V Hotels Limited vs The Deputy Commissioner Of Income Tax

ID: F2J-C-2208 **Court:** Bombay High Court
Case: WRIT PETITION (L) NO. 22834 OF 2025 **Date:** 2025-08-06

Bombay High Court V Hotels Limited vs The Deputy Commissioner Of Income Tax ... on 6 August, 2025 Author: B. P. Colabawalla Bench: B. P. Colabawalla 2025:BHC-OS:12931-DB

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

WRIT PETITION (L) NO. 22834 OF 2025 Digitally signed by V Hotels Limited .. Petitioner UDAY UDAY SHIVAJI SHIVAJI JAGTAP JAGTAP Date: 2025.08.08 Versus 11:31:26 +0530 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 19 th March 2025 issued under Section 148 of the Income Tax Act, 1961 (the Act) for the A.Y. 2021-22. Page 1 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc

3. It is contended by the Petitioner that re-assessment proceedings for AY 2021-22 initiated against the Petitioner are liable to be quashed and set aside, in view the Resolution Plan approved by the 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 31st 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 31 st May 2019, the National Company Law Appellate Tribunal (the NCLAT), vide its order dated 11th December 2019 set aside the said order dated 31 st 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 11 th December 2019 of NCLAT and restore the order dated 31st May 2019 passed by the NCLT. Page 2 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc

7. In view of the order of the Hon'ble Apex Court, the CIRP proceedings continued and the NCLT, vide its order dated 26 th 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). Page 3 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc

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 NCLT, and which does not form part of the Resolution Plan approved by the NCLT.

12. We find that the tax allegedly escaping assessment pertains to AY 2021-22, which is prior to the approval of Resolution Plan and does not form part of the Resolution Plan.

13. In the present case, 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 the order and judgment of the Hon'ble Supreme Court in Ghanshyam Mishra (supra) in the context of statutory dues.

14. The issue involved in the present petition, therefore, is no longer res integra. Page 4 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc

15. In a series of decisions, 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), this Court quashed the reassessment proceedings for prior assessment years in view of the approval of the Resolution Plan by the NCLT.

16. 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 a 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.

17. 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 Page 5 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc (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).

18. In view of the foregoing discussions, we hold that the Respondents cannot be permitted to proceed with the reassessment proceedings for AY 2021-22 in furtherance of the impugned notice dated 19 th March 2025 issued under Section 148 of the Act.

19. Accordingly, the above writ petition is allowed. The impugned notice dated 19th March 2025 issued under Section 148 of the Act and any consequential orders/notices issued to the Petitioner are quashed and set aside.

20. Rule is made absolute in the aforesaid terms with no order as to costs. Page 6 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 ::: 21-22834-2025-WP-L=.doc

21. 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.] Page 7 of 7 AUGUST 6, 2025 Uday S. Jagtap ::: Uploaded on - 08/08/2025 ::: Downloaded on - 08/08/2025 23:50:45 :::