

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 2861/DEL/2018 (A.Y 2008-09)

ACIT Central Circle-16 Room No, 344, 3 rd floor, Jhandewalan Extension, New Delhi (APPELLANT)	Vs.	ABW Infrastructure Ltd. Reactangle-1, D-4, Saket District Centre, Saket, New Delhi. PAN: AAECA5466H (RESPONDENT)
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And

I.T.A. No. 1063/DEL/2018 (A.Y 2013-14)

ABW Infrastructure Ltd. Reactangle-1, D-4, Saket district Centre, Saket, New Delhi. PAN: AAECA5466H (APPELLANT)	Vs.	ACIT Central Circle-16 Room No, 344, 3 rd floor, Jhandewalan Extension, New Delhi (RESPONDENT)
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Assessee by :	None
Department by:	Shri Kanv Bali, CIT D.R.;

Date of Hearing	10.02.2023
Date of Pronouncement	16.02.2023

ORDER

PER YOGESH KUMAR U.S., JM

The above captioned appeals are for the Assessment Year 2008-09 filed by the Revenue and for the Assessment Year 2013-14 filed by the Assessee respectively against the order of the Id. Commissioner of Income Tax (Appeals),- 31, New Delhi, dated 26/12/2017 and 23/02/2018.

2. The Revenue has raised the following grounds of appeal:-

I.T.A. No. 2861/DEL/2018 (A.Y 2008-09)

1. *Whether based on the facts and circumstances of the case Ld. CIT(A) is erred in holding that the assumption of jurisdiction u/s 147 of the Income Tax Act, 1961 is illegal, bad and void ab initio.*

2. *Whether based on the facts and circumstances of the case Ld. CIT(A) is erred in holding that the assumption of jurisdiction by the AO is bad/illegal as the reasons recorded are factually wrong.*

3. *Whether based on the facts and circumstances of the case Ld. CIT(A) is erred in holding that assessment is bad since no additions have been made with regard to the grounds/allegations detailed in the reasons recorded.*

4. *Whether based on the facts and circumstances of the case Ld. CIT(A) is erred in holding that the satisfaction is mechanical making the initiation of proceedings u/s 147 to be bad/invalid.*

5. *The appellant craves leave to add, amend or alter any/all the grounds of appeal before or during the course of hearing of the appeal."*

The assessee has raised the following grounds of appeal :-

I.T.A. No. 1063/DEL/2018 (A.Y 2013-14)

“1. That the learned Commissioner of Income Tax (Appeals)-31, New Delhi has erred both in law and on facts in substantially confirming the order of assessment dated 31.3.2016 u/s 143(3) of the Act without appreciating that impugned order of assessment has been framed without valid opportunity and in disregard of the settled position of law and even the remand report as obtained in the appellate proceedings had been made in a cursory manner without due application of mind and hence the order so framed are illegal, arbitrary, unjustified, contrary to principle of natural justice and wholly vitiated.

1.1 That both the authorities below have framed impugned orders without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.

1.2. That furthermore impugned orders are vitiated orders having been made with a premeditated and preconceived opinion to make arbitrary addition and raise demand and that too without considering the facts and evidence on record and settled position of law and thus such an orders be quashed as such.

2. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs. 10,37,00,000/- representing alleged unexplained share application money received and, held to be unexplained credit u/s 68 of the Act.

2.1. That the finding of the learned Commissioner of Income Tax (Appeals) that “the entity did not have the capacity to give share application money. Further, the transactions have remained unexamined, as reported by the AO. Prime facie, this entity did not have the capacity to give this amount” “For coming out of the ambit

of section 68, the nature as well as source of the amount credited needs to be got satisfactorily explained” is factually incorrect, legally misconceived and wholly untenable.

2.2. That the learned Commissioner of Income Tax (Appeals) has proceeded to confirm the impugned addition without appreciating the settled position of law that, it is not for the appellant to explain the source of the creditor and therefore, any addition made on irrelevant and extraneous considerations is illegal, unjustified and hence untenable.

2.3 That the basis adopted by learned Commissioner of Income Tax (Appeals) in the impugned order to regard the sums received as unexplained credit u/s 68 of the Act is factually and legally misconceived.

2.4 That the learned officer has further erred in confirmation the addition on irrelevant and extraneous considerations by failing to appreciate the written submission and, evidence on record and therefore, addition confirmed is unjustified, invalid and unsustainable.

3. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs. 7,65,71,205/- (however, balance as brought forward in this year (of the same persons) cannot be made to suffer addition in this year) representing alleged unexplained sundry creditors outstanding at the end of the year and, held to be unexplained credit u/s 68 of the Act.

3.1 That the findings of the learned Commissioner of Income Tax (Appeals) that “in view of factual position as provided by the AO in his remand report, and in view of the non cooperation by the appellant (and that of Sh. Atul Bansal before the AO in remand proceedings), the aforesaid sundry creditors remain unverified” is

factually incorrect, legally misconceived and wholly untenable.

4. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs. 1,32.62,02,462/- representing alleged unexplained advance received from customers and, held to be unexplained credit u/s 68 of the Act.*

4.1. *That the findings of the learned Commissioner of Income Tax (Appeals) that “ in view of non cooperation by the appellant at assessment stage as well as in remand proceedings, advance received from the customers remain unverified” is factually incorrect, legally misconceived and wholly untenable.*

5. *That various adverse findings and conclusions recorded in the impugned order are factually incorrect and contrary to record, legally misconceived and untenable.*

It is therefore, prayed that the additions made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted. Further the order of assessment of below authority be quashed and appeal of the appellant company be allowed.

3. The Revenue has filed ITA No. 2861/Del/2018 for the Assessment Year 2008-09 aggrieved by the order of the Ld. CIT(A) dated 23/02/2018 wherein the Ld. CIT(A) has deleted the addition made by the A.O. The assessee filed ITA No. 1063/Del/2018 for the Assessment Year 2013-14 aggrieved by the order dated 26/12/2017 passed by the Ld. CIT(A), wherein the Ld. CIT(A) upheld the certain additions made by the Ld. A.O.

4. None appeared for the assessee, the notices sent to the registered address of the Assessee returned with endorsement "LEFT". By looking into the facts and circumstances of the case, we deem it fit to dispose off the above appeals after hearing the Ld. DR and verifying the material on record.

5. The Ld. DR brought to our notice that a financial creditor had filed an Application u/s 7 of Insolvency and Bankruptcy Code 2016 against the assessee in (IB)-375 (PB)/2018 before the National Company Law Tribunal Principal Bench at New Delhi ('NCLT' for short) and judgment has been passed by the NCLT on 12/09/2019 by allowing the application. Therefore, submitted that consequential appropriate order may be passed in the present appeal.

6. We have heard the Ld. DR, perused the material available on record and gave our thoughtful consideration. It is found that a financial creditor had filed an Application u/s 7 of Insolvency and Bankruptcy Code 2016 against the assessee in (IB)-375 (PB)/2018 before the National Company Law Tribunal Principal Bench at New Delhi ('NCLT' for short) and judgment has been passed by the NCLT on 12/09/2019 by allowing the said application. The NCLT has admitted the Application filed u/s 7 of IBC Code, in terms of Section 14 of the IBC Code and consequent to the same the moratorium terms of Section 14(a),(b), (c) & (d), the following prohibition are imposed, which are as under:

“a) 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;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

7. In view of the above, no proceedings can be initiated against the corporate debtor, i.e., assessee company including the present proceedings before this Tribunal, or the income tax proceedings and recovery of demand or giving effect of any order. It is well settled now that, IBC has overriding affect on all the acts including [Income Tax Act](#) which has been specifically provided u/s 178(6) of the [I.T. Act](#) as amended w.e.f. 01.11.2016.

8. Thus, in view of moratorium declared by NCLT, all the proceedings in the Court of Law, Tribunal etc. cannot continue in view of Amendment to Section 178(6) of the Act, therefore, no useful purpose is going to be served in continuing the present proceedings.

9. In view of the above, we dismiss both the appeals filed by the assessee and the Revenue as not maintainable. However, liberty is granted to the assessee/Revenue to seek remedial measures in accordance with law as and when the moratorium period is over or order of the NCLT is modified revival of assessee company takes place or where it is necessary to do so in the interest of justice.

10. In the result, the appeal filed by the Revenue in ITA No. 2861/Del/2018 and the Appeal filed by the assessee in ITA No. 1063/Del/2018 are dismissed in limine.

Order pronounced in the open court on 16th February, 2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated : 16/02/2023

*R.N, Sr. PS**

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI



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