

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SRI KULDIP SINGH, JM AND SRI PRASHANT MAHARISHI, AM

आयकर अपील सं./ ITA No. 1090/Mum/2020

(निर्धारण वर्ष / Assessment Year 2011-12)

M/s Jaybharat Textiles and Real Estaeet Ltd. 11/12, Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel (W), Mumbai-400 013	बनाम / Vs.	The Dy. Commissioner of Income Tax, Central Circle 5(3), R.NO. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACJ5959L		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Pinisetty Satya Prasanth, DR

सुनवाई की तारीख / Date of hearing:	29.12.2021
घोषणा की तारीख / Date of pronouncement:	06.01.2022

आदेश / ORDER

प्रशांत महर्षि, लेखा सदस्य के द्वारा /
PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the order passed by the Commissioner of Income Tax (Appeals)-53, Mumbai [in short 'the CIT(A)'] on 26.11.2019. By this order the appeal filed by the assessee against the order passed under section 144 read with section 147 of the Income-Tax Act, 1961 (hereafter referred as 'Act') on 18.12.2018



passed by the Dy. Commissioner of Income Tax (AO), CC-5, Mumbai [the Id AO] was dismissed. The assessee has preferred the appeal challenging the reopening of assessment for issue of notice under section 143(3) of the Act in time and addition of Rs. 4,21,21,760/- under section 69 of the Act.

02. Briefly stated fact of the case shows that assessee is a company, who filed its returned of income for AY 2011-12 on 27.09.2011 which was assessed under section 143(3) of the Act. Subsequently, information was received that some other party has provided accommodation entries to the assessee. The provider of the accommodation entry did not have any credentials for providing of such entry and thereafter, after recording the reasons notice under section 148 was issued on 27.03.2018. On 03.10.2018, after repeated notices assessee filed its return of income in response to reopening of the assessment. Assessee was provided copy of the reasons recorded and thereafter notice under section 143(2) of the Act was issued. The assessee was asked to explain the credibility of the accommodation entry which assessee failed to explain before the Assessing Officer and thereafter the Assessing Officer passed an order under section 144 read with section 147 of the Act and made an addition of Rs.4,21,21,760/-.



03. Addition was made on account of sale consideration received from M/s Raves Trade Private Limited, the assessee could not furnish the ledger account, sale and purchase bills, VAT returns, Lorry receipts, stock register and bank statements along with books of account.
04. Assessee aggrieved with that order preferred the appeal before the learned CIT(A) challenging the reopening of the assessment as well as the addition on merits. The learned CIT(A) confirmed both the issues and therefore assessee is in appeal before us.
05. At the time of hearing a letter dated 27.12.2021, it was informed that NCLT Ahmedabad has passed an order in the above assessee company appointing Mr. Naren Sheth as Insolvency Resolution Professional and the Insolvency proceedings are still going on. Therefore, it was submitted that Section 13 and 14 of the IBC code are applicable and therefore, in view of the moratorium the matter may be adjourned.
06. The learned Departmental Representative submitted that Section 13 and 14 of the IBC code is with respect to continuation of proceedings against company however, in the present case the assessee is an appellant.
07. We have carefully considered the rival contention and find that this appeal is filed by assessee which is verified by

one Ms Manasi Wadkar on 6.02.2020, who is stated to be authorized representative of interim resolution professional. On careful perusal of the order of the NCLT dated 03.06.2020, as per Para No. 21 Mr. Naren Sheth has been appointed as Insolvency Resolution Professional. In terms of notification No.578 E (93 2021) dated 18.08.2021, Rule 12A and 51B has been inserted which provides that interim resolution professional shall be the person, who can file an appeal before the Tribunal. In the present case such appeal has been filed by the authorized person i.e. authorized representative of IRP. In view of this, we find that as the appeal has not been filed by IRP himself and hence, same is not in accordance with the law. Even otherwise, there is no authorization of the person available on record who has filed this appeal.

08. Even otherwise, this appeal is filed by assessee and not against assessee, therefore provision of section 14 IBC 2016 does not apply.
09. In view of this, we dismiss the appeal filed by the assessee with a liberty to the assessee to file an appeal in proper format and duly verified by the person authorized to file the return of income along with an application for recall of this order.



010. In view of this, the appeal filed by the assessee is dismissed with above directions.

Order pronounced in the open court on 06.01.2022

Sd/-

(KULDIP SINGH)

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06.01.2022

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy व. निजी सचिव/ Sr. Private Secretary
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai