

Learning Curve-1025

February 26, 2024

The AA has no power and authority under the IBC to declare an assessment order as void ab initio and non est in law.

CASE TITLE	Deputy Commissioner (Works Contract) Vs. National Company Law Tribunal & Ors.
CASE CITATION	WP(C) NO. 39185 OF 2022
DATE OF ORDER	January 30, 2024
COURT/ TRIBUNAL	High Court, Kerala

BRIEF FACTS:

The Petitioner on verification of records of CD noticed certain irregularities. Hence, issued notice under Sec 25(1) of the KVAT Act to the CD. Thereafter, the assessment for the year 2015-16 was completed vide an order.

The AA had passed the impugned order stating that the Assessment Order was passed in violation of the prohibition provided under Section 14(1)(a) of IBC and therefore declared the Order void ab initio. The Petitioner filed a Writ Petition before the High Court against the impugned order.

DECISION:

The Hon'ble High Court of Kerala held that,

“after declaring the moratorium, there is an embargo on enforcing the demand, but there is no embargo under Section 14, read with Section 33(5) of the IBC, for determining the quantum of tax and other levies, if any, against the Corporate Debtor.

This Court finds the impugned order passed by the National Company Law Tribunal, Kochi Bench, as preposterous and untenable. The Company Law Tribunal has no power and authority under the IBC to declare an assessment order as void ab initio and non est in law. Such an order only reflects the competence of the persons who are manning such an important Tribunal. The Order shows the lack of basic understanding of the law. Instead of considering the application by the 2nd respondent for permission to file an appeal against the assessment order, the National Company Law Tribunal, Kochi Bench, has assumed the jurisdiction of the Constitutional Court to declare the assessment order as void ab initio.

In view thereof, the impugned order is unsustainable, and the same is set aside. The writ petition is allowed.”