

IT Department cannot raise claims against the Corporate Debtor once the resolution plan is approved

The Hon'ble Bombay High Court in *Murli Industries Limited vs. Assistant Commissioner of Income Tax & ors. [W.P. No. 2948 of 2021 and W.P. No. 2965 of 2021 dated December 23, 2021]* held that the IT Department is not entitled to issue notice against the Corporate Debtor for unpaid tax claims after the approval of the resolution plan by the adjudicating authority.

Facts:

Murli Industries Limited ("**the Petitioner**" or "**Corporate Debtor**") is engaged in the business of manufacture and sale of cement.

The M/s. Edelweiss Asset Reconstruction Company Limited had filed application under the Insolvency Bankruptcy Code, 2016 ("**the IBC**") to initiate Corporate Insolvency Resolution Process ("**CIRP Proceedings**") against the Petitioner.

Accordingly, Resolution Professional ("**RP**") was appointed and he made a public announcement calling upon the creditors to submit a proof of their claim.

Subsequently, the resolution plan was approved subject to certain modifications by the National Company Law Tribunal ("**NCLT**") vide order dated March 03, 2019 and July 22, 2019 and further upheld by National Company Law Appellate Tribunal ("**NCAIT**") vide order dated January 24, 2020 and the same was made effective from August 25, 2020.

Thereafter, the Assessing Officer ("**the Respondent**") issued the Notice dated March 25, 2021 ("**the Notice**") under Section 148 of the Income Tax Act, 1961 ("**Income Tax Act**"), seeking to reopen the concluded assessment of the Petitioner for the assessment year 2014 – 15 i.e., the assessment year falling prior to the date of approval of Resolution Plan under IBC.

Being aggrieved by the Notice, the Petitioner challenged the legality of the Notice and contended that the Resolution Plan was approved prior to the issuance of the Notice.

The Respondent argued that the claim cannot be a part of the Resolution Plan since the claim was not finalised and has been purely charged based on the fact that the tax in the assessment year of 2014-15 has been escaped.

Issue:

Whether the Notice under Section 148 of the Income Tax Act can be issued to a Corporate Debtor after approval of resolution plan?

Held:

The Hon'ble Bombay High Court in ***W.P. No. 2948 of 2021 and W.P. No. 2965 of 2021 dated December 23, 2021*** held as under:

- Relied on the judgement of the Supreme Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and others [2021(9) SCC 657]*** to state that a claim in respect of dues arising under any law for the time being in force, including claims under the Income Tax Act which is payable to the Central Government or the State Government, would come within the ambit of Operational Creditors.
- Held that any claims which were previously not a part of the resolution plan will not be entertained and no person will be entitled to initiate any proceedings which has no connection with the plan including notices under issued under Section 148 of the Income Tax Act.
- Observed that in the present matter there can be a fair possibility that the assessee might have suppressed few facts from the Respondent which led to the issuance of the Notice under Section 148 of the Income Tax Act. That being said, the Court could not get any justification from the Respondent as to why the it did not raise the claim earlier before the resolution professional or the adjudicating authority.
- Additionally, the Court quashed and set aside the Notices dated March 25, 2021 and held that as far as the object of maintainability of this writ petition is concerned, the law is well settled, which is also reflected in ***Ghanashyam Mishra and Sons Private Limited (supra)*** i.e., alternate remedy would not operate as a bar for invoking jurisdiction under Article 226 of the Constitution of India in at least three contingencies, namely,
 - where the writ petition has been filed for the enforcement of any of the Fundamental Rights
 - where there has been a violation of the principle of natural justice; and
 - where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

The Court found that the impugned notice falls under category 3 of the above. Thus, it is maintainable.

Relevant Provisions:

Section 147 of the Income Tax Act:

“Income escaping assessment.

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.-For the purposes of assessment or reassessment or re-computation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with."

Section 148 of the Income Tax Act:

"Issue of notice where income has escaped assessment.

148. Before making the assessment, reassessment or re-computation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice."

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s)

unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.