

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

ITA Nos.139, 140, 141 & 142/M/2020

**Assessment Years: 2008-09, 2009-10, 2010-11 & 2011-12
&**

ITA Nos.1083 & 1084/M/2020

Assessment Years: 2016-17 & 2011-12

M/s. Krishna Knitwear Technology Ltd., 11/12, Raghuvanshi Mills Compound, S.B. Road, Lower Parel, Mumbai – 400 013 PAN: AAACK 4721H	Vs.	Dy. CIT, Central Circle – 5(3), Room No.1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

ITA Nos.131, 132 & 1021/M/2020

Assessment Years: 2008-09, 2009-10 & 2011-12

M/s. K. Lifestyle & Industries Ltd., 11/12, Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel (W), Mumbai – 400 013 PAN: AABCS1364B	Vs.	Dy. CIT, Central Circle – 5(3), Room No.1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

ITA Nos.230, 231, 232, 233 & 234/M/2020

**Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13
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ITA No.1088/M/2020

Assessment Year: 2011-12

M/s. KSL And Industries Ltd., 11/12 Raghuvanshi Mill	Vs.	Dy. CIT, Central Circle – 5(3), Room No.1906,
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Compound, Senapati Bapat Marg, Lower Parel (W), Mumbai – 400 013 PAN: AAACK4722E		19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

ITA Nos.121, 122, 123, 124, 125, 126, 127, 128 & 129/M/2020
Assessment Years: 2007-08, 2008-09, 2009-10, 2010-11, 2010-11,
2011-12, 2011-12, 2012-13 & 2013-14

&

ITA No.1024/M/2020
Assessment Year: 2011-12

M/s. KG Corporation Ltd., 11/12, Raghuvanshi Mill Compound, Senapati Bapat Marg, Lower Parel (W), Mumbai – 400 013 PAN: AACCT3462C	Vs.	Dy. CIT, Central Circle – 5(3), Room No.1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Jasdeep Singh, D.R.
Shri Chintamani V. Dingankar, Sr. A.R.

Date of Hearing : 02 . 06 . 2022

Date of Pronouncement : 14 . 07 . 2022

ORDER

Per Bench:

Aforesaid appeals filed by M/s. Krishna Knitwear Technology Ltd. and its other group concerns (hereinafter referred to as the assessee companies) bearing common question of law and facts, are taken up for disposal by way of composite order for the sake of brevity.

2. Briefly stated facts necessary for adjudication of the controversy at hand are : appellants M/s. Krishna Knitwear Technology Ltd., M/s. K. Lifestyle & Industries Ltd., M/s. KSL And Industries Ltd. & M/s. KG Corporation Ltd., Mumbai by filing the aforesaid appeals challenged the reopening of assessments under section 147/148 of the Income Tax Act, 1961 (for short 'the Act') being invalid and on wrong reasons and has also challenged the order on the ground that the notice under section 143(2) of the Act was not served within the prescribed period. Assessee also challenged the addition made by the Assessing Officer (AO)/Commissioner of Income Tax (Appeals)[CIT(A)] on account of unexplained money under section 69A of the Act. On the basis of assessment framed under section 144 read with section 147 of the Act AO initiated the penalty proceedings under section 271(1)(c) of the Act and thereby levied the penalty which has been confirmed by the Ld. CIT(A).

3. Assessee companies carried the matter before the Ld. CIT(A) by way of challenging assessment orders and penalty orders by filing appeals who has upheld the assessment orders as well as penalty orders passed by the AO. Feeling aggrieved assessee companies have come up before the Tribunal by way of filing present appeals.

4. Despite the issuance and service of repeated notices none come present on behalf of the assessee companies as well as Resolution Professionals, hence the Bench proceeded to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and order passed by Hon'ble National Company Law Tribunal (NCLT) and documents available on record in the light of the facts and circumstances of the case.

6. At the very outset, it is brought to the notice of the Bench that Hon'ble National Company Law Tribunal (NCLT), Ahmedabad Bench passed the order in petitions bearing No.C.P.(I.B.) No.279/7/NCLT/AHM/2018 dated 13th January, 2020, C.P. (I.B.) No.625/7/NCLT/AHM/2018 dated 5th February, 2020, No.C.P. No.(IB) 397/7/NCLT/AHM/2018 dated 06th September 2019 & C.P. No.(IB) 271/7/NCLT/AHM/2019 dated 09th November 2020 filed under section 7 of the Insolvency and Bankruptcy Code (I&B Code), 2016, in case of aforesaid appellants namely M/s. Krishna Knitwear Technology Ltd., M/s. K. Lifestyle & Industries Ltd., M/s. KSL And Industries Ltd. & M/s. KG Corporation Ltd. respectively, which are available on the file, to the following effect:

“(i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

7. In view of the order passed by the Hon'ble NCLT (supra), we are of the considered view that since proceedings under I&B code have already been initiated/decided and moratorium has been declared by prohibiting all the proceedings against the corporate debtors including execution of any judgment, decree or order of any court of law, tribunal, arbitration panel or other authority, present appeals in the present format are not maintainable having not been filed by the Interim Resolution Professionals (IRP) who can file appeal with approval of committee of creditors. Moreover, none has come present on behalf of IRP to assist the Bench to proceed further in these appeals, hence aforesaid appeals are liable to be dismissed being not maintainable at this stage.

8. Resultantly, aforesaid appeals filed by the assessee companies are disposed of with liberty to file fresh appeal in the proper format, duly verified by the person authorized to file the return of income or to get the present appeal restored by moving an application. However, nothing expressed herein shall affect the aforesaid appeals on merits.

Order pronounced in the open court on 14.07.2022.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 14.07.2022.

* Kishore, Sr. P.S.

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.