

Regional Director can raise income-tax related objections in merger scheme though tax authorities raised no objections; tax authorities not bound by appointed date fixed by scheme

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In brief

The Bombay High Court (HC) in the case of Casby Logistics Private Limited has held that the income tax authorities (ITA) were not bound by the appointed date while deciding validity of revised returns, or while carrying out pending or future assessments of the petitioners. Also, the regional director (RD) was held entitled to raise tax-related objections in a scheme of amalgamation even though no objections were received from the ITA.

In detail

Facts

- A scheme of amalgamation was filed with the HC on 21 March 2014 for the amalgamation of Casby CFS Private Limited into Casby Logistics Private Limited¹ (together referred to as 'petitioners') with a retrospective appointed date.
- No objections were raised by the ITA before the RD.
- The RD contended that the idea behind propounding the scheme with retrospective appointed date was to defeat the provisions of income tax laws, and was devised to

evade taxes and provisions with respect to capital gains tax, transfer for inadequate consideration, revised return, tax demands and assessment proceedings.

- The HC directed the RD to seek views from the ITA on the objections raised. The ITA informed that it supported the RD's views.
- The ITA made protective assessment on the petitioners, pending scheme sanction by the HC.

Issue before HC

- Whether the scheme was liable to be rejected based on the RD's aforesaid objections?
- Whether the RD could raise tax-related objections

to the scheme of amalgamation though the ITA raised no objections?

HC ruling

On powers of the court

The court could interfere with the decision or commercial wisdom of the shareholders, if it was satisfied that the scheme had been framed to contravene provisions of any law.

On powers of the RD

- Since the court was required to ensure that the scheme did not contravene any Act, the RD was not only entitled to, but was duty-bound, to bring to the HC's notice any provision in the scheme that contravened any law. This included the Income-tax law and aimed to ensure

¹ Casby Logistics Private Limited [TS-152-HC-2015(BOM)]

that the company did not use the HC sanction as a shield to protect itself from consequences of contravention of the law.

- The RD had the necessary *locus standi* and statutory recognition in sections 394 and 394A of the Companies Act to make representation and offer comments with respect to a scheme, and they were required to be considered by the HC.
- That the ITA did not object did not prevent the RD from raising objections or making such observations with regard to the scheme as he/ she deemed fit, including those pertaining to tax laws.

On reference to be made to the Ministry by the RD

There was no occasion for the RD to make any reference to the Ministry since the ITA had not offered its views on the scheme. By not offering its views, it cannot be said that the ITA has conclusively and forever accepted that the scheme does not violate taxation laws.

On appointed date and tax issues highlighted by the RD

- The mere fact that protective assessment was made did not mean that the ITA had accepted the scheme. Protective assessment was

not a final assessment, and it was finalised after the scheme was approved or rejected by the Court. Accordingly, by making protective assessment, it could not be said that the ITA had accepted the scheme.

- If the scheme was sanctioned unconditionally, the ITA would be bound by the appointed date and could not review the same.
- However, the scheme was sanctioned by the HC subject to the following conditions :
 - The clause relating to filing of revised return was deleted from the scheme, and it was left open to the ITA to decide validity of such revised return, if filed by the petitioners, without being bound by the appointed date.
 - The ITA would not be bound by the appointed date fixed by the scheme while carrying out pending or future assessments of the petitioner companies.
 - It was left open to the ITA to decide income tax matters in accordance with tax laws without prejudice to observations made in the order.

The takeaways

The HC has held that the RD is entitled to raise objections pertaining to income tax in a merger scheme, even though no objections were raised by the tax authorities. This ruling may be relevant for the companies proposing to undertake merger scheme.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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