



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.149/CTK/2015**  
Assessment Year : 2010-2011

M/s. Sree Metaliks Limited, Gurudwar Road, Barbil, Keonjhar	Vs.	DCIT, Rourkela Circle, Rourkela
PAN/GIR No.AAECS 1828 F		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Sidharth Ray, AR  
Revenue by : Shri S.Shivanandan, CIT DR

**Date of Hearing : 27 /9/2022**  
**Date of Pronouncement : 27/9/2022**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A)-1, Bhubaneswar dated 7.1.2015 in Appeal No.0166/14-15 for the assessment year 2010-2011.

2. Shri Sidhartha Ray, Id AR appeared for the assessee and Shri S.Shivanandan, Id CIT DR appeared for the revenue.

3. The assessee has filed an additional ground, which reads as follows:

“For that the department having failed to file its claim before the Resolution Professional, the demand raised for the A.Y. 2010-2011 ceased to exist because of the fact that

the NCLT by judgment dated 7.11.2017 has approved the Resolution plan and the same having been confirmed by the NCLT, Delhi, the prior demand will ceased to exists?

4. It was submitted by Id AR that the said ground does not require further evidence or investigation but goes to the root of the issue. It was the submission that the primary claim of the assessee is that the assessee was a sick company and registered with Board of Industrial Finance and Reconstruction (BIFR). On the basis of application by one of the creditors, the assessee was brought under the Corporate Insolvency Resolution Process (CIRP). The resolution process was admitted by the Hon'ble NCLT vide order dated 30.1.2017 in Company Petition No.16/2017. On the basis of admission by the Hon'ble NCLT, the public announcement in Form No 'A' had been made by the concerned Insolvency Professionals calling for the creditors to raise their claims. It was the submission that the Income Tax Department had not raised its claim before the Insolvency professionals. It was the submission that on 23.10.2017, the Insolvency Professionals had processed the resolution plan under section 13(6) of the Insolvency and Bankruptcy Code -2016. It was the submission that for the relevant assessment year, the Assessing Officer had raised demand of Rs.6,98,24,230/- and same had also been upheld by the Id CIT(A). However, the revenue has not raised any claim before the Insolvency Professionals. It was the submission that the resolution plan submitted came to be accepted by the Hon'ble NCLT on 7.11.2017. It was the

submission that as there was no claim by the revenue, no recovery could be made against the assessee and the claim against the assessee by the revenue was lost. Ld A.R. placed reliance on the decision of Hon'ble Supreme Court in the case of M/s. Ruchi Soya Industries Ltd. Vs Union of India & Ors, 2022 Livelaw (SC) 207, wherein, it has been held that the claim in respect of demand not lodged after the public announcements were issued under sections 13 and 15 of the IBC, on the date on which the Resolution Plan was approved by the NCLT, all claims stood frozen and no claim which is not a part of the Resolution Plan, would survive. He further relied upon the decision of the Hon'ble Supreme Court in the case of Pr. CIT vs Monnet Ispat and Energy Limited, (2018) 18 Supreme Court Cases 786, wherein, it has been held that "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". The Hon'ble Supreme Court further went on to make it clear that the income tax dues being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. It was the submission that as the revenue has not raised its claim before the Resolution Professionals and the same was not recognised the resolution plan, which has already been approved by the NCLT, all claims stood frozen and the demand against the assessee could not be enforced.

5. In reply, Id CIT DR submitted that the resolution plan admittedly has been approved by the NCLT. It was the submission that the Income Tax Department does not need to make any claim insofar as it is not a creditor. The income tax liability is a statutory liability and it is a crown debt. It was the further submission that the public announcement does not mention that even statutory claim must be raised before the Resolution Professionals. Ld CIT DR further drew our attention to page 77 of paper book, which is a copy of the Resolution plan submitted at page 77 para 3.2, which mentions "statutory liabilities/other legal liabilities". It was the submission that in the said para, as on 31.3.2017, the "provision for income tax old" had been categorically shown at Rs.14,26,69,327.27. He further drew our attention to page 123 of paper book para 8.2.3 under the head "statutory liabilities", wherein, it has been specifically mentioned that " it is pertinent to mention that as per the waterfall arrangement explained at para 8.10, the above statutory liabilities being in the nature of operational creditors will have a nil liquidation value, still the company proposes to settle the statutory liabilities in full as provided in the scheme". It was the submission that the total statutory liabilities shown in para 3.2 was Rs.30.71 crores. It was the submission that in page 148 para 9 of PB under the head " CBDT, Central Govt., New Delhi", it is mentioned that to waive interest and penalty charged against the dues of the income tax authority till date and no additional interest/penalty shall be charged for the dues till the date. The

said dues shall be repaid as per the resolution plan. It was thus the submission that in the resolution plan, the income tax liabilities has been referred to and the resolution plan also provides for the demand of the income tax liabilities. It was the submission that this plan has been approved by the NCLT and consequently, the income tax liabilities continue to exist on the assessee. It was the prayer that the assessee may be directed to pay its liabilities to the department at the earliest.

6. At this point, Id A.R. was specifically asked as to whether the amount of Rs.14,26,69,327.27 shown in para 3.2 as provision for old income tax included the liabilities for the assessment year 2010-2011, to the extent of Rs.6,98,24,230/-. It was submitted by Id AR that this question was not expected by him and he was not prepared with the figures. It was the submission that if time is given, he would be able to provide the break-up.

7. We have considered the rival submissions. The matter has been heard at length and now only for the purpose of clarification as to whether the amount of Rs.14,26,69,327.27 mentioned at para 3.2 of the Insolvency Professional Resolution Plan includes the amount of income tax liabilities for the impugned assessment year, it would not be appropriate to adjourn the matter. Consequently, for the purpose of verification as to whether this amount of Rs.6,98,24,230/- being the demand for the assessment year 2010-2011 is included in the amount of Rs. 14,26,69,327.27, the issue is restored to the file of the Assessing Officer for verification. If the amount of

Rs.6,98,24,230/- is included in the amount of Rs. 14,26,69,327.27 , then, there is nothing further to be done because the amount would be paid according to the resolution plan which has been approved by the NCLT. If the amount of Rs. 14,26,69,327.27 does not include in the said amount, then in view of the decision of Hon'ble Supreme Court in the case of Monnet Ispat and Energy Limited(supra) as also the decision of Hon'ble Supreme Court in the case of M/s. Ruchi Soya Industries Ltd.(supra), the liability stood frozen as on the date of approval by the NCLT and no such claim can be made against the assessee.

8. No other issues have been argued before the Bench. Consequently, all other grounds raised are dismissed as not argued.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 27/9/2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 27/9/2022  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Sree Metaliks Limited,  
Gurudwar Road, Barbil, Keonjhar
2. The Respondent: DCIT, Rourkela Circle,  
Rourkela
3. The CIT(A)-, -1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**