical facts, with the consent of the both the parties, we proceed

to hear all these appeals together and pass consolidated order for the sake of convenience.

3. First we shall take up appeal in ITA No. 276/Chny/2022 for AY 2013-14 for adjudication.

4. The assessee raised 7 grounds of appeal amongst which the only issue emanates for our consideration as to whether the Id. CIT(A) is justified in confirming the penalty levied under section 271(1)(c) of the Act in the facts and circumstances of the case.

5. Brief facts emanating from the record are that the assessee filed its return of income on 30.11.2013 declaring total income of ₹.29,51,39,990/- and a revised return of income was filed on 12.03.2014 declaring a loss of ₹.266,04,86,669/-. The scrutiny assessment was completed by making addition of ₹.59,98,34,478/- on account of disallowance under section 37 of the Act [₹.34,11,081/-], disallowance under section 35(2AB) [₹.36,61,73,213/-], disallowance under section 36(va) of the Act [₹.17,12,37,289/-] and prepaid finance charges [₹.5,90,12,895/-].

6. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A) and the Id. CIT(A) confirmed the disallowance made under section 35(2AB) of the Act as well as prepaid

finance charges, against which, the Assessing Officer levied penalty under section 271(1)(c) of the Act at ₹.15,00,00,000/-, which was confirmed by the Id. CIT(A).

7. Before the Id. CIT(A), the assessee has raised a plea that the demand is to be taken as NIL in view of the NCLT order in assessee's case dated 27.06.2019. It was further submitted that the section 238 of the Insolvency and Bankruptcy Code 2016 has an overriding effect over all the other laws and consequently the NCLT approved resolution plan setting the operational creditors including income-tax at NIL. Further, value would result in setting the penalty levied under section 271(1)(c) of the Act at NIL and to cancel the demand raised by the Department. The Id. CIT(A) did not adjudicate the above plea of the assessee for the reason that, since the said plea of the assessee is not emanating from the order under appeal or from the grounds preferred on it, held that the plea is beyond the scope of the appeal filed before the Id. CIT(A).

8. The Id. AR Shri B. Ramakrishnan, F.C.A. filed copy of letter dated 12.03.2021, which was submitted before the Id. Principal Commissioner of Income Tax, Central-1, Chennai, being in pursuance to the NCLT proceedings and requesting to issue directions to pass orders giving effect to the NCLT orders determining the tax liabilities at NIL.

9. The Id. AR drew our attention to page 7 to 123 of paper book and submits that the assessee preferred an application under section 31(1) of the Insolvency & Bankruptcy Code, 2016 [“IBC” in short] before the Chennai Division Bench of National Company Law Tribunal for approval of the Resolution Plan. The NCLT approved the above “Resolution Plan” as the said Plan was approved by the CoC since it is in compliance of section 30(2) of the Code vide its order dated 25.06.2019.

10. The Id. AR referred to page 124 to 130 of paper book and submits that, against the order of the NCLT, in the ‘Corporate Insolvency Resolution Process’, one of the unsuccessful Resolution application filed an application before the National Company Law Appellate Tribunal [NCLAT], New Delhi for direction to the “Resolution Professional” to reconsider the “Resolution Plan” and vide its order dated 13.11.2019 in Company Appeal (AT) (Insolvency) No. 761 of 2019, the NCLAT, set aside the order of the NCLT dated 25/27th June, 2019 conveying approval of the “Resolution Plan” but did not interfere with the rejection of the application filed by M/s. Accord Life Spec Private Limited, a “Resolution Applicant”.

11. The Id. AR drew our attention to page 131 to 133 of paper book and submits that against the order of the NCLAT dated 13.11.2019, the State

Bank of India preferred an appeal against the “Resolution Applicant” M/s. Accord Life Spec Private Limited before the Hon’ble Supreme Court, and by following its own judgement in the case of Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Ors. In Civil Appeal No. 4242 of 2019 dated 22.01.2020, the Hon’ble Supreme Court set aside the order of the NCLAT and allowed the appeal vide its order in Civil Appeal No. 9036 of 2019 dated 28.02.2020, thereby, the Hon’ble Supreme Court approved the “Resolution Plan” approved by the NCLT. The Id. AR vehemently argued 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, etc.

12. The Id. AR, besides, relying upon various case law including the decision of the Hon’ble Supreme Court in the case of Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Col. Ltd. [2021] 126 taxmann.com 132 (SC), prayed for deleting the penalty levied under section 271(1)(c) of the Act.

13. The Id. DR Shri V. Nandakumar, CIT drew our attention to para 8 of the NCLT’s order and submits that the Hon’ble NCLT has very well

concluded in its order that *“As to Income Tax exemptions and exemptions from taking approvals from various Government Authorities, this Bench has no jurisdiction to grant any such approvals save and except in accordance with law, therefore this prayer is hereby rejected leaving it open to the Resolution Applicant to proceed in accordance with law”*. This clear ruling of the Hon’ble NCLT is contrary to the claim of the Id. AR. However, the Id. DR submits that in view of insertion of section 156A to the Income Tax Act, 1961 by way of Finance Act, 2022, suitable directions may be given to the Assessing Officer.

14. Having heard both the parties and on perusal of the sequence of events as filed by the Id. AR vide letter dated 28.08.2024, which is not disputed by the Id. DR, we find from the decision dated 28.02.2020 passed by the Hon’ble Supreme Court in the case filed by the State Bank of India against one of the “Resolution Applicants” M/s. Accord Life Spec Private Limited by setting aside the order of the NCLAT, confirmed the order of the NCLT approving the “Resolution Plan approved by the CoC in compliance of section 30(2) of the Code settling the operational creditors including the income-tax at NIL value. Therefore, in our opinion, the penalty imposed under section 271(1)(c) of the Act does not survive

and it is deleted. Thus, the grounds raised in the both the appeals are allowed.

15. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 25th September, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 25.09.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.