

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No.1039/Ahd/2024
Assessment Year: 2018-19**

Sona Alloys Private Limited, 4 th Floor, Medimax House, Opposite Karnavati Hospital, Ahmedabad City, Gujarat – 380 006. [PAN – AAKCS 5706 L] (Appellants)	Vs.	Jurisdictional Officer – Deputy Commissioner of Income Tax, Circle 4(1)(1), Ahmedabad. (Respondent)
Assessee by	Shri Vijay Mehta, AR	
Revenue by	Shri H. Phani Raju, CIT (DR)	
Date of Hearing	29.08.2024	
Date of Pronouncement	25.09.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assesses against order dated 15.03.2024 passed by the PCIT, Ahmedabad-3 for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal :-

- “1. *The Ld. PCIT has erred in law and facts that the Appellant had undergone the Corporate Insolvency Resolution Process (CIRP) which was initiated under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016. The Hon'ble National Company Law Tribunal (NCLT) ordered initiation of CIRP on 16 June 2020 (CIRP Date) and moratorium was declared. Therefore, no new income tax proceedings can be initiated on the Appellant for period prior to CIRP Date as the claim form in that respect has been filed and accepted.*
- 2 *The order passed by the Ld. PCIT under Section 263 of the Income-tax Act, 1961 is bad in law and invalid.*

- 3 *The Ld. PCIT has erred in holding that the assessment order dated 23 May 2021 passed under Section 143(3) r.w.s. 144B of the Act is erroneous and prejudicial to the interest of the Revenue and in setting aside the order by initiating revisionary proceeding and passing order under Section 263 of the Act for the year under consideration.*
- 4 *The Ld. PCIT erred in law and facts in directing a fresh assessment order for addition of closing stock on account of difference in valuation of stock amounting to Rs.6,38,93,218/- to the total income of the Appellant whereas the said query was not an issue under consideration during the assessment proceedings.*
5. *The Ld. PCIT has erred and facts in directing a fresh assessment order pertaining to unsecured loans amounting to Rs.71,42,11,010/- under Section 68 of the Act wherein assessment order the Ld. Assessing Officer had made addition of unsecured loan to extent of Rs.4,61,44,176/-. The unsecured outstanding loans have been duly verified and admitted by the RP as on CIRP date, therefore, these unsecured loans are genuine, a fact which has not been considered by Ld. PCIT.*
- 6 *The Ld. PCIT has erred in providing sufficient opportunity of being heard to the appellant during the revisionary proceedings under Section 263 of the Act.*
- 7 *The Appellant craves leave to add, amend, alter and/or delete any of the grounds of appeal before or during the course of appeal.*
- 8 *The Appellant reserves to submit any documents or evidences that may be required to substantiate its claims."*

3. The assessee Company is engaged in the business of manufacturing of Pig Iron and allied products. The original return of income for the Assessment Year 2018-19 was filed on 31.10.2018 by the assessee thereby declaring loss of Rs.3,59,78,20,682/-. The case was selected for complete scrutiny. During the assessment proceedings for Assessment Year 2018-19, statutory notice under Section 143(2) of the Income Tax Act, 1961 dated 22.09.2019 was issued to the assessee. Subsequently, notice under Section 142(1) of the Act dated 01.01.2021 alongwith questionnaire was issued to the assessee. No reply was received from the assessee to the subsequent notices also and, therefore, the Assessing Officer proceeded on the basis of Section 144B of the Act. Subsequently, notice under Section 133(6) of the Act was issued to the Directors of the assessee Company and in response to the same, the Director of the assessee Company submitted a reply dated 15.04.2021 but the said reply does not contain any detail. The Assessing Officer

observed that huge losses were reflected in Income Tax Return, however, on perusal of the Balance Sheet of the assessee as on 31.03.2018, there is additional loans during the Assessment Year 2018-19 and thus there was increase in ST borrowings. The assessee has not proven the identity, genuineness and credit worthiness of those creditors and, therefore, the Assessing Officer made addition of Rs.4,61,44,176./- under Section 68 of the Act as unexplained credits. The Assessing Officer also made disallowance under section 37 amounting to Rs.1,23,20,51,028/- in respect of the interest component paid by the assessee as reflected in the Balance Sheet. The Assessing Officer further made disallowance of Rs.47,92,04,167/- under Section 37 in respect of Selling & Distribution Expenditure. The Assessing Officer made disallowance under Section 37 of the Act amounting to Rs.8,93,59,099/- in respect of expenditure towards Sales Tax IPS written off expenditure. The Assessing Officer made disallowance under Section 37 of the Act amounting to Rs.1,12,83,48,940/- towards the claim of expenditure which are relating to Bad Debt Written Off. The Assessing Officer also made disallowance under Section 37 of the Act amounting to Rs.4,88,41,569/- towards Consultancy Fee expenditure. Thus, the Assessing Officer assessed the income at Rs.(-) 62,00,15,879/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the PCIT. The PCIT directed the Assessing Officer to pass a fresh Assessment Order thereby invoking Section 263 of the Act. The PCIT while invoking Section 263 of the Act has observed that the Assessing Officer has not taken into account the difference in closing stock and besides these unsecured loans received from various parties amounting to Rs.71,42,11,010/- was also not proved by the assessee. Thus, the PCIT observed that the Assessment Order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue.

5. The Id. AR submitted that the assessee had undergone the Corporate Insolvency Resolution Process which was initiated under Section 9 of the Insolvency and Bankruptcy Code (IBC) 2016. The Hon'ble National Company Law Tribunal (NCLT) ordered initiation of Corporate Insolvency Resolution Process on 16.06.2020 and Moratorium was declared. Since the Moratorium was declared, no new income tax proceedings can be initiated on the assessee for the period prior to Corporate

Insolvency Resolution Process date as the claim form in that respect has been filed by the Hon'ble National Company Law Tribunal and the same was accepted by the contesting party including that of the Department. The Ld. AR further submitted that the order passed under Section 263 of the Act by the PCIT is bad in law and invalid as the Assessment Order itself is passed after initiation of Corporate Insolvency Resolution Process which was declared on 16.06.2020. The Ld. AR further submitted that as regards the merit of the Order passed under Section 263 of the Act, the said query was not raised during the assessment proceedings related to the difference in valuation of stock and, therefore, the PCIT is not justified. Ld. AR further submitted that the unsecured outstanding loans were already verified and admitted by the Resolution process as Corporate Insolvency Resolution Process was declared on 16.06,2020 and, therefore, the same are genuine and this fact cannot be controverted by the PCIT. Ld. AR further submitted that before the PCIT no opportunity was granted to the assessee. The Ld. AR submitted that in case of *Surya Exim Limited vs. Union of India* (2024) 161 taxmann.com 749 passed by the Jurisdictional High Court, it was held that the assessment proceedings which were initiated prior to the date of passing the order by the Hon'ble National Company Law Tribunal approving the Resolution Plan would not survive as in consonance with the decision of Hon'ble Apex Court in case of *Ghanashyam Mishra & Sons (P) Limited vs. Edelweiss Asset Reconstruction Co. Ltd.* (2021) 126 taxmann.com 132. The Ld. AR further relied upon the Hon'ble Madras High Court's decision in the case of *Dishnet Wireless Limited vs. ACIT*, 446 ITR 227 wherein the same principle was asserted whereby stating that once the Corporate Insolvency plan is sanctioned and approved, the same cannot impinge on the rights or the Income Tax Department to pass any fresh Assessment Order under Section 148 read with Section 143(3) and Section 147 of the Income Tax Act.

6. The Ld. DR submitted that the assessee did not file any details regarding the additions and disallowances made by the Assessing Officer before the PCIT. The PCIT has also looked into the Assessment Order which has not taken into account the stock difference and, therefore, the PCIT has rightly invoked Section 263 of the Act.

7. We have heard both the parties and perused all the relevant material available on record. As relates to ground nos.1, 2 & 3, from the perusal of the decision of

Hon'ble Gujarat High Court in the case of Surya Exim Limited (supra) as well as Maruti Koatsu Cylinders Limited vs. DCIT (165 taxmann.com 332) and the decision of Hon'ble Madras High Court in the case of Dishnet Wireless Limited (supra), all these cases, the Hon'ble respective High Courts has not observed that the proceedings by the Revenue especially that of assessment and reassessment will be stopped due to the Corporate Insolvency Resolution Process as well as due to the Moratorium which was declared. Therefore, ground nos.1, 2 & 3 are dismissed. As regards to merits of the invocation of Section 263 of the Act by the PCIT in respect of difference in valuation of the stock amounting to Rs.6,38,93,218/- relating to Closing Stock has already been taken into account by the Assessing Officer and, therefore, merely taking second opinion will not attract the provisions of Section 263 of the Act. As relates to unsecured loans amounting to Rs.71,42,11,010/- under Section 68 of the Act, the assessee has submitted Moratorium which was declared and also has given the details of outstanding loans which was verified before the Corporate Insolvency Resolution process and thus though the same was a not proved by the assessee but the genuineness, credit worthiness and identity has been established during the assessment proceedings as well as before the PCIT and, therefore, invocation of Section 263 of the Act to that effect will also not be called for on the part of the PCIT. Thus, the Assessing Officer has taken a view which cannot be set aside or deferred as per the provisions of Section 263 of the Act as the Assessment Order is not erroneous or prejudicial to the interest of Revenue. Therefore, ground nos.4 & 5 are allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 25th September, 2024.

Sd/-
(MAKARAND VASANT MAHADEOKAR)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 25th September, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*