

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Waseem Ahmed, Accountant Member**

**ITA Nos. 543, 544 & 545/Ahd/2022
Assessment Years 2012-13 & 2013-14**

The ACIT, Central Circle-1(2), Ahmedabad (Appellant)	Vs	M/s. Pradip Overseas Ltd, A-601, Narayan Complex, Nr. Swastik Cross Road, Navrangpura, Ahmedabad PAN: AACCC6293J (Respondent)
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**Assessee by: Shri Tushar Hemani, A.R. &
Shri P.B. Parmar, A.R.**
Revenue by: Shri Kamlesh Makwana, CIT-D.R.

Date of hearing : 14-09-2023
Date of pronouncement : 04-10-2023

आदेश/ORDER

PER BENCH:-

These three appeals filed by the Revenue are against the order of the
ld. Commissioner of Income Tax, CIT(A)-11, Ahmedabad, in proceeding
u/s. 250 r.w.s. 144 r.w.s. 147 vide order dated 26/09/2022 passed for the
assessment years 2012-13 & 2013-14.

2. The grounds of appeals are as under:-

ITA No. 543/Ahd/2022 A.Y. 2012-13

"1. On the facts and in the circumstances of the case, Ld. CIT(A) erred in holding that additions made by AO in present order would not survive after order of NCLT and consequentially deleted the additions.

2. On the facts and in the circumstances of the case, Ld. CIT(A) has failed to appreciate the order of Hon'ble Supreme Court in Civil Appeal No.1661 of 2020 in the case of State Tax Officer vs. Rainbow Papers Ltd inter-alia holding as below :-

"....(Para 58) 'the Appellate Authority(NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above delay in filing a claim cannot be the sole ground for rejecting the claim..."

"....(Para 57) the definition of secured creditors in the IBC does not exclude any Government or Governmental Authority...."

".....(Para 54) the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owned to any Govt. or Govt. Authority or for that matter, any other dues..."

3. On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs.21,06,93,932/- being 3% of amount of Circular trading/inflated purchases.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

ITA No. 544/Ahd/2022 A.Y. 2013-14

“1. On the facts and in the circumstances of the case, Ld. CIT(A) erred in holding that additions made by AO in present order would not survive after order of NCLT and consequentially deleted the additions.

2. On the facts and in the circumstances of the case, Ld. CIT(A) has failed to appreciate the order of Hon'ble Supreme Court in Civil Appeal Mo.1661 of 2020 in the case of State Tax Officer vs. Rainbow Papers Ltd inter-alia holding as below :-

"...(Para 58) 'the Appellate Authority(NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above delay in filing a claim cannot be the sole ground for rejecting the claim..."

"...(Para 57) the definition of secured creditors in the IBC does not exclude any Government or Governmental Authority...."

".....(Para 54) the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owned to any Govt. or Govt Authority or for that matter, any other dues..."

3. On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs.2,10,000/- made on account of Income from House Property.

4. On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs.49,42,23,216/- made u/s 68 of the Act.

5. On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs.28,78,68,981/- made on u/s 69C of the Act.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

7. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."*

ITA No. 545/Ahd/2022 A.Y. 2013-14

"1. *On the facts and in the circumstances of the case, Ld. CIT(A) erred in holding that additions made by AO in present order would not survive after order of NCLT and consequentially deleted the additions.*

2. *On the facts and in the circumstances of the case, Ld. CIT(A)-has failed to appreciate the order of Hon'ble Supreme Court in **Civil Appeal No.1661 of 2020** in the case of State Tax Officer vs. Rainbow Papers Ltd inter-alia holding as below :-*

"....(Para 58) *'the Appellate Authority(NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above delay in filing a claim cannot be the sole ground for rejecting the claim...'*

"....(Para 57) *the definition of secured creditors in the IBC does not exclude any Government or Governmental Authority....'*

".....(Para 54) *the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owned to any Govt. or Govt. Authority or for that matter, any other dues...'*

3. *On the facts and in the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs. 2,87,00,000/- made u/s 68 of the Act as unexplained income.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*

5. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."*

3. The assessee has filed return of income for assessment year 2012-13 as on 29-09-2012 for assessment year 2012-13. A search and seizure operation was carried in the case of assessee as on 21-09-2010. The assessee filed an application u/s. 245C(1) on 03-05-2023 for settlement of the case before Income Tax Settlement Commission. The Income Tax Settlement Commission passed an order dated 07-11-2014 u/s. 245D(4) settling the matter for assessment year 2006-07 to 2012-13. The Revenue authority issued notice u/s. 148 for assessment year 2012-13. The assessee attended the hearing and filed its submissions thereby stating that as per the provisions of section 245I, it is settled position that once the Income Tax Settlement Commission has passed a final order of settlement for an assessment 245D(4), the assessment become conclusive and the Assessing Officer has no jurisdiction to open any matter relating to that assessment year u/s. 148 of the Act. The assessee relied upon the decision of Hon'ble Delhi High Court in case of M/s Omaxe Ltd. Vs ACIT wherein under similar circumstances, the Hon'ble High Court quashed the impugned notice issued by the first respondent u/s. 148 of the Act for assessment year 2006-07 and also the reassessment order passed u/s. 147/143(3) of the Act on 08-11-2011 for the same assessment year. Further, Miscellaneous Application before the Income Tax Settlement Commission was filed by the PCIT-3, Ahmedabad wherein the Income Tax Settlement Commission passed an order dated 15-11-2018 thereby taking a view interfering in the order already passed by the Commission cannot be made based on presumptions and assumptions of the Department without any evidence that the applicant has incurred alleged expenditure in the form of paying commission with regard to paper transactions of M/s Utkantha Trading Ltd. and 41 concerns of

Mudaliar. Therefore, the Income Tax Settlement Commission refused to interfere with the order already passed by the Settlement Commission u/s. 245D(4) dated 07-11-2014 and rejected request made by PCIT u/s. 245D(6) of the Act. Thus, the assessee submitted before the Assessing Officer that the Department had no authority to make the assessment u/s. 147 and the matter raised by the Department was categorically quashed by the Settlement Commission which was mis-interpreted by the Assessing Officer. The Assessing Officer in the assessment order passed u/s. 144 r.w.s. 147 of the Income Tax Act, 1961 dated 21-12-2018 overlooked the decision of Income Tax Settlement Commission and made addition of Rs. 21,06,93,932/- on account of income earned by the employing circular inflated purchases thereby taking 3% of amount of circular trading in respect inflated stock which was not disclosed in the return of income.

4. Being aggrieved by the assessment order, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee.

5. The Id. Departmental Representative submitted that the CIT(A) erred in holding that the additions made by the Assessing Officer in the present order surviving after order of NCLT and consequently deleted the additions which is incorrect. The Id. Departmental Representative relied upon the decision of Hon'ble Supreme Court in case Rainbow Papers Ltd. Civil Appeal 1661 of 2020 wherein it is held that the committee of creditors which might include financial institutions and other financial creditors including the Government or Governmental Authority cannot secure their own dues,

due at the cost of statutory dues owned by the Central Government or any State Government. The Id. Departmental Representative further submitted that the Id. CIT(A) was not correct in deleting the addition of Rs. 21,06,93,392/- being 3% of amount of circular trading/inflated purchases.

6. The Id. Authorized Representative submitted that once the NCLT passed an order approving the resolution plan, the same is binding on all the authorities including the Central Government and all the dues including the dues not forming part of resolution plan shall stand extinguished. The Id. Authorized Representative relied upon the following decisions:-

- *Ghanshyam Mishra & Sons P. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd. - (2021) 9 SCC 657;*
- *Oasis Textiles Limited vs. DCIT, Ahmedabad - ITA No.87/Ahd/2019;*
- *Garden Silk Milk Limited vs. CIT - Tax Appeal No.875 of 2013 (Gujarat);*
- *Murli Industries Ltd. vs. Addl. Commissioner of Income Tax - 2021 SCC OnLine Bom 6187;*
- *Paschimahal Vidyut Vitran Nigam Ltd. vs. Ram an Ispat Private Limited and others - 2023 SCC OnLine SC 842;*

6.1 The Id. Authorized Representative further submitted that in view of the order passed by the NCLT in the case of assessee approving the resolution plan all the dues under the Act whether admitted or not, due or contingent in relation to any period prior about the acquisition of control by the resolution applicant over the company pursue to the plan shall stand

extinguished by virtue of the order of NCLT and the assessee company shall not be liable to pay any amount against such payment. The Id. Authorized Representative submitted that the CIT(A) was right that the claims which are not part of the resolution plan stood extinguished and the pending suits or proceedings stood disposed of. Resultantly, the addition by Assessing Officer made while framing the assessment in the case of the assessee was rightly deleted. The Id. Authorized Representative further submitted that once order has been passed by Income Tax Settlement Commission u/s. 245D, assessment for the year stands concluded and Assessing Officer has no power to reopen such assessment. The Id. Authorized Representative relied upon the decision of Hon'ble Gujarat High Court in case of *Komalkant Fakirchand Sharma vs. DCIT (2019) 417 ITR 11*.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessment was framed u/s. 144 r.w.s. 147 of the Act dated 21-12-2018 making estimated addition. During the pendency of the appeal before the Id. CIT(A), the National Company Law Tribunal passed order dated 14-10-2021 whereby resolution plan approved by the Committee of creditors was approved and thus the same resolution plan is binding on all the parties such as Central Government and the related dues shall stand extinguished. This submission of the Id. Authorized Representative is a settle legal principle and therefore the same is accepted. The Income Tax Settlement Commission has also passed order which is binding on the Revenue Department and the Assessing Officer has no power to reopen the assessment. The Id. CIT(A) has rightly held that claims which are part of the resolution plan stood extinguished as

well as once the Income Tax Settlement Commission has decided/settled the tax component between the assessee and the revenue, the revenue authorities do not have any power to reopen such assessment. Thus, there is no need to interfere with the finding of the Id. CIT(A). ITA 543/Ahd/2022 and 544/Ahd/2022 along with 545/Ahd/2022 are identical as per submissions of both the parties and hence the appeals of the revenue do not sustain. All the three appeals filed by the Revenue are dismissed.

8. In the result, all the three appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 04-10-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 04/10/2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद