

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.2485/Del/2019  
Assessment Year: 2010-11  
With  
ITA No.2486/Del/2019  
Assessment Year: 2011-12

Monnet Ispat And Energy Limited, Monnet House, 11, Masjid Moth, Commercial Complex, Greater Kailash, Part-II, New Delhi	<b>Vs.</b>	Assistant Commissioner of Income Tax, Circle-17(1), New Delhi
<b>PAN :AAACM0501D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. V.K. Jain, CA
Respondent by	Ms. Sarita Kumari, CIT(DR)

Date of hearing	17.11.2022
Date of pronouncement	25.01.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeals by the assessee arise out of two separate orders, both dated 23.01.2019, of learned Commissioner of Income Tax (Appeals)-6, Delhi, pertaining to assessment years 2010-11 and 2011-12.

2. The issues arising in both the appeals are identical and relate to the powers of the Assessing Officer in framing assessments as well as raising tax demand in the face of order passed by the National Company Law Tribunal (NCLT) imposing moratorium under the provisions of Insolvency and Bankruptcy Code (IBC) -2016.

3. Before we proceed to decide the issue, it is necessary to provide a brief factual backdrop. The assessee is a resident corporate entity. Pursuant to a search and seizure operation conducted under section 132 of the Income-tax Act, 1961 (for short 'the Act') in case of the assessee, proceedings under section 153A was initiated against the assessee for the impugned assessment years. Subsequently, assessment orders were passed under section 143(3) read with section 153A of the Act enhancing the income declared by the assessee after making a number of additions. Against the assessment orders so passed, the assessee preferred appeals before learned Commissioner (Appeals). While deciding the appeals, learned Commissioner (Appeals) granted partial relief to the assessee. Being aggrieved with the decision of learned Commissioner (Appeals), both, the assessee and the Revenue went in appeal before the Tribunal. The appeals were

disposed of by the Tribunal by deleting certain additions made by the Assessing Officer. Whereas, issues relating to some other additions were restored back to the Assessing Officer for fresh adjudication. In the fresh assessment proceedings in pursuance to the direction of the Tribunal, as alleged by the Assessing Officer, the assessee did not respond to the notices issued and queries raised seeking information and details. However, vide letter dated 11.12.2017 Sh. Sumit Binani, Insolvency Resolution Professional (IRP) requested the Assessing Officer not to proceed with the assessment proceedings in view of the order passed by NCLT imposing moratorium in terms of section 14 of the IBC Code. Further, the IRP intimated the Assessing Officer that while considering the appeals filed by the department against the orders of the Tribunal, the Hon'ble Delhi High Court in order dated 04.09.2017 has also dismissed the appeals of the Revenue in view of the moratorium imposed by the NCLT. The Assessing Officer, however, proceeded to complete the assessments in spite of the moratorium imposed by NCLT giving the following two reasons:

- i. The proceedings before the NCLT are applicable to normal creditors of the assessee and not to proceedings under the Income Tax Act; and
  - ii. Against the order of the Hon'ble Delhi High Court dismissing the appeals of the Revenue, CBDT has given approval for filing Special Leave Petition (SLP) before Hon'ble Supreme Court.
4. Thus, in the aforesaid premises, the Assessing Officer completed the assessments ex-parte raising tax demands.
5. Against the assessment orders so passed, the assessee preferred appeals before learned Commissioner (Appeals). However, by the impugned orders, learned Commissioner (Appeals) dismissed both the appeals.
6. Before us, learned counsel appearing for the assessee submitted that in the face of moratorium order passed by the NCLT, the Assessing Officer could not have proceeded to complete the assessments. He submitted, the Assessing Officer not only has declined to give effect to the moratorium order of the NCLT but even went to the extent of not following the decision of the Hon'ble Jurisdictional High Court by saying that the department is contemplating filing of SLP. He submitted, the Assessing Officer

has not only acted in a high handed manner but has not even followed the binding decision of the Hon'ble Jurisdictional High Court. He submitted, the plea of the Assessing Officer of not following the jurisdictional High Court's decision is no more available as the Hon'ble Supreme Court has dismissed the SLP filed by the department by holding that section 238 of the IBC Code will override any inconsistency contained in any other enactment including the Income Tax Act. Thus, he submitted, the assessment orders passed despite the moratorium imposed by NCLT are invalid in the eye of law.

7. Without prejudice, he submitted, the NCLT, in the meanwhile has passed the final order on 24.07.2018 in case of the assessee, wherein, taking note of the fact that there is huge difference in the total amount of secured financial creditors and the liquidation value of the company, the NCLT applied the waterfall mechanism provided under section 53 of the IBC Code and determined the liquidation value due to unsecured financial creditors, operational creditors and other creditors of the assessee as NIL. Thus, he submitted, in view of the final order of the NCLT, the present demands having been written off, hence, no more enforceable, as, they have been extinguished. Thus, he submitted,

the assessment orders have to be declared as null and void. He submitted, under identical facts and circumstances, the Tribunal in two separate orders has dismissed the appeals of the Revenue for assessment years 2005-06, 2006-07, 2007-08 and 2013-14.

8. Learned Departmental Representative submitted, in course of assessment proceedings the assessee neither appeared nor furnished the necessary details as called for by the Assessing Officer. Therefore, in absence of the required information and details, the Assessing Officer was compelled to complete the assessments ex-parte.

9. We have considered rival submissions and perused materials on record. From the facts on record, it is patent and obvious that on applications made by secured and unsecured financial creditors, operational creditors and others, Corporate Insolvency Resolution Process (CIRP) was initiated against the assessee in NCLT. On 18.07.2017, NCLT Bench, Mumbai, has passed an order of moratorium with the following directions:

*“11. In view .same, this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:*

*I(a) 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;*

- (b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);*
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
  
- (II) *That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.*
- (III) *That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (IV) *That the order of moratorium shall have effect from 18.7.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be,*
- (v) *That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.*
- (VI) *That this Bench hereby appoints Mr. Sunlit Binani, Room No4 4<sup>th</sup> Floor 24, Commerce House, Ganesh Chandra Avenue, Kolkata 700013, Registration No. IBBI/IPA-0014F-N0000512016-2017/10025 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.*

10. In terms with the IBC Code, an IRP was appointed by NCLT. By the time, the assessment proceedings were taken up in pursuance to the direction of the Tribunal for the impugned assessment years, the moratorium order of the NCLT has already been passed and IRP has been appointed. In such a scenario, the

assessee had no *locus standi* to appear in the assessment proceedings. A reading of the assessment orders clearly reveal that in pursuance to the statutory notices issued by the Assessing Officer, the IRP, vide letter dated 11.12.2017, has clearly intimated the fact of moratorium imposed by the NCLT as well as the order passed by Hon'ble Delhi High Court dismissing the appeals of the Revenue on the ground that in view of the moratorium imposed by NCLT proceedings cannot continue. Therefore, the submission of learned Departmental Representative that necessary details called for by the Assessing Officer was not submitted before the Assessing Officer is far from reality. In fact, the Assessing Officer, though, was conscious of the moratorium imposed by the NCLT and the order of the Hon'ble jurisdictional High Court categorically holding that in view of moratorium imposed by the NCLT the Income Tax Act proceedings cannot continue, however, he has proceeded to complete the assessments by firstly stating that NCLT order imposing moratorium is not applicable to Income Tax proceeding and secondly, against the decision of the Hon'ble Delhi High Court, the department was contemplating filing SLP in Hon'ble Supreme Court. Both the aforestated reason of the Assessing Officer have to be rejected at



the threshold as they run in the teeth of the settled legal position declared by the Hon'ble Supreme Court in case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No.8129 of 2019, order dated 13.04.2021). It is surprising to note that even though the order of the Hon'ble Jurisdictional High Court, dismissing a batch of appeals filed by the Revenue arising out of Income Tax Act proceedings due to moratorium imposed by NCLT was brought to the notice of the Assessing Officer, however, disregarding such order he went ahead to complete the assessments in spite of moratorium imposed by the NCLT. Therefore, the assessment orders are *void-ab-initio*.

11. There is another aspect to the issue. As brought to our notice by learned counsel for the assessee, in the meanwhile, the NCLT has passed the final order on 24.07.2018 in case of the assessee, wherein, following observations have been made:-

*"5. The total amount of claims admitted by the Applicant Resolution Professional in the CIRP of the Corporate Debtor is Rs.11478,09,50,325 (Rupees eleven thousand four hundred seventy-eight crore nine lac fifty thousand three hundred twenty-five), details of which are set out herein below:*

S.N.	Category of Creditor	Amount claimed (in Rs.)	Amount of claims admitted (in Rs.)
1.	Financial Creditors	115,733,833,438	110,149,151,687
2.	Operational Creditors (other than workmen and employees) (unsecured)	6,732,612,108	4,440,447,623
3.	Operational Creditors (only workmen and employees) (unsecured)	2,210,000	
	Other creditors (unsecured)	191,351,015	191,351,015
<b>Total</b>		<b>122,660,006,561</b>	<b>114,780,950,325</b>

6. The Resolution Professional determined the liquidation value of the company as 2356,35,25,186, but whereas the total amount of admitted secured financial creditors is Rs.9772 crores and the admitted claims of the unsecured financial creditors is Rs.1243 crores, put, together it would come to Rs.11,478,09,50,325. By this difference the liquidation value of the asset of the Corporate Debtor is not even sufficient to satisfy the admitted claim of secured financial creditors in full and therefore, the liquidation value due to the unsecured financial creditors, operational creditors and other creditors of the Corporate Debtor as per the waterfall mechanism mentioned under Section 53 of the Code is NIL. In the backdrop of it, the Resolution Plan approved by the COC discloses that the Resolution Applicant would make an upfront payment of amount equivalent to Rs. 2457 crores (less the liquidation value paid to the dissenting secured financial creditors) to the assenting secured financial creditors on pro rata basis alongwith conversion of an amount of Rs. 215.20 crores into equity shares of the Corporate Debtor allotted to assenting Financial creditors in proportion to their admitted debt and would undertake deemed automatic conversion of the remaining admitted debt held by the assenting financial creditors into Optionally Convertible Preference Shares (OCPS) which shall be deemed to be purchased by the Resolution Applicant for an aggregate amount of Rs.219.92 crores and OCPS would thereafter be deemed to be extinguished in the manner provided in the Resolution Plan. Having regard to valuation of the assets of the Corporate Debtor company, we

*have noticed that the fair valuation of the company is almost double to the liquidation value given to the Corporate Debtor. When we have asked as to why so much difference has come in between liquidation value and fair value and how the COC approved the resolution plan that; is slightly above liquidation value, the Counsel appearing on behalf of the COG submitted that the COC has approved after thoughtful consideration looking at the upfront payment coming from the Resolution Applicant. In view of the same, though difference between fair value and liquidation value is more, than two thousand crores rupees, this Bench, considering the submissions of the Counsel appearing on behalf of the COC and looking at the compliance of Section 30(2) of the Code, approved this Resolution plan.*

12. Thus, as could be seen from the aforesaid observations of the NCLT, debt due to various creditors, such as, unsecured financial creditors, operational creditors and other creditors, including Income Tax Department were extinguished and determined at Nil as per waterfall mechanism mentioned under section 53 of the IBC Code. This is clearly evident from List -B of the Report of the IRP and finds place at entry 47 of List-B appended to the final order of the NCLT in respect of income tax demand for various assessment years. At this stage, it is further necessary to observe, though, at the stage of CIRP before NCLT, the Assessing Officer had communicated to the IRP regarding the upward revision in tax demand relating to various assessment years starting from 2005-06 to 2014-15, however, the IRP declined to consider the revised

demand of the Assessing Officer as Insolvency Resolution Process period has ended.

13. Thus, the aforesaid facts clearly reveal that the Income Tax demands relating to the assessee for assessment years 2005-06 to 2014-15 have been fully extinguished and reduced to Nil in the final order of the NCLT. Taking note of the aforesaid factual position, the Coordinate Bench, while deciding Revenue's appeal in assessment year 2013-14 vide order dated 16.08.2021 passed in ITA No.173/Del/2018 has held as under:

*"5. We have gone through the record in the light of submissions made on either side. Dues to the Income-tax Department are reflected in list — B appended to the order dated 24.07.2018 passed by the NCLT. By such order, NCLT observed that there is a huge difference in the total amount of admitted secured financial creditors which is to the tune of Rs.1,14,78,09,50,325/- and the liquidation value of the company to the tune of Rs.23,56,35,25,186/- and therefore, by application of the waterfall mechanism mentioned in section 53 of the Code, the liquidation value due to unsecured financial creditors, operational creditors and other creditors of the assessee becomes nil. It is clear that in terms of the resolution plan as approved by the NCLT, all claims or demands or liabilities or obligations owed or payable to or assessed by or assessable by the Central Government/State Government in relation to any period prior to the acquisition, will be written off in full and will be deemed to be permanently extinguished. This position of law is clear in view of the decision of Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons vs. Edelweiss Assets Reconstruction Company Ltd. (Civil appeal No.8129/2019 — Order dated 13/04/2021).*

4. *In these circumstances, we are of the considered opinion that the dues to the Income-tax Department for the assessment year 2013-14, which are reflected in the list-B appended to NCLT order stood fully extinguished and no useful purpose would be served by adjudicating this matter. With this view of the matter, we dismiss the appeal of the Revenue.”*

14. Identical view was expressed by the Tribunal vide order dated 27.08.2021 while deciding Revenue’s appeals for assessment years 2005-06, 2006-07 and 2007-08 in ITA No.6961, 6962 and 6963/Del/2017. Thus, in view of the aforesaid, we quash the impugned assessment orders. Resultantly, the impugned orders of learned Commissioner (Appeals) are set aside.

15. In the result, both the appeals are allowed, as indicated above.

***Order pronounced in the open court on 25<sup>th</sup> January, 2023***

***Sd/-***  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 25<sup>th</sup> January, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi