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

WRIT PETITION (L) NO. 22777 OF 2025

V Hotels Limited .. Petitioner

Versus

The Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai & Ors. .. Respondents

Mr. Prakash Shah, Senior Counsel *a/w Mr. Jas Sanghavi i/b PDS Legal, Advocates for the Petitioner.*

Mr. Vipul Bajpayee*, Advocate for the Respondent No.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: AUGUST 6, 2025.

P. C.

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

2 By this writ petition under Article 226 of the Constitution of India, the Petitioner is challenging the re-assessment proceedings initiated by the Respondent No. 1 vide notice dated 29th March 2024 issued under Section 148A(b) of the Income Tax Act, 1961 (*the Act*), Order dated 15th

April 2024 issued under Section 148A(d) of the Act and Notice dated 15th April 2024 issued under Section 148 of the Act for the A.Y.2020–21.

3. It is contended by the Petitioner that re-assessment proceedings for AY 2020-21 initiated against the Petitioner is liable to be quashed and set aside, in view the Resolution Plan approved by the learned National Company Law Board (NCLT) vide order dated 26th April 2024.

4. It is further contended by the Petitioner that, prior to initiation of the impugned reassessment proceedings, the NCLT, Mumbai Bench, vide its order dated 31 st May 2019, admitted an application filed by Asset Reconstruction Company (India) Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short "**IBC**") and declared a moratorium under Section 14 of the IBC and appointed the Resolution Professional.

5. In an appeal filed against the order dated 31st May 2019, the National Company Law Appellate Tribunal (the NCLAT), vide its order dated 11th December 2019 set aside the said order dated 31st May 2019.

6. Vide its order and judgment dated 1st August 2022, the Hon'ble

Apex Court was pleased to set aside the order dated 11th December 2019 of NCLAT and restored the order dated 31st May 2019 passed by the learned NCLT.

7. In view of the order of the Hon'ble Apex Court, the CIRP of the proceedings continued and the NCLT, vide its order dated 26th April 2024, approved the Resolution Plan of Macrotech Developers Limited in accordance with the provisions of Section 31 of the IBC.

8. Accordingly, it is contended by the Petitioner that the entire proceedings are without jurisdiction and contrary to law declared by the Hon'ble Apex Court in ***Ghanshyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. [(2021) 9 SCC 657]*** and ***Vaibhav Goel & Anr. Vs. Deputy Commissioner of Income Tax & Anr. [(2025) 255 Company Cases 266 (SC)]***.

9. It is further contended by the Petitioner that the impugned reassessment proceedings are contrary to law declared by this Court in ***Alok Industries Ltd. Vs. Assistant Commissioner of Income-tax [2024] 161 taxmann.com 285 (Bombay), Uttam Galva Metallics Ltd. vs. Assistant Commissioner of Income-tax [2024] 166 taxmann.com***

492 (Bombay) and ***Order dated 21st July 2025 passed by this Court in Writ Petition No. 2698 of 2025 (Ornate Spaces Private Limited Vs. Dy Commissioner of Income Tax and Ors)***.

10. We have heard the learned counsel for the parties.

11. The short issue to be decided is that whether the Income Tax Authorities can proceed against the Petitioner for alleged escapement of tax for the period prior to the approval of the Resolution Plan by learned NCLT, and which does not form part of the Resolution Plan approved by the NCLT.

12. We find that the tax allegedly escaping the assessment pertains to AY 2020-21, which is prior to the approval of Resolution Plan and does not form part of the Resolution Plan.

13. In the present case, in view of the order and judgment dated 1 st August 2022 of the Hon'ble Apex Court, the order dated 30th September 2022 passed by the NCLT initiating CIRP against the Petitioner revived and moratorium continued from 31st May 2019 till the Resolution Plan was approved on 26th April 2024. The impugned proceedings during the period of moratorium were clearly contrary to law declared by the Hon'ble Apex Court

in ***Ghanshyam Mishra (supra) and Alchemist Asset Reconstruction Company Ltd. vs. Hotel Gaudavan (P.) Ltd. [2017] 88 taxmann.com 202 (SC)***.

14. Further, on a combined reading of paragraph nos. 30 and 31 of the order dated 26th April 2025 of the NCLT [approving the Resolution Plan] would indicate that all past claims against the Petitioner stood extinguished. The NCLT, while approving the Resolution Plan, made a reference to the ratio of order and judgment of the Hon'ble Supreme Court in ***Ghanshyam Mishra (supra)*** in the context of statutory dues.

15. The issue involved in the present petition, therefore, is no longer *res integra*.

16. In a series of decisions of this Court including in ***Alok Industries Ltd. Vs. Assistant Commissioner of Income-tax [2024] 161 taxmann.com 285 (Bombay), Uttam Galva Metallics Ltd. vs. Assistant Commissioner of Income-tax [2024] 166 taxmann.com 492 (Bombay)*** and ***Order dated 21st July 2025 passed by this Court in Writ Petition No. 2698 of 2025 (Ornate Spaces Private Limited Vs. Dy Commissioner of Income Tax and Ors.)***, following the ratio of

the judgment of the Hon'ble Apex Court in the case of ***Ghanshyam Mishra (supra)***, quashed the reassessment proceedings for prior assessment years in view of the approval of Resolution Plan by the NCLT.

17. In a recent decision, the Hon'ble Supreme Court in the case of ***Vaibhav Goel & Anr. Vs. Deputy Commissioner of Income Tax & Anr. [(2025) 255 Company Cases 266 (SC)]*** reiterated that the demand made subsequent to approval of Resolution Plan by an Adjudicating Authority, is invalid and once a Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier.

18. In fact, we find that the Respondents had submitted their claims in respect of income tax dues of the Petitioner pertaining to the AY 2018-19 and AY 2019-20, as is evident from the list of Operational Creditors (Government dues) submitted by the Resolution Professional to the NCLT. However, no claim was filed for the Assessment Year under consideration. Therefore, permitting the Respondents to continue with the reassessment proceedings will result in derailing the Resolution Plan and the Resolution Applicant will not be in a position to revive the Petitioner with a clean slate as held by the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra (supra)***.

19. In view of the foregoing discussions, we hold that the Respondents cannot be permitted to proceed with the reassessment proceedings for AY 2020-21 in furtherance of the impugned notice dated 15th April 2024 issued under Section 148 of the Act.

20. Accordingly, the above writ petition is allowed. The impugned order dated 15th April 2024 issued under Section 148A(d) of the Act and the impugned notice dated 15th April 2024 issued under Section 148 of the Act and any consequential orders/notices issued to the Petitioner are quashed and set aside.

21. Rule is made absolute in the aforesaid terms with no order as to costs.

22. 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.]**

Uday S. Jagtap