

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5243/Del/2018
(Assessment Year : 2013-14)

ACIT, Circle – 24(1) New Delhi-02	Vs.	Spentex Industries Ltd., A-60, Okhla Industrial Area, Phase-II, New Delhi-110 020
PAN No. AABCS 4997 E		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Sunil Singh, Adv.
Revenue by	Ms. Rakhi Vimal, CIT-D.R.

Date of hearing:	10.11.2022
Date of Pronouncement:	23.11.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 18.05.2018 passed by the Commissioner of Income Tax (Appeals)-31, New Delhi relating to Assessment Year 2013-14.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of manufacturing of Polyester Cotton Yarn, Cotton Yarn, man-made Fibre yarn etc. Assessee filed its return of income for A.Y. 2013-14 on 30.11.2013 declaring Nil income after set off brought forward losses of Rs.28,23,08,697/- pertaining to A.Y. 2009-10. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 25.03.2016 and the total income before set off brought forward losses was determined at Rs.48,82,30,573/-. After the adjustment of brought forward losses, the total taxable income was determined at Rs. Nil. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 18.05.2018 in Appeal No.268/17-18 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds:

1. *“Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in restricting arm’s length price of compensation for providing corporate guarantee on behalf of its A.E. @1% instead of 2.58% determined by AO after a detailed discussion in the assessment order thereby giving relief of Rs.5,60,11,287/- to the appellant.”*

2. *“Whether on the facts and circumstances of the case, the Ld CIT(A) was justified in restricting arm's length price of compensation for providing corporate guarantee on behalf on Indian Subsidiary @1% instead of 2.5% being alternately covered within the meaning of section 40A(2)(b) of the Income-tax Act.*

“The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”

4. Before us, at the outset, Learned AR of the assessee submitted that Edelweiss Asset Reconstruction Company Ltd. had filed the petition before National Company Law Tribunal u/s 7 of the Insolvency and Bankruptcy Code ('IBC'), 2016 with a prayer to trigger the Corporate Insolvency Resolution Process against the assessee. He submitted that the Hon'ble National Company Law Tribunal vide order passed in CP No.IB-933(PB)/2019 dated 03.01.2020 has admitted the petition. He further submitted that Hon'ble Company Law Tribunal has declared moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016 ('IBC'). He submitted that by virtue of the declaration of moratorium, all liabilities of assessee pertaining to any governmental dues related to a period prior to the approval of the Resolution Plan stand extinguished other than those expressly provided for in the Resolution Plan and the NCLT order. He further submitted that by virtue of the NCLT order, all pending proceedings in relation to or in connection with assessee will be deemed withdrawn or terminated and, thereby all the liabilities or obligations in relation thereto will be deemed to have been written off in full and permanently extinguished. He also placed on record the copy of the NCLT order. He, therefore, submitted that in view of the aforesaid facts, necessary orders be passed in the case.

5. Learned DR did not controvert the submissions made by Learned AR but however supported the order of AO.

6. We have heard the rival submissions and perused the material available on record. Before us, Learned AR has submitted that Hon'ble National Company Law Tribunal vide order dated 03.01.2020 has admitted the petition filed by Edelweiss Asset Reconstruction Company Ltd. against the assessee u/s 7 of the IBC Code and has declared moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code ('IBC'), 2016.

7. Hon'ble Apex Court in the case of PCIT vs. Monnet Ispat & Energy Ltd. (2019) 107 Taxmann.com 481 (SC) has held that IBC Code will override anything inconsistent in any other enactment including Income Tax Act. When NCLT has declared moratorium u/s 14 of IBC Code in the case of assessee, then there is a complete bar to initiate and continue proceedings against the assessee before any authority. Therefore, in view of the moratorium granted by NCLT, no proceedings against the assessee can continue. In view of the aforesaid facts, the appeal of Revenue deserves to be dismissed. However, liberty is granted to the Revenue to seek revival of the appeal after the lifting of the moratorium and in accordance with law.

8. In view of the aforesaid facts, **grounds of appeal filed by Revenue are dismissed.**

9. **In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court on 23.11.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.11.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI