

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

BEFORE SHRI AMARJIT SINGH (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

I.T.A No.	A.Y.	Appellant	Respondent
1395/Mum/2021	2011-12	M/s Pratibha Industries Limited, C/o Jayesh Sanghrajka and Co. LLP, 405, Hind Rajasthan Centre, DS Phalke Road, Dadar (E), Mumbai-400 014 PAN : AAACP4709N	DCIT-CC 3(1), Air India Bldg, Room No.1924, Mumbai-400 021
1396/Mum/2021	2012-13	-do-	-do-
1397/Mum/2021	2013-14	-do-	-do-
1398/Mum/2021	2014-15	-do-	-do-
1399/Mum/2021	2015-16	-do-	-do-
3075/Mum/2018	2010-11	-do-	-do-
4162/Mum/2015	2006-07	-do-	DC IT, Central Circle 17 & 28, Mumbai
4163/Mum/2015	2007-08	-do-	-do-
4458/Mum/2016	2008-09	-do-	-do-
4459/Mum/2016	2011-12	-do-	-do-
4460/Mum/2016	2009-10	-do-	-do-
4461/Mum/2016	2010-11	-do-	-do-
3841/Mum/2018	2010-11	DCIT-CC 3(1), Air India Bldg, Room No.1924, Mumbai-400 021	M/s Pratibha Industries Limited, 14 th Floor, Universal Majestic, P.L. Lokhande Marg, Govandi (W), Mumbai-400 -43 PAN : AAACP4709N
1500/Mum/2021	2013-14	Jt. Commissioner of Income-tax (OSD), Cent.Circle-3(1), Air India Bldg, Room No.1924, Mumbai-	M/s Pratibha Industries Pvt Ltd, LBS Marg, Kurla-West, Mumbai-400 070 PAN : AAACP4709N

		400 021	
1501/Mum/2021	2012-13	-do-	-do-
1502/Mum/2021	2015-16	-do-	-do-
1503/Mum/2021	2014-15	-do-	-do-
1504/Mum/2021	2011-12	-do-	-do-
4367/Mum/2016	2008-09	Dy.CIT- Cent.Cir.3(1), Central Range-3, Mumbai	M/s Pratibha Industries Limited, 14 th Floor, Universal Majestic, P.L. Lokhande Marg, Govandi (W), Mumbai-400 -43 PAN : AAACP4709N
4368/Mum/2016	2009-10	-do-	-do-
4369/Mum/2016	2010-11	-do-	-do-
7007/Mum/2016	2013-14	-do-	-do-
7006/Mum/2016	2012-13	-do-	-do-
4370/Mum/2016	2011-12	-do-	-do-
3847/Mum/2015	2006-07	-do-	-do-
3848/Mum/2015	2007-08	-do-	-do-

Assessee represented by	Shri Margav Shukla
Department represented by	Shri H.N. Singh, CIT DR

Date of hearing	08/06/2022
Date of pronouncement	13/06/2022

ORDER

Per Bench :

These cross appeals have been filed the Revenue and the Assessee challenging various grounds as against the order of Ld.CIT(A) pertaining to various assessment years.

2. There is delay in filing the appeals in ITA No.7006 & 7007/Mum/2016 by 10 days. After hearing the parties, we deem it fit to condone the delay and admit appeals for adjudication.

3. The assessee company is engaged in the business of construction and development of infrastructure projects. During the course of the appellate proceedings, the Ld.AR representing the assessee company had submitted details with regard to the proceedings before the Hon'ble National Company Law Tribunal under various provisions of Insolvency and Bankruptcy Code-2016 initiated by Bank of Baroda as one of the lender of the assessee company. It was further stated that Hon'ble NCLT vide its order dated 01/02/2019 had appointed Mr. Sunilkumar Choudhary as Interim Resolution Professional & subsequently one Mr. Anil Mehta was appointed as Resolution Professional. As the Resolution Plan was rejected, for the purpose of liquidation, it is seen that the RP Mr. Anil Mehta having Registration No.IBBI/IPA-001/IP-P00749.2017-2018/11282 has been appointed as the Liquidator of the Corporate Debtor. It was submitted by the assessee company vide its letter dated 06/06/2022 that as per provisions of section 33(5) of the Insolvency & Bankruptcy Code-2016, no proceeding can be initiated or continued till the completion of liquidation proceedings. During the course of hearing the Ld.AR citing the above reasons, had sought for long adjournments and the Ld.DR on the other hand, did not produce any material to controvert assessee's submission.

4. Having heard both the Ld.representatives and perused the materials placed on record, we observe that the liquidation proceedings has commenced as per the order of the Hon'ble NCLT, Mumbai, in assessee's case thereby appointing Official Liquidator. We are aware that from the time of appointment of Official Liquidator, the assessee company became defunct and the Official Liquidator steps into the shoes of the assessee. In the present

case, it is seen that the Official Liquidator has not appeared before us so far to present the case of the assessee. Even during the moratorium period specified under section 14(1)(a) of the IBC Code, the Ld. representative for the AR made no representation on several hearings and the case was adjourned on various hearings. This being so, upon considering the provisions of section 33(5) of the IBC Code, which is reproduced hereinbelow:-

*33. (1) Where the Adjudicating Authority, —
 (a), (b)(i) to (iii) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
 (2) to (4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
 (5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

5. Therefore, we are of the considered opinion that no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings and the Proviso to section 33(5) also provides prior approval of the Adjudicating Authority to be obtained by the Official Liquidator.

6. Pertinently, it is also to be observed that in case of parallel proceedings under Income-tax Act, 1961 and IBC, 2016, the IBC has an overriding effect over the provisions of the Income-tax Act which has been decided by Hon'ble Apex Court in Principal Commissioner of Income-tax Vs Monnet Ispat & Energy Ltd in Special Leave to Appeal (C) No(s). 6483/2018 & Ors dated 13/08/2018 wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. It is also trite to peruse section 178 of the Income-tax Act, 1961 which has been amended for the purpose of preventing any conflict with provisions of IBC Code which is reproduced as under:-

“178. (1) Every person—

(a) who is the liquidator of any company which is being wound up whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company; (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries of calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

¹*[(3) The liquidator—*

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income-tax Officer under sub-section (2) ; and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force(except the provisions of the Insolvency & Bankruptcy Code, 2016)."

7. From the above observation and also by the decisions of co-ordinate bench of this Tribunal, we hereby dismiss the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants / Official Liquidator to recall the present order when the occasion warrants. The issue of limitation in filing fresh appeal, if need be, has already been dealt with in the judgement of Hon'ble Supreme Court in New Delhi Municipal Corporation vs Minosha India Ltd in Civil Appeal No.3470 of 2022 (arising out of SLP (C) No.8302 of 2021), vide judgement dated 27/04/2022.

8. In the result, appeals filed by the Revenue and Assessee are dismissed.
Order pronounced in the open Court on 13th June, 2022.

Sd/-

sd/-

(AMARJIT SINGH)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 13/06/2022

Pavanan

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai