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

WRIT PETITION NO.3272 OF 2024

Smaaash Entertainment Pvt. Ltd., .. Petitioner.

Versus

Assistant Commissioner of Income Tax
Circle 16 (1) .. Respondent.

Adv. Dharan Gandhi (now representing the Resolution Professional), for the Petitioner.

Adv. P. A. Narayanan, for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: JULY 14, 2025

P. C.

1 The above Writ Petition inter alia challenges (i) the notice issued under Section 143 (2) of the Income Tax Act, 1961 ("IT Act") dated 1st June, 2023; (ii) all notices issued in the course of assessment proceedings; (iii) the assessment order passed under Section 144 dated 28th March, 2024; and (iv) the impugned notice of demand dated 28th March 2024 issued under Section 156 of the IT Act.

2 The short point on which all these notices, as well as the impugned order, are challenged is that all these notices as well as the impugned order, have been passed when the assessee was undergoing a

Corporate Insolvency Resolution Process ("CIRP") and there was a Moratorium in operation pursuant to the order dated 6th May, 2022 passed by the NCLT under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016"). In light of the order passed under Section 14, the assessment proceedings could not have proceeded, and which culminated in an order passed under Section 144 of the IT Act. Further, no recovery notices could also have been issued under Section 156. It is on this short point that all the above notices as well as the assessment order are challenged in this Writ Petition.

3 Mr. Gandhi, the learned Counsel appearing on behalf of the Petitioner (now representing the Resolution Professional), submitted that the Delhi High Court in the case of ***Principal Commissioner of Income Tax-6, New Delhi v/s. Monnet Ispat and Energy Limited [2018] 18 SCC 786*** has clearly held that even an appeal filed by the Department before the Income Tax Appellate Tribunal ("ITAT") could not proceed or be instituted in light of the provisions of Section 14 of the IBC, 2016. He submitted that this order of the Delhi High Court was challenged before the Hon'ble Supreme Court. He submitted that the Hon'ble Supreme Court, also relying upon Section 238 of the IBC, 2016, came to the conclusion that the Delhi High Court correctly decided the law and hence, the Special Leave Petition was dismissed. Once this is the case, the present assessment proceedings could not have continued

or even been initiated while the Moratorium under Section 14 was in operation.

4 On the other hand, the learned Advocate appearing on behalf of the Revenue submitted that though it is correct that recovery proceedings could not be initiated or proceeded with against the assessee because of the Moratorium, the same would not preclude the assessment proceedings being completed. In this regard, the learned Counsel appearing on behalf of the Revenue relied upon the decision of the Hon'ble Supreme Court in the case of ***Sundaresh Bhatt [Liquidator] of ABG Shipyard v/s. Central Board of Indirect Tax and Customs [(2023) 1 SCC 472].***

5 We have heard learned Counsel for the parties and perused the papers and proceedings in the present Writ Petition. The Hon'ble Delhi High Court in the case of *Monnet Ispat and Energy Limited (supra)* has clearly held that appeals filed by the Revenue before the High Court challenging the order passed by the ITAT could not proceed in light of the provisions of Section 14 of the IBC, 2016. Since this is a short order, the same is reproduced in its entirety.

> *"1. The Court has heard the learned counsel for both parties. The provisions of the Insolvency and Bankruptcy Code, 2016 ('Code') and, in particular, Section 14 thereof has been perused.*
>
> *2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time*

being in force. Section 14 (1)(a) of the Code states, inter alia, that on the 'insolvency commencement date' the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority." That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31st August, 2017 of the Supreme Court in Civil Appeal No. 8337-8338/2017 (Innovative Industries Ltd. v/s. ICICI Bank).

3. In the instant case, the National Company Law Tribunal (NCLT) [which by virtue of Section 5(1) of the Code is the AA] has by its order dated 18th July 2017 admitted the petition under Section 7 of the Code filed by the State Bank of India against the Respondent Assessee and prohibited, inter alia, "the institution of suits or continuation of pending suits or proceedings' against the Respondent. This would include the present appeal by the Income Tax Department ('Department') against the order of the Income Tax Appellate Tribunal ('ITAT') in respect of the tax liability of the Respondent-Assessee.

4. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue, points out that unlike some of the earlier insolvency statutes the Code does not envisage permission being sought from the NCLT for continuation of the continuation of pending proceedings against the Respondent in other fora . In the order dated 18th July 2017 is clear that the moratorium continues "till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be."

5. Consequently, these appeals are disposed of with liberty to the Appellate-Department to revive them subject to the further orders of the NCLT.

6. Copy of the order be given dasti under the signature of the Court Master."

(emphasis supplied)

6 This decision of the Delhi High Court was subjected to challenge by the Revenue before the Hon'ble Supreme Court. The Hon'ble Supreme Court proceeded to dismiss the SLP by making a following observations:-

> *"1. Heard. Delay, if any, is condoned.*
>
> *2. Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act. We may also refer in this connection to Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.*
>
> *3. We are of the view that the High Court of Delhi, is, therefore, correct in law. Accordingly, the special leave petitions are dismissed. Pending applications, if any, stand disposed of."*

7 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, 2016 was in operation.

8 Be that as it may, since the learned Counsel appearing on behalf of the Revenue, relied upon the decision of the Hon'ble Supreme Court in *ABG Shipyard (supra)* , we would have to deal with the aforesaid decision. Firstly, we find that this decision is clearly distinguishable on facts because

it is not passed under the IT Act but under the Customs Act, 1962. Secondly, we find that another decision of the Hon'ble Supreme Court in the case of ***S V. Kandaskar v/s. V. N. Deshpande [(1972) 1 SCC 438]*** was relied upon to come to the conclusion that the Customs Department could initiate assessment or reassessment of duties and other levies but could not initiate recovery in violation of Section 14 or 33 (5) of the IBC, 2016. We find that the decision relied upon in the case of *V. N. Deshpande (supra)* was considered by an earlier Coordinate Bench of the Hon'ble Supreme Court in the case of ***P Mohanraj & Others v/s. Shah Brothers Ispat [(2021) 6 SCC 258].*** In that decision also, the decision in *V. N. Deshpande's (supra)* case was pressed into service and was distinguished by the Hon'ble Supreme Court. Without noticing the decision passed by the Hon'ble Supreme Court in *P. Mohanraj & Others (supra)*, the Hon'ble Supreme Court, in *ABG Shipyard (supra),* has relied upon the case of *V. N. Deshpande (supra).* We, therefore, find that the reliance placed by the Revenue on the decision of the Hon'ble Supreme Court in *ABG Shipyard (supra)* is wholly misplaced. Once, we have the decision of the Delhi High Court under the provisions of IT Act and which has the seal of approval of the Hon'ble Supreme Court, we are bound by the those decisions.

9 In view of the foregoing discussion, the above Writ Petition is allowed in terms of prayer clause (a) which reads as under:-

> *"(a):- that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice under section 143 (2) of the Act dated 01.06.2023 ("Exhibit C"), all notices issued in the course of the assessment proceedings, assessment order passed u/s. 144 of the Act dated 28.03.2024 (Exhibit K) and the impugned notice of demand under section 156 of the Act dated 28th March 2024 (Exhibit L) as well as the consequential show-cause notices for levy of penalty."*

10 Once the Moratorium under Section 14 ceases, the Revenue is free to revive the assessment proceedings, if they are otherwise entitled to in law.

11 Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

12 At this stage, the learned Advocate appearing on behalf of the Revenue sought a stay of the above order so as to enable the Revenue to test the correctness of this order before the Hon'ble Supreme Court. Acceding to the request of the Revenue, the execution and operation of this order is stayed for a period of four weeks from today.

13 It is needless to clarify that despite staying the operation of this order, the Revenue shall not proceed to take any coercive action/ steps against the Assessee who has succeeded before us.

14 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.]**