

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "B" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.782/Hyd/2024  
Assessment Year 2017-2018

The DCIT, Circle-1(1), HYDERABAD.	vs.	M/s. RVR Enterprises [Successful bidder of Chadalavada Infratech Limited], Hyderabad. <b>PIN -500 090. PAN AABCC4800C</b>
(Appellant)		(Respondent)

For Revenue :	Shri Narender Kumar Naik, CIT-DR
For Assessee :	CA Satya Dinakar

Date of Hearing :	02.06.2025
Date of Pronouncement :	03.06.2025

**ORDER**

**PER MANJUNATHA G. :**

This appeal has been filed by the Revenue against the order dated 17.06.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short the "NFAC"] Delhi, relating to the assessment year 2017-2018.

2. Brief facts of the case are that, the appellant company has filed its return of income for the assessment year 2017-2018 on 07.11.2017 admitting loss of Rs.100,34,94,280/- under the normal provisions of the Income Tax Act, 1961 [in short "the Act"]. The assessment was completed u/sec.143(3) of the Act on 31.12.2019 and determined the total income of the appellant company at Rs.11,76,72,980/- by making addition towards disallowance of retention money written off; addition towards bank guarantee invocation, addition towards inter-corporate loan and addition towards other payables.

3. Aggrieved by the assessment order passed by the Assessing Officer, the assessee preferred an appeal before the learned CIT(A). The learned CIT(A) vide order dated 17.06.2024 partly allowed the appeal filed by the appellant company where the learned CIT(A) sustained the addition made towards retention money written-off, bank guarantee invocation and other payables. However, deleted the addition made by the Assessing Officer towards inter-corporate loan.

4. Aggrieved by the order of the learned CIT(A), the Revenue is now in appeal before the Tribunal.

5. Shri Narender Kumar Naik, learned CIT-DR for the Revenue submitted that, the learned CIT(A) erred in deleting the additions made by the Assessing Officer towards cessation of liability, even though, the appellant company failed to furnish any documentary evidences in support of it's claim. Learned CIT(A) erred in not recognising the fact that, mere claim by the appellant company that loans belong to earlier years does not establish the genuinity of the transactions.

6. CA Satya Dinakar, Learned Counsel for the Assessee, on the other hand, supporting the order of the learned CIT(A) submitted that, the appellant company under it's previous management was admitted to Corporate Insolvency Resolution Process on 23.09.2021. Thereafter, vide order dated 11.04.2022, the National Company Law Tribunal [in short "NCLT"] has directed for liquidation of the appellant company. Subsequently, the business of the

appellant company was purchased by the present management on a going concern from the Liquidator on 06.04.2023. Since the liability of the Department pertains to date prior to the date of liquidation of the company and the present management has purchased the company from the Liquidator as a going concern basis for a consideration of Rs.80 lakhs, the previous liabilities including income tax liability, if any, shall extinguish and, therefore, the appeal of the Department is not maintainable and needs to be dismissed.

7. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The appellant company was under Corporate Insolvency Resolution Process and an order was passed by the NCLT, Hyderabad Bench, Hyderabad on 23.09.2021 by appointing an interim resolution professional. Thereafter, the NCLT, Hyderabad Bench, Hyderabad has passed an order on 11.04.2022 and ordered for liquidation of the appellant company in terms of Chapter-III of Para-II of the Insolvency and Bankruptcy

Code, 2016 [in short “IBC”]. Shri G. Madhusudhan Rao has been appointed as Official Liquidator. Subsequently, the business of the appellant company was purchased by M/s. RVR Enterprises, a partnership firm, on a going concern basis for a consideration of Rs.80 lakhs. The Official Liquidator has issued a sale certificate dated 06.04.2022. Learned Counsel for the Assessee submitted that, although, the Liquidator has issued an intimation to the DCIT, Circle-1(2), Hyderabad about the liquidation of the appellant company, but, the Department has not made any claim before the Liquidator in respect of any outstanding liability. Further, as per the information obtained from the O/o. Liquidator, there is no claim from the Department. Since the disputed tax pertain to the period prior to the date of taking-over of the company by the present management, all existing liabilities and past liabilities, including income tax arrears, if any, shall extinguish and the Department does not have any claim on the present management.

8. We find that, the NCLT vide order dated 11.04.2022 ordered for liquidation of the appellant company and has also appointed an Official Liquidator to complete the liquidation process of the company. The Liquidator Shri G. Madhusudhan Rao in terms of the order of the NCLT has issued sale certificate dated 06.04.2023 in favour of M/s. RVR Enterprises, the present management of the appellant company, for a consideration of Rs.80 lakhs. There is no details as to the claims made by various stake holders before the Liquidator including the Income Tax Department. Although, the Learned Counsel for the Assessee claims that, the Department has not preferred any claim before the Liquidator by showing the intimation issued by the Official Liquidator dated 29.01.2022 and subsequent claims chart, but, in our considered view, there is no specific reference either in the order of the NCLT or in the sale certificate issued by the Official Liquidator regarding various claims made by the parties including the Income Tax Department. Further, it is settled principle of law by the decision of Hon'ble Supreme Court in the case of Ghanshyam Mishra &

Sons Pvt. Ltd., vs., Edelweiss Asset Reconstruction Company Ltd., & Ors. Civil Appeal No.8129 of 2019 and in COC of Essar Steel India Ltd., vs., Satish Gupta & Ors [2020] 8 SCC 531 (SC) that, while approving a 'Corporate Debtor' sale as a 'going concern' in liquidation proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds in accordance with Section 53 of the Code. Further, when a resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguish and the proceedings related thereto, shall stand terminated. In other words, once the resolution plan is approved by the NCLT and the Company has been sold on going concern basis, whatever claims made before the Liquidator is final and all past or existing liabilities shall extinguish. In the present case, since the liability pertain to assessment year 2012-2013 which is prior to the date of

sale of the appellant company to the new management in terms of sale certificate dated 06.04.2023 issued by the Official Liquidator, in our considered view, all liabilities including liability relates to Income Tax shall extinguish and the Department does not have any claim. Since there is no clarity as to the claim made by the Department before the Liquidator of their outstanding liability, in our considered view, the matter needs to be set-aside to the file of Assessing Officer to re-examine the claim in light of the order of the Hon'ble Supreme Court in the case of Ghanshyam Mishra & Sons Pvt. Ltd., vs., Edelweiss Asset Reconstruction Company Ltd., & Ors. (supra). Thus, we set-aside the order of the learned CIT(A) and restore the issue back to the file of Assessing Officer and also direct the Assessing Officer to pass consequential order, if any, in light of the Order passed by the NCLT dated 11.04.2022 and subsequent sale certificate issued by the Liquidator dated 06.04.2023 and also in light of decision of Hon'ble Supreme Court in the case of Ghanshyam Mishra & Sons Pvt. Ltd., vs., Edelweiss Asset Reconstruction Company Ltd., & Ors. (supra).

Accordingly, the grounds of appeal of the Revenue are allowed for statistical purposes.

8. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 03.06.2025.

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Hyderabad, Dated 03<sup>rd</sup> June, 2025

VBP

Copy to

1.	The DCIT, Circle-1(1), Room No.724, 7 <sup>th</sup> Floor, B-Block, I T Towers, Masab Tank, A C Guards, HYDERABAD. PIN -500 004. State of Telangana.
2.	M/s. RVR Enterprises [Successful bidder of Chadalavada Infratech Limited], Plot No.125 & 126, Flat No.401, Vindhya Apartment, Nizampet, Bachupally, Kukatpally, K V Rangareddy, Hyderabad – 500 090.
3.	The Pr. CIT, Hyderabad.
4.	The DR ITAT “B” Bench, Hyderabad.
5.	Guard File.

//By Order//

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