

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 7410/MUM/2010
Assessment Year: 2008-09**

M/s Raj Oils Mills Ltd.,
224, Bellasis Road, Nagpada,
Mumbai Central,
Mumbai-400 008.
PAN No. AACCR 0266 J
Appellant

Vs. The Dy. CIT, Range-8(3),
Aayakar Bhavan, M.K. Road,
Churchgate,
Mumbai-400020.
Respondent

**ITA No. 3774/MUM/2012
Assessment Year: 2008-09**

M/s Raj Oils Mills Ltd.,
224, Bellasis Road, Nagpada,
Mumbai Central,
Mumbai-400 008.
PAN No. AACCR 0266 J
Appellant

Vs. Addl. CIT, Range-8(3),
Aayakar Bhavan,
Mumbai-400020.
Respondent

Assessee by : None
Revenue by : Mr. T. Shankar, CIT-DR

Date of Hearing : 10/03/2022
Date of pronouncement : 10/03/2022

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders dated 17/08/2010 and 15/03/2012 passed by the Ld. Commissioner of Income-tax(Appeals)-18, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09. In order dated 17/08/2010, the Ld. CIT(A) has upheld a penalty of ₹34,72,089/-levied by the Assessing Officer under section 221 of the Income Tax Act, 1961 (in short 'the Act'). In order dated 15/03/2012, the Ld. CIT(A) has upheld the addition of ₹2,45,00,000/-made by the Assessing Officer for unexplained expenditure by invoking provision of section 69C of the Act. The Ld. CIT(A) in the order has mentioned tax effect involved of ₹1,26,53,444/-.

2. At the outset, we may like to mention that despite notifying none attended on behalf of the assessee for hearing i.e. 10/03/2022. It is also noticed that on last two occasions i.e. on 20/12/2021 and 03/02/2022 none attended before the bench. On 03/02/2022 the bench recorded as under:

"Registry is directed to send notice to assessee to communicate the status of NCLT proceedings and appointment of liquidator. In last occasion letter dt. 21.08.2017 assessee informed registry to adjourn the case sine-die. Based on the information contained in the letter that assessee was under insolvency and bankruptcy proceeding initiated by the corporate debtors. Subsequently no representation

from assessee on this issue. Therefore, assessee is directed to file status of this proceedings before NCLT. Hearing is adjourned to 10.03.2022.”

3. Before us a letter has been filed on 09/03/2022, on behalf of the assessee requesting adjournment in the case. The said letter states that Hon’ble National Company Law Tribunal (NCLT) as an adjudicating authority, has passed an order dated 19/04/2018, approving the “resolution plan” filed by the Committee of Creditors (COC). A copy of said order was enclosed along with letter. According to said order of NCLT, wherein the resolution plan was approved, statutory duty of Income-tax was settled as under:

“Statutory Liabilities

Income Tax: The Company has not received any 'Claim Form' from Income Tax department towards Income tax liability. In view of the same no provision is required to be made for payment of dues on account of Income tax. RP has enumerated on page no. 73 and 74 of IM The details of legal cases in respect of Income Tax matters. ROM has filed appeal with Income Tax Appellate Tribunal or before CIT Appeal. The subject matters of dispute are not settled and the liabilities cannot be determined.

*NP proposes to **settle crystalized demand based on the order of Income Tax Appellate Tribunal or CIT Appeals.** The amount so determined shall be settled **for settlement amount of @1% of crystalized demand maximum to ₹2.58 crores.***

The amount due on the settlement as stated above will be paid in 4 equal quarterly instalments starting from Sep, 2019.”

(emphasis supplied externally)

3.1 Against the said order of the adjudicating authority (NCLT), the Income-tax Department preferred appeal before the Hon'ble National Company Law Appellate Tribunal (NCALT), where in the Income-tax Department agitated as under:

"In Company Appeal (AT) (Insolvency) No. 671 of 2018

4. This appeal has been preferred by 'Pr. Commissioner of Income Tax (Central)-3, Mumbai' against the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the Adjudicating Authority approved the 'Resolution Plan' in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited'.

5. The grievance of the Appellant is that the Income Tax liability/demand in respect of the 'Corporate Debtor' amounting to Rs. 338 Crores was settled for 1% of the 'crystallized demand' to a maximum of Rs.2.58 crores against the mandate of the Income Tax Act, 1961."

3.2 The Hon'ble NCALT in order dated 20/03/2019 upheld the order of the adjudicating authority observing as under:

"33. In the other appeal, the statutory dues have been treated as 'Operational Debt' and equated them with similarly situated 'Operational Creditors', we find no reason to interfere with the impugned order(s) challenged in Company Appeal (AT) (Insolvency) Nos. 309, 559, 671 & 759 of 2018. All the appeals stand disposed of with aforesaid observations. No cost."

4. Against the order of the Hon'ble NCALT, the assessee has claimed to have filed appeal before the Hon'ble Supreme Court disputing the finding of the Hon'ble NCALT that the appeal filed by the Department was within time. Before us, the assessee requested adjournment in view of the appeal pending before the Hon'ble Supreme Court. In our opinion, result of said appeal will not be having any bearing on the issue before us, therefore, the adjournment application of the assessee was accordingly rejected.

4.1 Looking to the old appeals involved, we have heard the appeal ex parte qua the assessee, after hearing Ld. Departmental Representative. We have gone through the order of the adjudicating authority (NCLT), which has been further upheld by the Hon'ble NCALT. The adjudicating authority has restricted the income tax liability payable to the Income Tax Department to the extent of 1% of the 'crystallised demand' subject to a maximum of ₹2.58 crores. On perusal of the order of the NCLT, we find that no details of pending appeals before the Income Tax Appeal Tribunal (ITAT) or the CIT(A) has been given before the NCLT. If presuming, that only these appeals are pending, in that case even if full relief is allowed to the assessee, the demand of ₹34,72,089/- and ₹1,26,53,444/- respectively disputed in these two appeals, will only be reduced from the demand of ₹338 crores outstanding against the assessee. The

resultant tax liability /demand will then be approximately ₹336.38 crore and 1% of which will be approximately ₹3.36 crore. Thus, even if full relief is allowed to the assessee in these two appeals, 1% of the crystallized demand will be more than ₹2.58 crore i.e. the liability (which has to be paid by the assessee company which has been acquired by the new group of persons). In such a scenario, adjudicating of these appeals will be rendered merely academic. In view of the above facts and circumstances, we dismiss these two appeals as infructuous.

4.2 However, in case of change of facts of existence of other appeals or alteration of payable tax demand adversely to the assessee in higher appellate forum, the assessee is at liberty to request for recall of these appeals by way of miscellaneous application.

5. In the result, both these appeals of assessee dismissed.

Order pronounced in the open Court on 10/03/2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **10/03/2022**

Dragon Legal Software/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai