IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.15805 & 15806 of 2011
and
M.P.Nos. 1 & 2 of 2011

M/s Dishnet Wireless Limited,
Rep. By its Assistant General Manager (Finance),
Spencer Plaza, 5th Floor,
769, Anna Salai,
Chennai – 600 002. .. Petitioner in both writ petitions

vs

1.Union of India
Rep. By its Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

2.The Commissioner of Income Tax,
No.121, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

3.The Assistant Commissioner of Income Tax,
Company Circle I(4),
No.121, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

4.The Central Board of Direct Taxes,
Rep. By its Chairman,
E-2, Mezzanine, A.R.A.Centre,
Jhandeewalan Extension,
New Delhi – 110 055

5.The Commissioner of Income Tax (Appeals)
No.121, M.G.Road,
Nungambakkam, Chennai – 34. .. Respondents
in both writ petitions

Prayer in W.P.No.15805 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration directing the fourth respondent has no power to fix the time limit for submission of Form ITR under the provisions of the Income Tax Act, 1961 and consequently any time limit imposed for filing Form ITR-V, including the time limit imposed under any notification or circular is ultra vires the Income Tax Act, 1961 and without authority of law.

Prayer in W.P.No.15806 of 2011: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the third respondent comprised in the assessment order dated 31.12.2010 passed by the third respondent and quash that portion of the assessment order which deals with the ineligibility to carry forward of loss by the petitioner as being wholly arbitrary, illegal and violative of the provisions of the Income Tax Act, 1961, Income Tax Rules, 1962 and the fourth respondent's notifications and circulars and consequently direct the respondents to treat the petitioner's income tax returns for the Assessment Year 2008 – 09 as being furnished and filed within the due date and therefore allow the claim of the petitioner to carry forward its losses under Section 80 of the Income Tax Act, 1961.

For Petitioner	:	Mr.Sanjay for Mr.Rahul Balaji (in both writ petitions)
For Respondents	:	Mr.B.Ramana Kumar Senior Standing Counsel (in both writ petitions)

COMMON ORDER

These matter have been hanging fire since 2011. When it was listed on 20.03.2023, this Court recorded submissions of the representing counsel, who appeared on behalf of learned counsel on record for the writ petitioner that the petitioner was undergoing Corporate Insolvency Resolution Process (CIRP) before the National Company Law Tribunal (NCLT).

2. Opportunities were given thereafter to the representing counsel, to bring on record the Resolution Professional. There was no compliance by the petitioner and this was recorded under orders dated 30.03.2023 and 10.04.2023.

3. On 10.04.2023, Mr.Ramana Kumar, learned Senior Standing Counsel, appearing for the Income Tax Department, placed on record a copy of order dated 09.06.2020 passed by the NCLT, Mumbai Bench II stating as follows:-

> *"....*
> *6.7.2 The existing members of the suspended Board of Directors of the corporate applicants shall be deemed to have resigned from their directorships effective from today.*
>
> *6.7.3 The Resolution Plans placed on record in respect of all the three corporate applicants viz., (1) Aircel Limited; (2) Dishnet Wireless Limited; and (3) Aircel Cellular Limited, is hereby approved with the modifications mentioned in para 6.7.1 supra. The same shall be binding on the respective corporate applicant, its members, creditors, guarantors, employees and other stakeholders, as also the Resolution Applicants.*

> *6.7.4 The order of moratorium which has come into effect from 12.03.2018(in the case of Aircel Limited) and 19.03.2018(in the case of Dishnet Wireless Limited and Aircel Cellular Limited) by virtue of the orders of admission passed on those dates by this Adjudicating Authority under Section 14 of the IBC shall cease to have effect from the date of passing of this Order.*
>
> *6.7.5 The Resolution Professional shall forward all records relating to the conduct of the CIRP and Resolution Plans to the IBBI as mandated by the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
>
> *6.7.6 A copy of this order be filed with the Registrar of Companies, Maharashtra, Mumbai.*
>
> *6.7.7 Ordered accordingly, File be consigned to the record."*

4. Representing counsel was directed to obtain fresh vakalat from the Management who had taken over the Company pursuant to CIRP.

5. Even today, there is no assistance from the petitioners and no vakalat has been obtained from the new Management. They stated that they have no instructions to report.

6. In such circumstances, there is nothing gained by keeping these writ petitions pending any further and the writ

petitions stand closed. No costs. Connected miscellaneous petitions are closed.

15.06.2023

Index:Yes/No
Neutral Citation:Yes
ssm

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DR. ANITA SUMANTH,J.

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