Murli Industries Limited Writ Petition No. 2948 of 2021 Bombay High Court In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 147 Notice u/s 148 issued to a Corporate Debtor for an assessment year falling prior to the date of approval of Resolution Plan under the IBC deserves to be quashed. once the public announcement is made under the IBC by the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, the Income Tax authorities ought to have been diligent to verify the previous years' assessment of the Corporate Debtor as permissible under the law and to raise the claim in the prescribed form within time before the Resolution Professional.

Facts of the case with respect to issue No 1:

Assessee-Company challenged the reassessment notice issued for AY 2014-15, mainly on by contending that the Revenue could not have issued the reassessment notice subsequent to the approval of the Resolution Plan and also averred that as the claims were not a part of the Resolution Plan, they were not maintainable.

Held by the Authorities with respect to Issue No 1:

Claim of operational creditors includes "a claim of statutory authority like Income Tax Department on account of money receivable pursuant to an imposition by a statute".

A Successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan is submitted by him, as it would lead to uncertainty about the amount payable by a Prospective Resolution Applicant who would successfully take over the business of the Corporate Debtor.

On the date of approval of the Resolution Plan, all such claims that are not a part of the Resolution Plan, "shall stand extinguished and no person will be entitled to initiate any proceedings" and would include the reassessment proceedings.

The Income Tax Authority or the Legislature may also explore possibility to make necessary provisions to overcome such situation by lending circular under Rules or by way of an Amendment in the Income Tax Act, 1961, in line with the section 44(6) of the Maharashtra Value Added Tax, Act, 2002.

.Judgments Relied upon by the Authorities with respect to Issue No 1:

a. Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and others reported in 2021(9) SCC 657

Panacea Hospital Pvt Ltd CC. No. 87/2019 District Court Bangalore In favour of MD And Against Assessee

Issues discussed and addressed:

Issue No 1 Section 276B The penal provisions have to be strictly interpreted and whenever two views are possible, the one which favours the accused is to be upheld but that does not mean that "the penal provisions have to be interpreted in a way to avoid the penal consequence only. Mens rea is not a prerequisite for invocation of Section 276B.

Facts of the case with respect to issue No 1:

Assessee, a multi-specialty hospital, was found to have not paid TDS of Rs.1.07 Cr. for FY 2016-17 to the Revenue within the stipulated period; Revenue launched prosecution against the Assessee and its Managing Director (MD) u/s 276B and 278B, respectively.

Held by the Authorities with respect to Issue No 1:

Section 201(1) read with Rule 30 makes it clear that TDS has to be credited to Revenue's account within the prescribed time, failing which Section 276B gets attracted.

Following arguments raised by the assessee were rejected y court.

a. Voluntary remittance of the TDS with interest absolves the Assessee from the criminal consequence.
b. Since penalty for TDS default was not imposed, the prosecution was required to be dropped. Court observed that argument would be good if the penalty proceedings were not initiated.
c. TDS was paid before the due date of filing ITR, therefore, the time provided for remitting TDS is up to the date of filing ITR.

The court holds that

Only way to get rid of the conviction is by showing the existence of justifiable reasons for the failure to remit the TDS as provided u/s 278AA and notes, "If the failure is inflicted by the negligence or inaction. Then it cannot be held as 'reasonable cause.'"

Finally the court holds Assessee guilty u/s 276B and imposes a fine of Rs.20,000/- noting that non-realization of dues from the market led the Assessee to delay the remittance of TDS which was remitted before the due date of filing ITR however acquits the MD on the reasoning that as per Section 278B, Revenue's case was not that MD verified the TDS returns/Form No. 26AS and except the averment in the complaint there was no other evidence to show that the MD was in charge and responsible for day-to-day affairs of the Assessee's business.

Macrotech Developers Limited ITA No.3046/Mum/2019 Mumbai ITAT In favour of Assessee

Issues discussed and addressed:

Issue No 1 Section 271D and 271E Business constraints and exigencies and administrative convenience itself constitutes reasonable cause within the meaning of Section 273B, and thus no penalty u/s 271D and 271E could be invoked.

Facts of the case with respect to issue No 1:

Assessee-Company engaged in the business of construction and development of real estate was subjected to scrutiny assessment wherein Revenue observed that certain loan transactions were settled otherwise than by account payee cheques, which were explained by the Assessee to be adjusted against the amount receivable from booking of flats; Revenue, while accepting Assessee's explanation, as well as the fact that the entries were passed in the normal course of business, held that the aforesaid adjustment entries were passed by way of journal entries which was in violation of Section 269SS and initiated penalty proceedings under Section 271D and levied a penalty of Rs.66.01 Lakhs.

Held by the Authorities with respect to Issue No 1:

The basis of passing journal entries by the Assessee in its books was that these entries were merely passed for squaring up of transactions or adjustment of entries. Further Revenue did not make out a case of *mala fide* intention nor bring on record any adverse finding with respect to the journal entries passed by the Assessee. There is no evidence brought on record to even remotely suggest that the Assessee by passing the aforesaid journal entries had sought to introduce its unaccounted income into the system. The transactions were genuine and carried out in the normal course of business, and thus the provisions of Sections 269SS and 269T were not applicable to the instant case.

Judgments Relied upon by the Authorities with respect to Issue No 1:

a. CIT vs Triumph International Finance (I) Ltd reported in 208 Taxman 299 (Bom).
b. CIT vs Worldwide Township Projects Ltd reported in 229 Taxman 560 (Del)

Important Updates

The CBDT, vide notification No. 139/2021, dated 28-12-2021, has notified the Faceless Appeal Scheme, 2021 in supersession of the earlier Faceless Appeal Scheme, 2020. Now, the board has set up the National Faceless Appeal Centre (NFAC) and Appeal Units for the purpose of Faceless Appeal Scheme 2021.

Key Points

a. The new scheme has replaced the word 'may' with 'shall' with respect to allowing requests for a personal hearing. Thus, it would be **mandatory** for the Commissioner (Appeals) **to allow a personal hearing** if the taxpayer requests it during e-proceedings.

b. There is **no** concept of a draft order in the new appeal scheme.

c. Proviso to Section 249(4)(b) provides that where an assessee has not filed the return of income, the CIT(A) shall not admit appeal unless an amount equal to the advance tax payable by him has been paid. However, for good and sufficient reasons recorded in writing, the CIT(A) may exempt the assessee from the requirement of payment of such tax. In the erstwhile appeal scheme, it was provided that in such cases, an Appeal Unit may admit an appeal and exempt the appellant from payment of tax for any good and sufficient reason to be recorded in writing. The relevant clause has been dropped in the new scheme. It is unclear whether it is an inadvertent omission or the board has deliberately decided not to exempt an appellant from paying the required tax before filing an appeal.