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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 16186/2024 CM APPL. 68059-60/2024**

TRIDENT HILLS PVT LTD FORMERLY
IREO FIVERIVER PVT LTD .....Petitioner

Through: Ms Maneesha Dhir, Ms Varsha Banerjee, Ms Aishwarya Nabh and Ms Krishma Malini, Advocates.

versus

INCOME TAX DEPARTMENT & ANR. .....Respondents

Through: Mr Anurag Ojha, SSC, Ms Hemlata Rawat, and Mr V K Saksena, JSCs, Mr Dipak Raj and Mr Shubham Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **22.11.2024**

1. Issue notice.

2. The learned counsel for the Revenue accepts notice.

3. The petitioner has filed the present petition, *inter alia,* impugning an order dated 31.08.2024 (hereafter *the impugned order*) issued under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) and notice dated 31.08.2024 issued under Section 148 of the Act seeking to reopen the petitioner's assessment for assessment year (AY) 2018-19.

4. It is the case of the petitioner that the petitioner company had undergone Corporate Insolvency Resolution Process (CIRP). On 06.01.2020, a resolution plan was submitted by the consortium of Trident Infra Homes Private Limited and Romano Infrastructure Private Limited. The same was accepted by the Committee of Creditors (CoC) on

08.01.2020. The said plan was approved by the National Company Law Tribunal (NCLT) on 06.08.2021. Thus, according to the petitioner, the petitioner's liability in regard to the dues prior to the cut off date stood frozen by virtue of the approval of the resolution plan.

5. It is also stated that the assessing officer (AO) had issued the notices dated 29.12.2021, 03.03.2022 and 25.05.2022 for reopening the assessment in respect of AY 2017-18, which was after the plan was approved.

6. The petitioner (under a new management pursuant to the approved resolution plan) objected to the said notices on the ground that the same related to pre CIRP period. The said objections were rejected by the AO and an order dated 30.07.2022 was passed under Section 148A(d) of the Act.

7. The petitioner challenged the said order by filing a writ petition being W.P.(C) No.12461/2022 before this Court, which was allowed by an order dated 05.03.2024 whereby the order dated 30.07.2022 passed by the AO under Section 148A(d) of the Act was set aside.

8. Notwithstanding the same, the AO issued another notice dated 12.08.2024 under Section 148A(b) of the Act seeking to initiate the reassessment proceedings in respect of AY 2018-19, which is also covered within the resolution plan. The petitioner furnished the reply dated 23.08.2024 to the aforesaid notice issued under Section 148A(b) of the Act. Paragraph no.2 of the said response is relevant and set out as below:-

> "2. Another important factor is also being informed that the assessee company was facing Corporate Insolvency Resolution Proceedings (CIRP) during the period covered under the impugned notice i.e. FY 2017-18 (Assessment year 2018-19). By virtue of an approved resolution plan the company is being run by a Resolution Applicant who was approved by the Committee of Creditors on 08.01.2020 and by Ld

> NCLT, Delhi vide its order dated 06.08.2021(attached as per annexure II). The assessee company is now being managed and controlled by the new a management who are allowed by the law to continue and run the operations of the company on clean slate basis. As per provisions of Insolvency and Bankruptcy Code (IBC) the new management cannot be fastened with any previous liability.
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> 2.1 Your kind attention is further drawn on the Judgment given in case of the assessee for Assessment year 2017-18 where the Delhi High Court had quashed the orders passed by your office u/s 148A(d). We had relied on the grounds mentioned in para 2 above. We understand that being the JAO the judgment must be in the records, however the same is being attached herewith (attached as per annexure III).
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> 2.2 You may kindly appreciate that the provisions of the IBC have come to our rescue and the Court has been kind enough to adjudge that the recovery proceedings including Income Tax ought to be brought to the notice of the Insolvency Resolution Professional (IRP) during the proceedings itself. Any claims made subsequent to approval of Resolution Plan pertaining to the period of Resolution proceedings shall not be valid.
>
> 2.3 On the basis of a relief granted by Delhi High Court to us for immediately preceding year and similarity between the both the matters as to falling in the period of CIRP we request that the proceedings as initiated by your said notice should be dropped herewith, without prejudice we may aver that a adverse action may attract contempt of the court and it should be avoided at any cost."

9. Notwithstanding the above, the AO has passed the impugned order dated 31.08.2024, which proceeds on the basis that the petitioner had not responded to the notice issued under Section 148A(b) of the Act.

10. The learned counsel appearing for the Revenue submits that the fact that the resolution plan has been passed, was not brought to the notice of the

AO, and that the response submitted by the petitioner was not placed before the AO. Therefore, he had no occasion to consider the same.

11. *Prima facie*, we are unable to accept the said contention. The fact that similar orders were passed in respect of the earlier assessment which, following the decision of the Supreme Court in ***Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited: (2021) 9 SCC 657 –*** were set aside by the order dated 05.03.2024 of this Court in W.P.(C) No.12461/2022

12. Any rudimentary enquiry into the question whether the assessment in respect of the AY 2018-19 is required to be reopened, would reveal that a similar exercise was conducted in respect of AY 2017-18. However, it is not necessary for this Court to examine this issue in further detail as it is conceded that the impugned order was passed without considering the petitioner's response.

13. In view of the above, the petition is allowed. The impugned order is set aside. In the event, the AO seeks to initiate the reassessment proceedings, it is imperative for the AO to examine the prior record, as well as the averments set out in the present petition before issuance of any notice.

14. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2024

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Click here to check corrigendum, if any