



ECONOMIC  
LAWS  
PRACTICE  
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**RECENT DEVELOPMENTS IN DIRECT TAX**

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## DIRECT TAX - RECENT CASE LAWS

**Mumbai Tribunal <sup>1</sup>held that no tax recovery proceedings could be initiated against Corporate Debtor under liquidation. Rules that IBC code prevails over Income Tax Act, 1961 (The 'Act').**

### FACTS OF THE CASE

- Assessee, a Company under liquidation before the NCLT, was selected for scrutiny assessment by tax authorities for AY 2017-18.
- During the course of assessment, it was found that assessee had failed to get its accounts audited under section 44AB of the Act (Tax Audit) against which assessee was slapped with penalty order under section 271B of the Act.
- Assessee filed an appeal before Commissioner of Income-tax (Appeals) [‘CIT(A)’] against the said penalty order. The CIT(A) dismissed the appeal as not maintainable and infructuous due to pendency of liquidation process.
- Assessee filed an appeal before Tribunal against such the order of the CIT(A) on the ground that as per the Insolvency & Bankruptcy Code, 2016 (**IBC Code**) no proceedings can be initiated on the assessee under liquidation.

### ASSESSEE’S CONTENTION

No suit or legal proceedings should commence or if pending, shall be proceeded with against the company without the approval of the court as per section 446 of the Companies Act, 2013 relying upon the Bombay High Court judgement in the case of Deutsche Bank vs S.P. Kala Official Liquidator of Sea.<sup>2</sup>

### REVENUE’S CONTENTION

Revenue department submitted that no approval of the Court is necessary in respect of initiation of assessment proceedings.

### RULING OF ITAT

- Held that the provisions of IBC 2016 would prevail over the Income Tax Act.
- Relying upon the Hon’ble Supreme Court Judgment in the case of Sundaresh Bhatt, Liquidator of ABC Shipyard vs Central Board of Indirect Taxes and Customs<sup>3</sup>, held that Income Tax authorities have limited jurisdiction to initiate assessment / reassessment proceedings to determine the quantum of Income Tax dues during the moratorium period but does not have authority to initiate recovery of such dues.
- Income tax authorities are like any other creditor may stake their claim before liquidator in the statutory limitation period provided under the IBC Code.
- Restored the matter back to CIT(A) for passing order afresh.



### ELP Comments

*This is an interesting judgment where the ITAT has allowed the tax department to initiate assessment proceedings in case of assessee facing liquidation under IBC Code barring the fact that tax recovery could not be initiated. This is on a different footing than a Corporate Debtor whose resolution plan is approved by the NCLT on a clean slate basis where recovery of past tax dues by the tax department is impaired.*

<sup>1</sup> Varun Resources Ltd Vs Income Tax Officer, Mumbai ITA No. 4517/MUM/2023

<sup>2</sup> 67 COMPCAS 474 [1990] (BOM)

<sup>3</sup> Civil Appeal No. 7667 of 2021

**Delhi ITAT<sup>4</sup> held that the deeming provisions of section 50C of Act to impute ready reckoner value are restricted only to Land and /or Building, cannot be extended to rights therein.**

#### FACTS OF THE CASE

- Assessee sold a leasehold property during the AY 2011-12. Gains on sale of lease hold property were not offered to tax in the income tax return filed for the relevant assessment year.
- Assessing Officer (AO) initiated reassessment proceedings, based on the information obtained through Annual Information Return (AIR), and invoked section 50C of the Income Tax Act 1961, ('the Act') and imputed the stamp duty value to compute capital gains tax on sale of lease hold property.
- The assessee filed an appeal before the Income-tax Appellate Tribunal (ITAT) aggrieved by the order of Commissioner of Income-tax (Appeals) ['CIT(A)'].

#### ASSESSEE'S CONTENTION

- Section 50C of the Act, being a deeming provision, was not applicable in case of transfer of leasehold rights.
- The said section is applicable only to those capital assets which are Land or Building or both.

#### REVENUE'S CONTENTION

While placing emphasis on the findings of the AO and CIT(A), Revenue department's representative also admitted that there is no judicial pronouncement holding that provisions of section 50C of the Act are applicable on lease hold rights.

#### RULINGS OF THE ITAT

- The ITAT highlighted the distinction between a capital asset being 'land or building or both' and any 'right in land or building or both' is recognized under the Act itself referring to section 54D(1) of the Act.
- Referred to the Hon'ble SC rulings in the case of Amarchand N. Shroff<sup>5</sup> and Mother India Refrigeration Industries<sup>6</sup> which held that a deeming provision cannot be extended beyond the purpose for which it is enacted.
- Referred to the Hon'ble Bombay High Court's decision in the case of Greenfield Hotels and Estates<sup>7</sup> and Delhi ITAT's decision in the case of Noida Cyber Park<sup>8</sup> where it was held that section 50C of the Act covers only land or building or both and not lease hold rights in land and building.
- Held that that section 50C of the Act is not applicable while computing capital gains on the transfer of leasehold rights in land and building.



#### ELP Comments

*The Delhi ITAT ruling reinforces the position that the deeming fiction of section 50C of the Act does not apply to transfer of rights in land or building. Being a deeming provision, the scope and applicability of the section cannot be extended beyond land or building or both.*

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

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<sup>4</sup> Shivdeep Tyagi Vs. ITO [ITA no. 484/Del/2024]

<sup>5</sup> 48 ITR 59 [1963] (SC)

<sup>6</sup> 155 ITR 711 [1985] (SC)

<sup>7</sup> 77 Taxmann.com 308 [2017] (Bombay)

<sup>8</sup> 123 Taxmann.com 213 [2021] (Delhi ITAT)



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