

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 5985/Del/2014
(Assessment Year: 2005-06)

ACIT, Central Circle, Noida.	Vs.	M/s. ATS Infrastructure Ltd. K – 19, Sector – 18, Noida. PAN: AADCA0609B
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AND

ITA. Nos. 5814 TO 5816/Del/2014
(Assessment Years: 2006-07 TO 2008-09)

M/s. ATS Infrastructure Ltd. K – 19, Sector – 18, Noida. PAN: AADCA0609B	Vs.	ACIT, Central Circle, Noida.
(Appellants)		(Respondents)

Assessee by :	Shri Karan Jain, C. A.;
Department by :	Shri K. A. Manu, Sr. D. R.;
Date of Hearing :	18/08/2021
Date of pronouncement :	18/08/2021

ORDER

PER BENCH:

1. I. T. Appeal No. 5985/Del/2014 is filed by the Revenue and three appeals I. T. Appeal Nos. 5814 to 5816/Del/2014 are filed by the assessee.
2. However, the National Company Law Tribunal has already appointed Interim Resolution Professional (IRP) in this case. Therefore, according to Insolvency & Bankruptcy Code, 2016 (IBC) no proceedings can continue against the company. Further, the appeals filed by the

assessee also cannot survive as these have been filed by the Directors of the company and after appointment of IRP, they do not have any locus standi.

3. Above Information is available in public domain in Millennium Post 11 April 2019 10:24 PM

<http://www.millenniumpost.in/business/nclt-gives-ats-gurgaon-jolt-348561> as under :-

“Gurgaon: The National Company Law Tribunal appointed Interim Resolution Professional (IRP) to look into the matter of several buyers of ATS Tourmaline in Sector 109, Gurgaon. The buyers bought apartments under guaranteed buyback offer extended by ATS but the developer rejected to honor the offer forcing the buyers to move the tribunal for initiation of Corporate Insolvency Resolution Process. The tribunal has asked the appointed IRP to look into matter. Seven out of 50 buyers, who failed to get their apartments bought back under the scheme, moved the tribunal. IRP has now been appointed in all the twelve cases.

Buyers bought an apartment in the project by the ATS, a leading developer of North India promoted by Geetambar Anand, Chairman & Managing Director, ATS Infrastructure Ltd & Chairman - CredaiNational). The buyers paid advance money and signed an MOU for the scheme in March 2014. Under this MOU it was written that if the buyer wants to exercise his option of getting his flat bought back by the company at a pre-set value within 33 months from the date of booking and that the company has compulsorily buyback within 30 days from the date the buyer has showed intent to exercise his right to buyback.

There were clauses where developer has to pay interest to the buyer if said buyback is delayed. In October 2016, various buyers showed their intention to the company to offer the flat in buyback to ATS but the developer kept on delaying the process forcing buyers to move to the tribunal. During the trial, ATS counsel tried to play on the fact that buyers had a home loan from a bank making the bank a buyer and thus buyers have no right to exercise the buyback. All these contentions of the developer were put aside by the Tribunal. After a long battle, buyers have been able to convince the court to appoint IRP to solve the issue. "It is a big victory for the buyers, who are being cheated by the developer on the pretext of lucrative offers. Shocking is the fact that the promoter is part of CREDAI, which claims to ensure fair practices in real estate. I am assured now that the law is supreme and it takes care of the buyers' interest. The increasing number of cases against the defaulting developers

is an example that the country is moving towards an era where developers have to face the educated buyers," a buyer said. The IRP has now invited claims from all the stakeholders of the company to file their claims and will then legally exercise the buyback

4. On this issue, no information is forthcoming from assessee. No further legislative or judicial developments have been put before us by either of the parties.
5. Therefore, all the three appeals by the assessee as well as the appeal of the Revenue are dismissed. Both the parties are also given liberty to file an application for recall of this order as soon as insolvency proceedings are over or Committee of Creditors directs the IRP to file the appeal or any judicial developments subsequently makes the parties eligible to file the appeal.
6. In the result, all the four appeals are dismissed as above.

Order pronounced in the open court on : 18/08/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 18/08/2021.

MEHTA

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1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	18.08.2021
Date on which the typed draft is placed before the dictating member	18.08.2021
Date on which the typed draft is placed before the other member	18.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	18.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	18.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	18.08.2021
Date on which the final order is uploaded on the website of ITAT	18.08.2021
date on which the file goes to the Bench Clerk	18.08.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	