

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.1978/Del./2017
(ASSESSMENT YEAR : 2012-13)**

M/s. Moserbaer India Ltd.,
43 – B, Okhla Indl. Area, Phase – III,
New Delhi – 110 020.

vs. Addl.CIT,
Spl.Range 6,
New Delhi.

(PAN : AAACM0322J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Upvan Gupta, Advocate
REVENUE BY : Shri Mahesh Shah, CIT DR

**Date of Hearing : 08.08.2022
Date of Order : 08.08.2022**

ORDER

PER SHAMIM YAHYA, JUDICIAL MEMBER :

Appellant, M/s. Moserbaer India Ltd., (hereinafter referred to as 'the assessee'), by moving an application supported with an order passed by **Hon'ble Supreme Court in Civil Appeal No.4704 of 2014 order dated July 21, 2020** in assessee's own case brought to the notice of the Bench that **National Company Law Tribunal (NCLT) vide order dated 20.09.2018** has passed directions for liquidation of the assessee company by appointing Shri Anil Kohli, Resolution Professional as Liquidator under

section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') to dispose off the present appeal accordingly.

2. **Hon'ble Supreme Court in assessee's own case in Civil Appeal No. 4704 of 2014 order dated July 21, 2020** also held as under :-

“ The Official Liquidator has filed a report that the Respondent-Company (Moser Bear India Ltd.) is not financially viable and is under liquidation in proceedings pending before the National Company Law Tribunal. Even if the Appellant-Revenue were to succeed, the Official Liquidator is not in a position to pay the tax amount involved in these appeals.

Indisputedly, the respondent-Company has gone in liquidation. The Company in liquidation is not in a position to pay its outstanding dues including taxes. Moreover, the tax effect in the concerned appeals is just over Rs.2,00,00,000/- (Rupees Two Crore Only).

Taking overall view of the matter, we deem it appropriate to dispose of these appeals, leaving the question of law open, to be decided in appropriate case. Ordered accordingly.”

3. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

4. Provisions contained under section 238 of “the Code” are having an overriding effect over all other Central and State statutes including Income-tax Act as held by **Hon'ble Supreme Court in case of PCIT vs. Monnet Ispat and Energy Ltd. SLP (C)**

No.6483 of 2018 order dated 10.08.2018 by returning following findings :-

“Given section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act.”

5. In view of the matter, section 238 of the Code will have overriding effect over all other Central and State statutes including the Income-tax Act and all the claims including claim of the Income-tax Department under the Income-tax Act, 1961 shall be entertained by the Official Liquidator u/s 53 (1) of the Code. Keeping in view all these facts, ld. AR for the assessee stated at Bar that he does not press this appeal and same may be dismissed as withdrawn. Consequently, present appeal is dismissed as withdrawn having been become infructuous.

Order pronounced in open court on this 8th day of August, 2022 after the conclusion of the virtual hearing.

Sd/-
(SAKATIJJIT DEY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 8th day of August, 2022
TS

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- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

Date of Dictation : 10.08.2022

Date on which the typed draft is placed before the Dictating Member: 10.08.2022

Date on which the approved draft come to Sr.PS/PS : 10.08.2022

Date on which fair order sent to Member for signature : 10.08.2022

Date on which the fair order comes back after pronouncement to the Sr.PS/PS : 10.08.2022

Date on which order is uploaded : 10.08.2022

Date on which the file goes to the Bench Clerk : 10.08.2022

Date on which the file goes to the Head Clerk.....

The date on which the file goes to the AR for signature on the order.....

Date of Despatch of the Order.....
