

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/97/2003
IA NO. GA/2/2022
M/S. MINOSHA INDIA LIMITED
Vs
C.I.T., KOLKATA – 1 AND ANR.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 04, 2022.

Appearance:
Mr. Joy Saha, Sr. Adv.
Mr. Rajesh Mantha, Adv.
Mr. Santosh Kr. Ray, Adv.
Ms. Sannoyee Chakraborty, Adv.
..for appellant
Mr. Samarjit Roychowdhury, Adv.
...for the respondent

The Court :- This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal "E" Bench, Kolkata (Tribunal) in ITA no. 1786/CAL/1998 dated 26th November, 2022 for the assessment year 1995-96. The appeal was admitted on the following substantial questions of law :-

- i) Whether the learned Tribunal failed to consider the true and proper test for determining on the facts and in the circumstances of the case, the loss of Rs.39,89,099/- arising to the petitioner / assessee on account of shares held in IDCEL was a revenue loss and whether the Tribunal was justified in holding that the said loss was a capital loss and in any event a notional loss not allowable as a permissible deduction ?

- ii) Whether the sum of Rs.35,86,897/- incurred by the assessee for a project was found to be abortive can be claimed by the petitioner as a revenue loss in the relevant year when the project was found to be abortive and whether the Learned Tribunal was right in law in disallowing the said claim on the ground that the expenditure was not incurred during the relevant year ?
- iii) Whether the expenditure incurred by the petitioner for shifting its factory from Entally to Salt Lake on the grounds of commercial expediency can be claimed as a permissible deduction in computing the income of the petitioner ?

We have heard Mr. Joy Saha, learned Senior Advocate duly assisted by Mr. Rajesh Mantha learned Advocate for the appellant and Mr. Samarjit Roychowdhury, learned standing Counsel for the respondent/revenue.

The appellant assessee has filed GA/2/2022 with a prayer to set aside the assessment order dated March 30, 1998 and all proceedings arising therefrom as a consequence of the approval of the resolution plan apropos Ricoh India Limited by the adjudicating authority vide order dated November 28, 2019 whereby all statutory liabilities owed by the assessee stood permanently extinguished. For a further direction to declare that the respondent authority in furtherance of the assessment order dated March 30, 1998 have automatically stood extinguished and /or no proceeding in respect of such dues for the period prior to the date on which adjudicating authority grants its approval under Section 31 shall be continued in any manner.

Learned Senior Advocate in support his contention placed reliance on a decision of the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel Limited Vs. Satish Kumar Gupta & Ors.* reported in 2020 SCC 531 and by referring to paragraph 107 of the said decision it is submitted that all claims must be submitted to and decided

by the resolution personnel so that the prospective resolution applicant knows exactly what has been paid in order that it may then take over and run the business of the corporate debtor. Further it is submitted that the Hon'ble Supreme Court has observed that a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted as this would amount to hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. Reliance was also placed on the decision of the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.*; 2021 (9) SCC 657 and our attention has been drawn to paragraph 93 of the said judgment. It has been held therein that the legislative intent behind the resolution plan under the Insolvency & Bankruptcy Code is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with surprise claims. Further it has been held that if that is permitted, the very calculations on the basis of which resolution applicant submits its plans would go haywire and the plan would be unworkable. The law under the subject has been well settled by the aforementioned decision and other decisions as well. It is not in dispute that in case on hand an application was filed by the resolution professional of the corporate debtor before National Company Law Tribunal, Mumbai Bench dated February 18, 2019 seeking an approval of the successful resolution plan under Section 30(6) of the Insolvency & Bankruptcy Code (the Code) the said resolution plan was approved by the National Company Law Tribunal vide order dated November 28, 2019. In such circumstances the resolution applicant cannot be faced with undecided claims and it goes without saying once the plan is approved the resolution applicant starts on a clean slate and it cannot be faced with surprise claims. Therefore,

the assessment order which is the subject matter of the appeal cannot be enforced any longer, nor the consequential proceedings which arose from the assessment year.

For the above reasons, GA 2 of 2022 is allowed and the assessment order passed in case of the appellant/assessee dated March 30, 1998 and all proceedings arising therefrom are held to have been permanently extinguished.

In the light of the above, the appeal stands disposed of on the above terms and the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)