

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.1541, 1542, 1543, 1544, 1545, 1546 & 1547 /M/2018  
Assessment Years: 2006-07, 2007-08, 2008-09, 2009-10, 2010-11,  
2011-12 & 2012-13**

M/s. Loha Ispaat Ltd., Simran Plaza, 602, 6 <sup>th</sup> Floor, Near Regal Hotel, Khar West, Mumbai <b>PAN: AAACL1583C</b>	Vs.	ACIT, CC 43, Room No.650, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Ms. Shailja Rai, CIT-D.R.

Date of Hearing : 18.01.2022  
Date of Pronouncement : 18.01.2022

**O R D E R**

**Per Bench:**

Aforesaid appeals bearing common question of law and facts are taken up for disposal by way of composite order to avoid the repetition of discussion.

2. Appellant M/s. Loha Ispaat Ltd. (hereinafter referred to as the assessee) by filing aforesaid appeals sought to set aside the impugned orders of Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] even dated 22.12.2017 for

A.Ys.2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 on identically worded grounds except difference in amount of additions made by the Assessing Officer/CIT(A) on the grounds taken from A.Y. 2006-07 inter alia that;

*“1. On the facts and in the circumstances of the case and in law, the learned CIT (A)-48, Mumbai has erred in passing ex-parte appellate order though the moratorium period as per NCLT’s order is going on.*

*2. Without prejudice to ground no 1, on the facts and in circumstances of the case and in law, the appellant during the course of search proceedings had accepted that cash was generated by it through cash sales and the same money was routed to window dress the financial statements. Therefore the appellant had proposed for taxing the real income on the basis of telescopic assessment which it cannot produce before the learned CIT (A) — 48 due to lack of sufficient time. It also includes Rs. 5 Crores belonging to the appellant for commission on sale of flat which is taxed in hands of Poddar Renaissance Reality Private Limited.*

*3. Without prejudice to ground no 1, on the facts and in the circumstances of the case and in law, the learned CIT(A)-48, Mumbai has erred in making an addition of Rs.1,51,45,297 on account of cash sales unaccounted without appreciating the fact that the appellant has already offered net profit on cash sales to tax.*

*4. Without prejudice to ground no 1, on the facts and in the circumstances of the case and in law, the learned CIT(A)-48, Mumbai has erred upholding the addition made by the LD AO to tax Rs.1,52,79,082 on account of Bogus depreciation.*

*5. Without prejudice to ground no 1, on the facts and in the circumstances of the case and in law, the learned CIT(A)-48, Mumbai has erred in upholding the order of the Ld AO to tax Rs.2,86,88,959 on account of unexplained expenditure ( i.e. unaccounted cash payment for salaries ) u/s 69 C of the Income tax act 1961.*

*6. Without prejudice to ground no 1, on the facts and in the circumstances of the case and in law, the learned CIT(A)-48, Mumbai has erred in making a disallowance of Rs.14,58,986 being 5% of total financial expenses on adhoc basis.”*

3. Briefly stated facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are : on the basis of search and seizure operation originally assessment in all the

cases was framed under section 143(3) of the Income Tax Act (for short 'the Act'). Subsequently, consequent upon the search and seizure operation conducted on 22.02.2012 notices were issued under section 153A of the Act and in response thereto assessee company filed the return. Assessing Officer (for short 'the AO'), declining the contentions raised by the assessee company, made additions in all the years under consideration on account of unaccounted sales and other receipts; Bogus share capital for A.Y.2007-08 to A.Y. 2009-10, A.Y. 2011-12 & A.Y. 2012-13; Claim of Bogus depreciation; Various bogus / unaccounted expenses like salaries / Brokerage / financial expenses / capital expenses; Disallowance u/s.36(1) for A.Y. 2009-10 to A.Y. 2012-13 only; Bogus Purchases and sales for A.Y.2008-09 to 2012-13; Addition on account of Hawala Bills for A.Y. 2008-09,2009-10, 2011-12 & 2012-13 and unaccounted Investments for A.Y. 2011-12 and 2012-13 and framed assessment under section 143(3) read with section 153A of the Act.

4. The assessee company carried the matters before the Ld. CIT(A) by way of filing the appeals challenging the assessment orders framed under section 143(3) read with section 153A of the Act who has confirmed the additions by dismissing the appeals preferred by the assessee company.

5. Feeling aggrieved, the assessee company has come up before the Tribunal by way of filing the present appeals.

6. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

7. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities in the light of the facts and circumstances of the case and case law relied upon.

8. At the very outset, it is brought to the notice of the Bench that the National Company Law Tribunal (NCLT), Mumbai Bench in MA No.95/2018 in CP No.274/2017 under section 33 of I&B Code 2016 has passed order dated 26.04.2018, which is available on the file, whereby Mr. Anil Goel has been appointed as resolution professional/liquidator for the purpose of liquidation with all powers of the Board of Directors by returning following findings:

*“11. As to appointment of Liquidator, the Resolution Professional i.e. the applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to*

*the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.”*

9. So we are of the considered view that since resolution professional/liquidator has been appointed by the NCLT, the present appeals filed by the assessee company are not maintainable as all the powers vested in its directors are to be exercised by the resolution professionals/liquidators and no suit or other legal proceedings shall be instituted by or against the corporate debtor without prior approval of the adjudicating authority. So we are of the considered view that aforesaid appeals being not filed by the authorized person as per order (supra) passed by NCLT are not maintainable hence liable to be dismissed.

10. Resultantly, all the aforesaid appeals filed by the assessee company are dismissed with liberty to file fresh appeal in proper format, duly verified by person authorized to file the return of income or to get the present appeals restored by moving an application.

**Order pronounced in the open court on 18.01.2022.**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 18.01.2022.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.