

**आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई**  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No. 2112/Chny/2018  
निर्धारण वर्ष/**Assessment Year:2012-13**

Makara Leather Manufacturing  
Company Private Limited (In  
Liquidation),  
The Office of The Official Liquidator,  
29, Corporate Bhavan, Rajaji Salai,  
Chennai 600 001.

**[PAN:AAF7334R]**

The Income Tax Officer,  
Vs. Corporate Ward 4(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 26.07.2021  
घोषणा की तारीख /Date of Pronouncement : 29.07.2021

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee (in liquidation) is directed against the order of the Id. Commissioner of Income Tax (Appeals) 8, Chennai, dated 18.01.2018 relevant to the assessment year 2012-13. The following grounds have been raised in the appeal:

- *The CIT(Appeals) has not applied his mind to the facts and circumstances of the case.*
- *The CIT(Appeals) has not considered Sec 529A of the Companies Act 1956 (Section 326 of the New Companies Act, 2013) which has an over-riding provision over all the other laws for the time being in force.*

- *As per the Sec. 326 of the Companies Act 2013 (previous Act Sec. 529A) dealing with preferential rights on liquidation payments as given below:  
“Notwithstanding anything contained in this act or any other law for the time being in force, in the winding up of a company, (a) workman’s dues and (b) debts a due to secured creditors to the extent such debts rank under clause (iii) of the proviso to the subsection (1) of section 325 pari pasu with such dues, shall be paid in priority to all other dues”.*

*This section, being an over-riding provision clearly states that the payments should be first made towards preferential creditors against all other outstanding demand. Hence, the tax demand be stayed until the payment to the preferential creditors is disposed of.*

- *The CIT(Appeals) has erred in taking the indexed cost of acquisition as 10% of the Sale consideration on sale of immovable property whereas it was possible for the assessee to claim the benefit of indexation by taking the Fair Market Value as on 01/04/1981 thereby reducing capital gain tax.*
- *The Appellant craves leave to file additional grounds at the time of hearing.*

2. The above appeal is filed with a delay of 101 days, for which, the Official Liquidator has filed a petition in support of an affidavit for condonation of the delay, to which; the Id. DR has not raised any serious objection. Consequently, since the Official Liquidator was prevented by sufficient cause, the delay of 101 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. The assessee (in liquidation) filed the return of income for the assessment year 2012-13 on 06.09.2012 admitting NIL income. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 [“Act” in short] was issued and duly served on the assessee company (in Liquidation). Subsequently, notice under section 142(1) of the Act was also issued called for various details. After considering the detailed

submissions, the Assessing Officer completed the assessment under section 143(3) of the Act by assessing the income of the assessee at ₹.80,00,000/- after making addition towards long term capital gains. On appeal, after considering the materials available on record, the Id. CIT(A) allowed partial relief to the extent of ₹.8 lakhs and sustained the LTCG tax to the extent of ₹.72 lakhs.

4. On being aggrieved, the assessee (in liquidation) is in appeal before the Tribunal. The appeal was originally posted for hearing on 10.06.2021 and the hearing was adjourned to 26.07.2021 after informing both the parties. However, when the appeal was taken up for hearing, none appeared on behalf of the assessee. Hence, we proceeded to decide the appeal on merits after hearing the Id. DR.

5. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee company is in liquidation proceedings. As per assessment order under section 143(3) of the Act, the Assessing Officer has made an addition of long term capital gains of ₹.80,00,000/-. On appeal, the Id. CIT(A) has stated that last opportunity of hearing to the assessee to file the information was given on 09.01.2018. But, no details of opportunities given to the Official Liquidator to represent the case are available in the appellate order. In the absence of

any detailed representation from the Official Liquidator, the Id. CIT(A) concluded the appellate order with the available materials on record by allowing relief to the extent of ₹.8 lakhs and sustained the addition of ₹.72 lakhs towards long term capital gain. In view of the above facts and circumstances, we are of the considered opinion that the Id. CIT(A) should have given sufficient opportunities of being heard to the Official Liquidator to represent the case. Accordingly, we set aside the appellate order and direct the Id. CIT(A) to afford sufficient meaningful opportunities of being heard to the Official Liquidator to represent the case and thereafter conclude the appellate order in accordance with law.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 29<sup>th</sup> July, 2021 in Chennai.

Sd/-  
(S. JAYARAMAN)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, 29.07.2021  
Vm/-

The Official Liquidator, 29, Corporate Bhavan, Rajaji Salai, Chennai 600001.

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.  
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.