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

WRIT PETITION NO.1029 OF 2025

Swan Defence and Heavy Industries Limited .. Petitioner

Versus

Assistant Commissioner of Income Tax,
Central Circle 6(3) & Ors. .. Respondents

Mr.Sham V. Walve a/w Abhishek Khandelwal, Bhavik Chheda, Advocates for the Petitioner.

Mr.J. S. Saluja (through V.C.), Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : AUGUST 19, 2025

P. C.

1. At the outset, the Petitioner submits that after the above Writ Petition was filed, the name of the Petitioner Company was changed from “Reliance Naval and Engineering Limited” to “Swan Defence and Heavy Industries Limited”. He, therefore, sought leave to carry out the necessary amendment in the cause title of the Petition.

2. Considering that this is a formal amendment, the Petitioner is permitted to carry out aforesaid amendment. The amendment shall be carried out forthwith in front of the Associate. Re-verification is dispensed with.

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

4. The above Writ Petition challenges the re-assessment initiated *vide* Notice dated 26th March 2024 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 (for short "**the Act**") for the A.Y.2020-21, which is the year under consideration.

5. The short point on which the above order and the notice are impugned is that conducting such proceedings against the Petitioner would be an academic exercise since no demand can be raised upon the Petitioner for A.Y.2020-21. This is for the simple reason that prior to initiation of the impugned proceedings, a Resolution Plan came to be approved by the NCLT, Ahmedabad Bench *vide* its order dated 23rd December 2022. The Resolution Plan submitted by one 'Hazel Mercantile Ltd' for the Petitioner came to be approved by the NCLT as per Section 31 of the Insolvency and Bankruptcy Code (for short "**the IBC**"). A combined reading of paragraph Nos.23 and 24 of the NCLT order would show that all past claims would stand extinguished. In fact, the NCLT order, while noting the same, has made a reference to the decision of the Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt Ltd V/S Edelweiss Asset Reconstruction Company Ltd & Ors. [(2021) 9 SCC 657]*** in the context of statutory dues.

6. The Petitioner's argument is that once a Resolution Plan has been approved in accordance with the provisions of the IBC, the dues of the Income Tax Department would have to be governed by what is stated in the Resolution Plan approved by the NCLT. The Petitioner argues that the facts relating to the NCLT order were brought to the notice of the Assessing Officer vide its letter dated 18th March 2024 in response to the Show Cause Notice issued on 9th March 2024 under Section 148A(b) of the Act. Despite having pointed out the facts to the Assessing Officer, the order dated 22nd March 2024 under Section 148A(d) of the Act came to be passed holding that the Petitioner's case is fit for issuance of Notice under Section 148 of the Act. The Assessing Officer relied on a decision rendered by the Hon'ble Madras High Court in the case of ***Dishnet Wireless Ltd V/S Assistant Commissioner***

of Income-tax (OSD) [(2022) 139 taxmann.com 493 (Madras)] to hold that the provisions of IBC cannot be interpreted in a manner which is inconsistent with any other law for the time being in force and cannot be pressed into service to dilute the rights of the Income Tax Department.

7. In this backdrop, the issue to be decided is that whether the Income Tax Department could have proceeded against the Petitioner after approval of the Resolution Plan by the NCLT for a period prior to approval of such plan. This issue came up for consideration before this Court in Petitioner's own case viz ***Swan Defence and Heavy Industries Ltd V/S Assistant Commissioner of Income Tax Central Circle 6(3) & Ors (in Writ Petition (L) No.22088 of 2025)*** for a different assessment year. In that case, following the ratio laid down by the Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt Ltd V/S. Edelweiss Asset Reconstruction Company Ltd & Ors. [(2021) 9 SCC 657],*** the impugned re-assessment proceedings were set aside. The judgment rendered by the Hon'ble Madras High Court in *Dishnet Wireless Ltd (supra),* and which is relied upon by the Department, was also distinguished in paragraph No.6 of

Swan Defence (supra). As such, the present case is squarely covered by the judgment in *Swan Defence (supra)*.

8. In view of the foregoing discussion, the above Petition is allowed and the impugned notice dated 26th March 2024 issued under Section 148 of the Act and any consequential orders/notices for the A.Y.2020-21 are hereby quashed and set aside.

9. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**