

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1971 OF 2023
WITH
WRIT PETITION (L) NO. 13323 OF 2023
WITH
WRIT PETITION NO. 2092 OF 2024

The Principal Commissioner of Income Tax,
Central-4

...Petitioner

Versus

Patanjali Foods Ltd. (formerly known as Ruchi
Soya Industries Ltd.)

...Respondent

Mr. Suresh Kumar for Petitioner.
Mr. J. P. Sen, Senior Advocate a/w Mr. Kunal Vaishnav & Ms.
Surbhi Soni i/b MGV & Associates for Respondent.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 17th April 2024

PC :

1. Without going into the details and facts in all three petitions listed today, we find all these petitions will be covered by the judgment of this Court in *Alok Industries Limited v. Assistant Commissioner of Income Tax*¹. Mr. Sen and Mr. Suresh Kumar agreed. Mr. Suresh Kumar at the same time states that Revenue's doors should not be closed and they must be permitted to take such steps as advised against the ex-promoters because the purpose of passing the orders or issuance of notices under Sections 148A/143C/143(3)/148 of the Income Tax Act, 1961 were only to

1. [2024]161 taxmann.com 285 (Bombay).

take action against the ex-promoters of Respondent-company.

2. For ease of reference, the order passed in *Alok Industries Limited (supra)* is reproduced herein below :

“1 Petitioner is challenging the notice dated 27th February 2021 issued by respondent no.1 under section 148 of the Income-tax Act, 1961 (“the Act”) for the assessment year 2013-14, the order dated 6th December 2021 passed by respondent no.1 rejecting the objections of petitioner for assessment year 2013-2014, the assessment order dated 18th February 2022 passed under section 144 r.w.s. 147 of the Act for assessment year 2013-2014 and the penalty notice dated 23rd March 2022 issued under section 274 r.w.s. 271(1)(c) of the Act for the assessment year 2013-14.

2 On or about 29th June 2017, State Bank of India filed a petition before the National Company Law Tribunal (“NCLT”) for initiation of Corporate Insolvency Resolution Process (“CIRP”) against petitioner under the provisions of the Insolvency and Bankruptcy Code, 2016 (“the Code”). The NCLT admitted the petition on 18th July, 2017. On 26th June 2018, (resolution applicant) had filed a resolution plan.

3 The NCLT vide order dated 8th March 2019 allowed the resolution plan of the Resolution Applicant. As per the resolution plan, the liquidated value of all operating debt (including the debt, if any, of the Income-Tax Department which is also part of operating debt) was NIL. The resolution plan further provided that all claims (whether final or contingent, whether disputed or undisputed, and whether notified or claimed against the Company) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority), relating to the period prior to the Closing Date, shall stand fully and finally discharged and settled. The closing date of the resolution plan is the date when the resolution plan has been given effect to, i.e., 14th September, 2020.

4 After the resolution plan has been given effect to, respondent no.1 has initiated reassessment proceedings against petitioner for assessment year 2013-14 by issuing a notice under section 148 of the Act dated 27th

February, 2021. Although, petitioner filed objections to the initiation of reassessment proceedings by submitting, *inter alia*, that the proceedings for assessment year 2013-14, being a period prior to the closing date are non-est and could not have been initiated by the Income-tax Department in view of the resolution plan approved by the NCLT, respondent no.1, vide order dated 6th December 2021, rejected the submission of petitioner by *inter alia* holding that “.....all income tax proceedings are not always for recovery of tax, it can be used for collection of evidence of third parties, ex-promoters etc.....”.

5 Thereafter, respondent no.1 has also proceeded to pass an order dated 18th February 2022 under section 144 r/w section 147 of the Act, making an addition of Rs.109.70 crores to the income of petitioner. It is noted that although at paragraph 9.5 of the assessment order, respondent no.1 notes that the assessment order is passed on a protective basis, respondent no.1 has also proceeded to issue a notice of demand raising a demand of Rs. 305.70 crores. Further, respondent no.1 has initiated penalty u/s 271(1)(c) of the Act.

6 Respondent no.1, in the Affidavit in reply filed through one Saurabh Yadav, Deputy Commissioner of Income Tax, Central Circle 6(2), Mumbai, affirmed on 20th August 2022, has stated that “..... Respondent No.1 is aware of the resolution plan (as submitted by petitioner) and because of that has not initiated any coercive action to recover the demand in petitioner’s case....”.

7 In paragraph 4Q(v) respondent no.1 further stated in the affidavit that respondent no.1 has further stated that “...the section is for purpose of assessment / reassessment of escaped income. However before making assessment / reassessment of the escape income, the assessing officer causes necessary enquiries, if the Assessing officer finds / gathers evidence with respect to any other person or with regard to ex-promoters, ex-employees of petitioner, then, the same shall be used, for the purpose of any proceedings under the Income tax Act or any law in respect of the said persons and the findings / evidences in the case of the assessee shall be used against the assessee in framing of the assessment. However, in view of the legal position, yet to be settled, the recovery of demand will not be enforced as being done in the case of petitioner.”

8 Section 148 read with Section 147 of the Act only

deals with a situation where any income chargeable to tax has escaped assessment for any assessment year. We are unable to fathom as to how the provisions of Section 148 of the Act can be applied for collection of evidences of third party, ex-promoters etc., and we say this because there are separate provisions under Section 133(6) of the Act in which, such evidences can be collected. We are also unable to understand how the provisions of Section 148 of the Act can be used when the proceedings are not for recovery of tax.

9 During the course of submission, the Learned ASG stated that in view of the legal position as it stands under the Code, once resolution plan has attained finality, new management and company can get the benefit of clean slate principle. While the department does not dispute that such benefit has to go to new management, the Learned ASG further submitted that while department would not go to the new management, this cannot, however, result into direct benefit to the erstwhile Directors to make them go scot-free from their evasions and misdeeds. Therefore, some assessment and fact finding process is required to be carried out, where erstwhile Directors' role is given a closer scrutiny.

10 Even then, in our view, for reasons recorded above, Section 148 read with Section 147 of the Act cannot be applied against the company and the present management.

11 Considering the contentions of the parties, averments in the Petition, the affidavit in reply and the statement of learned ASG:-

(a) issue of notice under section 148 of the Act to petitioner company after the approval of the resolution plan for a period prior to closing is invalid and bad in law, having been issued contrary to the provisions of the Code and the Resolution Plan. Section 31 of the Code provides that the resolution plan which is approved under the Code is binding on the Corporate Debtor, its employees, members, creditors including the Central Government, State Government and any local authority to whom a debt or a statutory due is owned. Further, section 238 of the Code provides that the Code shall have effect notwithstanding anything inconsistent therein contain in any other law for the time being in force. Therefore, the resolution plan approved under section 31 of the Code will be applicable even if the department contends that the same is inconsistent with the provisions of the Act. Hence, proceedings cannot be

initiated contrary to the resolution plan. It is to be noted that as per paragraph 3.3.5 of the resolution plan, the value of all dues including income tax dues is treated as nil and is deemed to have been fully discharged and settled for any period prior to the closing date irrespective of whether final or contingent, whether disputed or undisputed, whether or not the Government authority was aware of such claim. Further para 3.3.3 of the Resolution Plan also provides that all proceedings initiated before any forum by the operational creditors (including the central government) shall stand withdrawn and abated. It is also noted that the Income-tax Department had challenged the order of the NCLT approving the resolution plan before the NCLAT, which appeal was rejected on account of delay and, hence, the resolution plan has become final.

(b) The Apex Court in ***Ghanshyam Mishra & Sons Pvt. Ltd. v/s. Edelweiss Asset Reconstruction Company Ltd.***² after considering the provisions of the Code has finally concluded in paragraph 102 that all dues including statutory dues owed to the Central Government, 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 a period prior to the date on which the Adjudicating Authority grants its approval under section 31 of the Act could be continued.

(c) Further, section 156A of the Act which has been inserted by the Finance Act, 2022 w.e.f. 1-4-2022 provides that if any amount payable by an assessee for which notice of demand has been issued, is reduced as a result of an order by the Adjudicating authority under the Code, the Assessing Officer shall modify the demand payable in conformity with such order. This section further makes it clear that effect of the resolution plan is required to be given to by the Assessing Officer.

(d) The argument of the revenue that, proceedings under section 148 of the Act initiated for collection of evidence in respect of third parties, ex-promoters, etc. is not within the scope and ambit of section 147 / 148 of the Act, as reassessment proceedings under the said section can only be initiated for bringing to tax income which has escaped assessment, is correct. Further, petitioner's present management is *ex-facie* not aware of the relevant facts in

2. (2021) 9 SCC 657.

respect of the period sought to be reopened and may well be incapable of properly participating in reassessment proceedings. In this view of the matter the proposed reassessment proceedings (no matter what the purpose) would be a futile endeavour.

(e) Insofar as the contention / submission of the revenue regarding the possible liability of previous management, the Revenue may take whatever steps are available to them in law to take action, if any, against ex-promoter, other third parties, but the same cannot be done by issuing notice under section 148 of the Act which requires petitioner to file the return of income, and thereafter in response to such notice participate in further proceedings.

(f) In view of the aforesaid, the notice dated 27th February 2021 issued by respondent no.1 under section 148 of the Act, the order dated 6th December 2021, rejecting the objections of petitioner, the assessment order dated 18th February 2022 passed under section 144 r.w.s. 147 of the Act and the penalty notice dated 23rd March, 2022 issued under section 274 r.w.s. 271(1)(c) of the Act for the assessment year 2013-14 are quashed and set aside.

(g) Petitioner undertakes to withdraw / apply to withdraw within two weeks the appeal against the order of assessment dated 18th February 2022 filed before the Commissioner of Income Tax(Appeal). Undertaking accepted.

12 Petition disposed.

13 At the same time, we make it clear that if, the revenue wants to take any steps as they proposed to, it may do so in accordance with law.

14 All rights and contentions of the parties are kept open.”

3. At the same time we make it clear that if Revenue wants to take any steps as they proposed to, it may do so in accordance with law. We express no opinion.

4. All rights and contentions of the parties are kept open.

5. Petitions disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)