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TAX FLASH NEWS

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Provisions mentioned in a Scheme of Amalgamation/Arrangement do not provide exemption from following the statutory procedure laid down for filing a revised return under the Income tax Act

Recently, in an appeal filed by the revenue against the single judge order, the division bench of the Madras High Court[1] has held that the provisions mentioned in a Scheme of Amalgamation/Arrangement do not provide exemption from following the statutory procedure laid down for filing a revised return under the Income tax Act, 1961 (the Act).

Facts of the case

Dalmia Power Limited (Dalmia Power) filed its return of income for the Assessment Years (AYs) 2015-16 and 2016-17 on 17 September 2015 and 30 September 2016, respectively. Pursuant to the sanction of a Scheme of Arrangement and Amalgamation sanctioned by the National Company Law Tribunal (NCLT), Dalmia Power attempted to file a revised return of income for the said AYs on 27 November 2018.

Similarly, Dalmia Cement (Bharat) Limited (Dalmia Cement), another entity of the Dalmia Bharat Group had filed its return of income for the AYs 2015-16 and 2016-17 on 30 November 2015 and 30 November 2016, respectively and post sanction of a separate Scheme of Arrangement and Amalgamation, Dalmia Cement attempted to file a revised return of income for the said AYs on 27 November 2018.

The revenue rejected the said return(s), stating that the revised returns were filed after the period prescribed under Section 139(5) of the Act without preceded by an application to condone the delay as stated under Section 119(2)(b) of the Act.

Aggrieved by the order, the said companies filed a writ with the Madras High Court, where the single bench of the Madras High Court upheld the Heydon's rule of interpretation i.e. procedural provisions are to be construed in a manner that advances and doesn't subvert the cause of justice.

The single bench pronounced the order in favour of the petitioner companies and held as follows:

- The Scheme of Arrangement and Amalgamation approved by the NCLT under Section 391 of the Companies Act, 1956, gives statutory force to enable the respective petitioners to file the revised returns of income beyond the prescribed period and Section 139(5) of the Act doesn't have applicability in such cases.
- The Circular issued under Section 119(2)(b) of the Act namely Circular No. 9 of 2015 and Rule 12(3) of the Rules is not applicable for filing revised return pursuant to a Scheme of Arrangement and Amalgamation sanctioned by the NCLT.

The revenue appealed against the above order of the single bench and filed a writ to the division bench of the Madras High Court on the following grounds:

- Section 139(5) of the Act is the only provision that deals with the filing of a revised return and therefore if the said provision is inapplicable, there is no scope for filing a revised return under the Act.
- If the revised return is not filed within the time limit specified under the Act, it is necessary for the assessee to file an application to condone the delay under Section 119(2) of the Act read with the Circular No.9/2015.

Division bench's decision

The division bench of the Madras High Court overturned the decision passed by the single bench and held that an NCLT order doesn't exempt the companies thereunder from complying with the procedure mentioned under the Act for filing a belated revised return belated on the following grounds:

- The NCLT exercises supervisory jurisdiction and not appellate jurisdiction while considering the sanction of schemes of arrangement or compromise.

[1] ACIT v. Dalmia Power Limited and Dalmia Cement (Bharat) Limited [W.A.(MD)Nos.566 to 569 of 2019] and [C.M.P(MD) Nos.4710 to 4713 of 2019] - Taxsutra.com

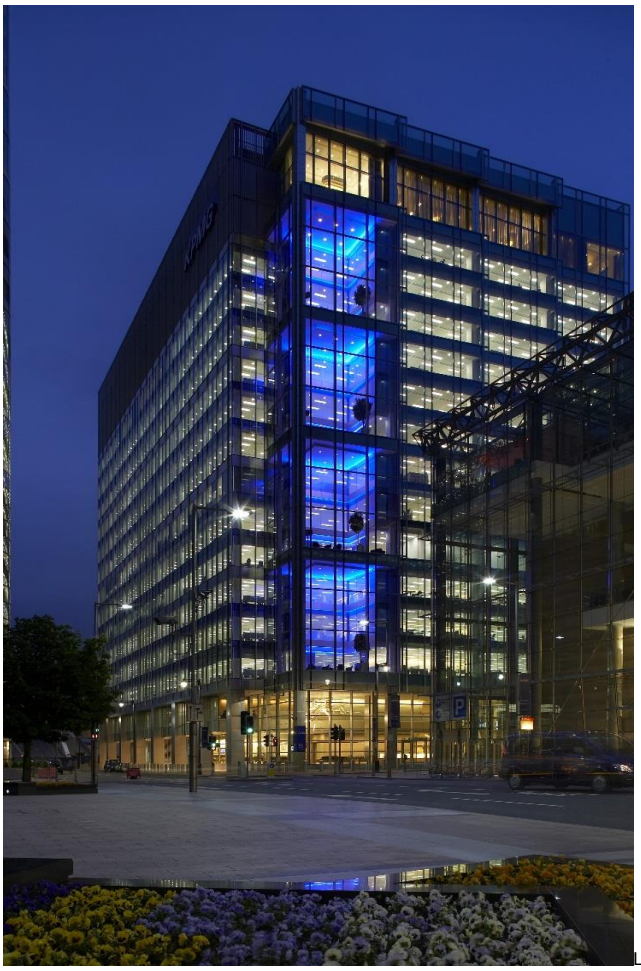
- The NCLT doesn’t examine a scheme minutely with a tooth comb and merely validates whether the scheme is not opposed to public policy or law (Miheer H. Mafatlal vs Mafatlal Industries Ltd [1996] 10 SCL 70 (SC)).
- A scheme has binding effect on the shareholders, creditors because they approve the scheme at specially convened meetings and on employees if it provides that employees would be absorbed on terms that are not inferior to the existing terms.
- The statutory authorities, who are notified under Section 230 (5) of the Companies Act 2013, and who do not object to the scheme are not bound by the scheme or to consider the returns that are filed pursuant to the scheme of arrangement provided they are filed in accordance with statutory procedure and decide the same independently on merits as per law.

Our comments

This is an important ruling providing guidance on the enforceability of a scheme of arrangement/ amalgamation on the statutory authorities vis-à-vis the provisions of the Act. Usually a scheme has clauses that are tailor made to provide enough flexibility to give effect to the arrangement mentioned thereunder.

Basis the above ruling, it seems that clauses mentioned in a scheme of amalgamation/arrangement would not *suo-moto* enable a company to undertake compliances under the Act without having to follow the procedure laid down under the relevant provisions, and hence a company would now be required to file condonation application for filing of return post the period prescribed under the Act. It may also be noted that even under the Corporate Law, necessary forms are required to be filled to give effect to a name change or alteration to the object clause etc. proposed pursuant to a scheme.

Though the ruling prescribes that processual law should be followed, it still continues to mandate the authorities to consider the applications/returns filed bearing in mind the established judicial principles.



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