IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.952 OF 2025

Reliance Projects & Property Management Services Ltd.,
(Successor to Reliance Infratel Ltd.) .. Petitioner

Versus

Assistant/Deputy Commissioner of Income Tax,
Circle 8(1)(1), Mumbai & Ors. .. Respondents

Mr. Madhur Agarwal, a/w. P.C. Tripathi, Mr. Ketan Dave and Mr. Pratik Shah i/b. A.S. Dayal and Associates, *Advocates for the Petitioner.*

Mr. Dhananjay B. Deshmukh, *Advocate for the Respondents-Revenue.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: OCTOBER 06, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. In this Petition, the Petitioner is challenging the validity of the assessment order dated 31st December 2019 passed under section 143(3) of the Income-tax Act, 1961 for the A.Y. 2017-18. The primary ground of challenge by the Petitioner is that the assessment order is contrary to law and the provisions of the Insolvency and Bankruptcy Code, 2016 (‘IBC’).

3. The Respondents have filed an Affidavit-in-reply dated 10th December 2024 which is taken on record.

4. From the facts of this case, we find that the Petitioner had undergone a corporate insolvency and resolution process ('CIRP') under the IBC, and the National Company Law Tribunal has approved the Resolution Plan vide order dated 3rd December, 2020. As per the Resolution Plan, the amount payable to the Respondents for a period prior to the effective date is treated as 'NIL' and stands extinguished. The impugned assessment order is for the A.Y.2017-18 pertaining to Financial Year 2016-17. The period of Financial Year 2016-17 is clearly prior to the effective date which is 22nd December, 2022. The Counsel correctly submitted that the impugned assessment order was passed after the admission of the CIRP by the NCLT on 15th May, 2018 and a moratorium was in effect. Therefore, the impugned order dated 31st December, 2019 passed for a period prior to the effective date and after the commencement of CIRP is required to be quashed and set aside.

5. We find that the issue in the above Writ Petition stands concluded by the decision of this Court in *Alok Industries Ltd. v. ACIT [161 taxmann.com 285 (Bom)]* wherein this Court held as under:

> *"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 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 Court 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 ***Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Company Ltd. [2021] 9 SCC 657/[2021] 126 taxmann.com 132/166 SCL 237*** *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 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 endevour.

(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."

6. Further, the decision of *Alok Industries Ltd. v. ACIT (supra)*, has been followed in the Petitioner's own case in **Reliance Projects & Property Management Services Ltd. vs. ACIT & Ors [WP(L) No. 3362 of 2024 dated 06th May 2024 and WP(L) No. 29578 of 2023 dated 15th April 2024]** and this Court has quashed and set-aside notices/assessment orders which were for a period prior to the implementation of the Resolution Plan. The Respondents challenged the said orders dated 06th May 2024 and 15th April 2024 before the Hon'ble Supreme Court vide **Diary No. 32190 of 2025 and Diary No. 60843 of 2024.** By orders dated 25th July 2025 and 21st April 2025, the Hon'ble Supreme Court has dismissed the Respondent's SLPs, both on delay as well as on merits.

7. Even in the case of **Smaaash Entertainment Pvt. Ltd. Vs ACIT (WP No. 3272 of 2024 decided on 14th July 2025],** this Court held that no assessment proceedings could have been initiated or continued during the Moratorium under Section 14 of IBC, 2016. The relevant paragraph is re-produced herein under:

> *From these two decisions, and which are directly under the provisions of the IT Act, we find that the assessment proceedings could not have been initiated at all or continued while the Moratorium under Section 14 of the IBC, was in operation."*

8. In these circumstances, it is held that the Petitioner's case is

covered by the decisions of Co-ordinate benches, and therefore, the impugned assessment order dated 31st December, 2019 is quashed and set aside. All the consequential notices, if any, are also quashed and set aside.

9. Rule is accordingly made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. There shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.] **[B. P. COLABAWALLA, J.]**

DATTAPRASAD GHANSHYAM PARAB

Digitally signed by DATTAPRASAD GHANSHYAM PARAB
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