

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.2950/Ahd/2017
Assessment Year : 2014-15

V.S. MetaCast P.Ltd. A-201, Mondeal Square Opp: Honest Restaurant Praladnagar. PAN : AAECV 1729 L	Vs	DCIT, Cir.4(1)(2) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	None
Revenue by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/06/2022

घोषणा की तारीख /Date of Pronouncement: 22/06/2022

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee against order dated 18.9.2017 passed by the Commissioner of Income-tax (Appeals)-8, Ahmedabad relating to the Asst.Year 2014-15.

2. The assessee has filed a statement of fact and grounds of appeal. It read as follows:

"1. The Hon'ble CIT (A) has erred in upholding the addition made by learned A.O. and has partly added Rs. 9,31,147/- to the income of assessee on account of the following:

<i>Particulars</i>	<i>Amount (In Rs.)</i>

Disallowance of ROC Expenses	7,547/-
Addition u/s 56(2)(viib) r.w.r 1 1U/ 1 1UA	6,73,600/-
Disallowance u/s 36(l)(iii)	2,50,000/-
TOTAL	9,31,147/-

2. The Ld CIT (A) has erred in law, on the facts and circumstances of the case, in assessing the income of the appellant at Rs (-) 1,66,71,312/- instead of Rs(-) 1,76,02,459/- returned. As such aggregate additions of Rs 9,31,147/- may please be deleted.

3. The Ld. CIT (A) has upheld the AO's views that ROC expenses of Rs 7,547/- are directly related to expansion of capital base and hence treated it as capital in nature. However, the Ld CIT (A) had failed to take into account that such expenses were Legal & Professional Fees paid by the assessee in the normal course of business and hence to be treated as revenue in nature.. The addition made by Ld. ITO / CIT (A) stands bad in law and is required to be deleted.

SN	Particulars	Purpose	Amount (Rs)
1	Monika Chechani & Associates	Certification	3250
2	KPSJ & Associates	Fee for ROC filing	4247
3	Siddharth Maniar	Search Report by SBI	50
	Total		7547

4. The Ld. CIT (A) has upheld the AO's views in making an addition of Rs 6,73,600/- in relation to share valuation u/s 56(2)(viib) r.w.r. 11U/11UA. The Assessee has voluntarily worked out the share valuation at Rs 49.20, in accordance to above rule was accepted by the officers. However assessee allotted the shares at rounded figure of Rs.50 per share. The market value of assets are much more than Book Value of the assets, hence difference of Rs.0.80 should not be added back to assessee's income. The addition made by Ld. DCIT over the excess value of Rs.6,73,600/ (0.80*842000) stands bad in law and is required to be deleted."

3. Brief facts of the case are that the assessee is company engaged in the business of manufacturing and trading in MS ingots

and alloy steel ingots. For the Asst.Year 2014-15, the assessee filed a return of income declaring loss of (-) Rs.1,76,02,459/-. The return as taken for scrutiny assessment and the AO disallowed –

- (i) a sum of Rs.7,547/- towards ROC expenses considering them to be capital expenditure,
- (ii) disallowance of additional depreciation claim on DG set of Rs.99,473/-,
- (iii) addition of Rs.6,73,600/- under section 56(2)(viib) r.w.r. 11U/UA being difference in share valuation, and (iv) disallowance of interest free loans and advances under section 36(1(iii)) of Rs.2,50,000/-. Thus, the ld.AO determined a loss of Rs.1,65,781,839/-. The AO also determined book profit under section 115JB of the Act at Rs.27,31,249/-.

4. Aggrieved against the assessment order, the assessee filed appeal before the ld.CIT(A). The ld.CIT(A) vide order dated 18.9.2017 partly allowed the appeal. Against the same, the assessee is now before us raising the grounds which are reproduced hereinabove.

5. At the time of hearing, the ld.Senior Counsel for the assessee, Shri Tushar Hemani submitted a Paper Book containing order passed by the National Company Law Tribunal (“NCLT” for short), Ahmedabad Bench dated 13.2.2019 and 13.12.2021, and also copy of Resolution Plan proposed under Insolvency and Bankruptcy Code, 2016; thereby assessee, V.S.Metcast Private Limited has amalgamated with M/s.Agarwal Mittal Concast Private Limited. As per this Resolution Plan, the Insolvency Professional has considered government dues and operational creditors as follows:

“4.2.4.4 As per list of Creditors provided in Data Room a claim of Rs. 11,70,39,120 (Rupees Eleven Crore Seventy Lacs Thirty-Nine Thousand One Hundred Twenty) made by Assistant Commissioner of CGST against which the RP has admitted the claim to the extent of Rs.8,47,25,921. Claim has also been received from Assistant Commissioner of Sales Tax for Rs. 1,77,20,499 which has been fully admitted by RP. As per our internal assessment Liquidation Value is much less than the amount payable to the Secured Financial Creditors. The amount receivable by the Statutory Creditors in case the Corporate Debtor would have gone into liquidation would have been Nil. However, in the interest of keeping the projects operational and for running the Corporate Debtor as a going concern, the Resolution Applicant also proposes to provide an ex-gratia amount of Rs 10,00,000 (Rupees Ten Lakh Only) to the Operational Creditors being statutory creditors (i.e. Income Tax, Excise Duty, VAT, GST and Service Tax Liabilities) on a pro-rata basis after the demand of the respective department/ authority is crystallized. As per IM and list of creditors provided in Data Room other than GST and Assistant Commissioner of Sales Tax there no other statutory authorities have filed claim.”

6. Thus, as against government dues, an exgratia amount of Rs.10 lakhs has been provided to the operational creditors to settle the statutory creditors viz. income-tax, excise duty, VAT, GST etc. on pro-rata basis after the demand of the respective department was crystalised. This Resolution Plan thereafter has been approved by the NCLT by its order dated 13.12.2021 and thus, the assessee-company is now merged with Agrawal Mittal Concast P.Ltd. Therefore, the ld.Sr.Counsel pleaded that in view of the above NCLT order and keeping in mind judgment of Hon’ble Supreme Court in the case of Ghanshyam Mishra & Sons P.Ltd. Vs. Edelweiss Asset Reconstruction Co Ltd., 126 taxmann.com 132 (SC), there is no necessity to set aside the matter back to the file of the AO, since the assessee got amalgamated.

7. Per contra, ld.DR filed before us copy of Company Master Data wherein company’s status is shown as “amalgamated”.

8. We have heard both the parties and also gone through the material placed before us. In the instant case, the assessee-company was merged with M/s.Agaral Mittal Concast P.Ltd., vide NCLT order dated 13.2.2019. Thereafter, Resolution plan submitted by the Mangalam Worldwide Pvt. Ltd. was approved by the Committee of Creditors, and final order to this effect was passed by the NCLT on 13.12.2021. In the present appeal of the assessee, the assessment year involved is 2014-15 and the demand had arisen on 9.12.2016 pursuant to the framing of assessment i.e. prior to the order of the NCLT dated 13.12.2021, and therefore, in view of overriding effect of the IBC proceedings, tax demand shall stand extinguished. Paragraph-9 and 25.1 of the NCLT order dated 13.12.2021 reads as under:

“25.1 After the payment of dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including claims of Government/Statutory Authorities, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/ unconfirmed dues shall also stand extinguished.....

“9. The provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors members, employees, statutory authority and other stakeholders in accordance with section 31 of the Code with effect from the appointed date.”

9. Further, the position of law in this regard is that, the proceeding under provisions of Insolvency and Bankruptcy Code, 2016 overrides the proceedings under the Income Tax Act, 1961. In other words, all the proceedings initiated or pending before different authorities shall stand abated in terms of approval of resolution plan

by the NCLT. The Hon'ble Apex Court in judgment dated 13th April 2021 in the case of M/s. Gyanshyam Mishra and sons Private Limited -Vs- Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019, was pleased to hold that once resolution plan is approved by the Adjudicating Authority under section 31 of IBC, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate debtors and its employees, members, creditors, including Central Government and State Governments. It is further declared by the Hon'ble Supreme Court that all claims not part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. We extract relevant part of judgment as under:

“95. In the result, we answer the questions framed by us as under:

(i) 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 or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

10. The present appeal pertains to Asst.Year 2014-15 and the demand had arisen on 9.12.2016 pursuant to framing of assessment i.e. prior to the order dated 13.12.2021 passed by the NCLT. Further, as per the Resolution Plan, there is no claim made by the Income Tax Department before the Insolvency Professional. In the Resolution Plan approved by the NLCLT, an exgratia amount of Rs.10 lakhs only approved to the operational creditors being statutory creditors viz. CGST Department made a claim of Rs.11.70 crores and Asstt.Comm. of Sales Tax claimed Rs.1.77 crores. Therefore, we hold that the present appeal pending before the Tribunal is not sustainable in law in view of subsequent development narrated hereinabove.

11. In the result, appeal of the assessee is dismissed as not maintainable.

Order pronounced in the Court on 22nd June, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 22/06/2022