

आयकर अपीलीय अधिकरण
गुवाहाटी 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं

डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 104/Gty/2010
Assessment Year: 2006-07**

***M/s. Assam Company India Limited.....Appellant
(Erstwhile Assam Company Limited)
[PAN: AAAC 7590 B]***

Vs.

ACIT, Circle-2, Dibrugarh.....Respondent

**I.T.A. No.: 183/Gty/2013
Assessment Year: 1998-99**

**I.T.A. No.: 440/Gty/2013
Assessment Year: 2008-09**

**I.T.A. No.: 12/Gty/2018
Assessment Year: 1986-87**

**I.T.A. No.: 108/Gty/2019
Assessment Year: 2011-12**

**I.T.A. No.: 109/Gty/2019
Assessment Year: 2012-13**

**I.T.A. No.: 119/Gty/2019
Assessment Year: 2010-11**

**I.T.A. No.: 120/Gty/2019
Assessment Year: 2011-12**

I.T.A. No.: 104/Gty/2010
I.T.A. No.: 183 & 440/Gty/2013
I.T.A. No.: 12/Gty/2018
I.T.A. Nos.: 108, 109, 119, 120, 121, 123 & 161/Gty/2019
M/s. Assam Company India Limited
(Erstwhile Assam Company Limited).

I.T.A. No.: 121/Gty/2019
Assessment Year: 2012-13

I.T.A. No.: 123/Gty/2019
Assessment Year: 2014-15

I.T.A. No.: 161/Gty/2019
Assessment Year: 2010-11

ACIT, Circle-2, Dibrugarh.....Appellant

Vs.

M/s. Assam Company India LimitedRespondent
(Erstwhile Assam Company Limited)
[PAN: AAAC 7590 B]

Appearances by:

Smt. Rakhi Purnima Paul, A/R, appeared on behalf of the Assessee.

Sh. N.T. Sherpa, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : September 28th, 2022

Date of pronouncing the order : December 12th, 2022

आदेश
ORDER

Per Bench:

The captioned appeals at the instance of assessee and Revenue are directed against separate appellate orders passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by ld. Commissioner of Income-tax (Appeals), Shillong [in short ld. “CIT(A)“].

2. Registry has informed that the appeal in I.T.A. No. 104/Gty/2010 for AY 2006-07 is time barred by 28 days and appeal in I.T.A. No. 183/Gty/2013 for AY 1998-99 is time barred by 05 days. Condonation applications have been filed by both the

parties. After perusing the same, we find force in the reasons mentioned therein and are satisfied that both the parties were prevented for reasonable cause in filing the instant appeals within statutory time limit. We, therefore, condone the delay and admit the appeals for adjudication.

3. As in the captioned appeals most of the issues raised by both the parties are common, therefore, as agreed by both the parties, the same are taken up together and are being disposed off by this common order for the sake of convenience and brevity.

4. Brief facts of the case as culled out from the records are that the assessee is a limited company. An application u/s 7 of Insolvency and Bankruptcy Code, 2016 was filed by the financial creditor against the assessee before the National Company Law Tribunal, Guwahati Bench (in short the "NCLT") on 26.10.2017 and an Interim Resolution Professional was appointed by the Tribunal. Further, it was submitted that vide order dated 10.02.2021 passed in IA No. 10 of 2020 the NCLT, Guwahati Bench has extinguished the claim of Income Tax Department which was made prior to 20th September, 2018. Therefore, all the appeals are liable to be dismissed as infructuous.

5. Ld. D/R, though supported the orders of both the lower authorities, could not controvert the fact about the orders passed by the Hon'ble NCLT, Guwahati Bench.

6. We have heard rival contentions and perused the records placed before us. The instant bunch of appeals raises various

issues relating to assessment years from 1986-87 to 2014-15. It was brought to our notice that an application u/s 7 of Insolvency and Bankruptcy Code, 2016 was filed by the financial creditor against the assessee before the NCLT, Guwahati Bench and moratorium was declared under Section 14 of Insolvency and Bankruptcy Code, 2016 and an Interim Resolution Professional was appointed by the Tribunal on 26.10.2017. The list of date-wise events are summarised below:

<i>LIST OF DATES & EVENTS</i>	
<i>October 26, 2017</i>	<i>An application under section 7 of Insolvency and Bankruptcy Code, 2016 was filed by the financial creditor against Assam Company India Limited (ACIL) before the Hon'ble National Company Law Tribunal, Guwahati Bench and moratorium was declared under Section 14 of Insolvency and Bankruptcy Code, 2016 and an Interim Resolution Professional was appointed by the Hon'ble Tribunal.</i>
<i>November 14, 2017</i>	<i>Income Tax Department has filed its claim of Rs. 162,025,953/- (For AY 13-14 & 14-15) before the Interim Resolution Professional (IRP). Out of which Rs. 19,792,084/- has been admitted by IRP.</i>
<i>August 10, 2018</i>	<i>The Resolution Plan submitted by the Resolution Applicant being BRS Ventures Investment Limited (hereinafter referred to as the resolution applicant) was duly accepted by the majority votes in the 13th Meeting of Committee of Creditors.</i>
<i>September 20, 2018</i>	<i>The Hon'ble National Company Law Tribunal, Guwahati Bench also approved the resolution plan.</i>
<i>December 18, 2018 & January 7, 2019</i>	<i>As per terms of the Resolution Plan, Rs. 120,23,691.03/- has been paid to the Income Tax Department against their claim.</i>

I.T.A. No.: 104/Gty/2010
I.T.A. No.: 183 & 440/Gty/2013
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March 11, 2019	ACIL vide their letter has communicated the said order dated 20 th September, 2018 to the Income Tax Department & requested for extinguishment of all its claims prior to 20 th September, 2018.
October 22, 2019	Order passed in IA No. 67 of 2019 by National Company Law Tribunal, Guwahati Bench.
January 28, 2020	Notice issued by Income Tax Department against AY 2014-2015 to the Banker of ACIL under Section 226 of IT Act.
February 4, 2020	ACIL has moved application seeking stay of notice dated 28 th January, 2020 before the NCLT, Guwahati Bench which has been registered as IA 10 of 2020 & the learned Bench has stayed the said notice.
February 24, 2020	ACIL has filed another application being No. IA 31 of 2020 before the NCLT, Guwahati Bench praying extinguishment of all claim of Income Tax Department which are prior to 20 th September, 2018.
February 24, 2020	Another application seeking to include the claim of the Income Tax Department has been filed by ACIL before NCLT, Guwahati Bench which has been registered as IA 32 of 2020.
January 20, 2021	Order passed in IA No. 10 of 2020 wherein the learned NCLT, Guwahati Bench has extinguished the claim of Income Tax Department pertaining to AY 2013-14 & AY 2014-15.
February 10, 2021	In terms of the Order passed in IA No. 10 of 2020 the learned NCLT, Guwahati Bench has extinguished the claim of Income Tax Department in IA 31 of 2020.
February 10, 2021	The Learned NCLT, Guwahati Bench has allowed the application being No. IA 32 of 2020 filed by ACIL and extinguished all claims which are prior to 20 th September, 2018.
April 19, 2021	Income Tax Department has issued show cause notice along with draft assessment order for AY 2018-19 to ACIL.

May 13, 2021	<i>ACIL has filed another application being No. MA (IBC)2 of 2021 before the NCLT, Guwahati Bench praying extinguishment of all claim of Income Tax Department for AY 2018-19.</i>
November 30, 2021	<i>The Learned NCLT, Guwahati Bench has allowed the application being No. MA (IBC) 2 of 2021 filed by ACIL and extinguished all its claim pertaining to AY 2018-19.</i>
March 8, 2022	<i>Income Tax Department has filed appeal before the National Company Law Tribunal, New Delhi against the order passed in IA 10 of 2020 which has been registered as Company Appeal (Insolvency) 243 of 2022.</i>
March 8, 2022	<i>Income Tax Department has filed appeal before the National Company Law Tribunal, New Delhi against the order passed in IA 31 of 2020 which has been registered as Company Appeal (Insolvency) 242 of 2022.</i>
March 8, 2022	<i>Income Tax Department has filed appeal before the National Company Law Tribunal, New Delhi against the order passed in IA 32 of 2020 which has been registered as Company Appeal (Insolvency) 241 of 2022.</i>

7. Further, it is submitted before us that since as per the order of the NCLT, Guwahati Bench, any claim of the Income Tax Department against the assessee company made prior to 20th September, 2018 are not maintainable in the eyes of law, all the instant bunch of appeals deserves to be quashed being infructuous. Following submissions were made on this aspect (relevant extract):

“That the Resolution Plan as prepared by BRS Ventures was based on the information and claims stated in the Information Memorandum of ACIL provided by the Resolution Professional, wherein, as Information Memorandum, Income Tax Department had submitted its claim on 14.11.2017 totalling to Rs. 16,20,25,953/- as an Operational

Creditor of ACIL. Therefore, by no iota of imagination the claims of Appellants could go over and above the said amount of Rs. 16,20,25,953/- against ACIL.

That in terms of the Resolution Plan, BRS Ventures infused Rs. 1064 crores and the same was disbursed to the creditors of the ACIL, which includes Rs. 120,23,691.03 released to the Income Tax Authorities. It is pertinent to mention herein that against the claim of Rs. 16,20,25,953/- of the Income Tax Authorities against ACIL, the Resolution Professional had admitted the claim to the extent of Rs. 1,97,92,084/- and upon approval of the Resolution Plan of BRS Ventures, an amount of Rs. 120,23,691.03 released to the Income Tax Authorities on 18.12.2018 and 07.01.2019.

That the Section 31(1) of the Insolvency and Bankruptcy Code, 2016 as amended vide Gazette Notification dated 06.08.2019 reads as under:

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in subsection (2) of section 30 it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any other local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom the statutory dues are owed, guarantors and other stakeholders involved in the resolution plan, [emphasis supplied]

That in view of the amended provision of section 31 of the Insolvency and Bankruptcy Code, the approved resolution plan has been made binding on the corporate debtor, its employees, members and all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is owed.

That the Hon'ble Supreme Court of India in the matter of "Committee of Creditors of Essar Steel India Limited versus Satish Kumar Gupta and others" bearing Civil Appeal No. 8766-67 of 2019 and other petitions, vide its judgement date 15th November 2019, while setting aside the Judgement dated 4th July 2019 of the NCLAT and upholding the constitutional validity of the Insolvency and

Bankruptcy Code (Amendment Act) 2019, has settled several issues and made important rulings including the issues as under:

"a. Ultimately it is the commercial wisdom of the requisite majority of the Committee of creditors that must prevail on the facts of any given case, which include distribution of assets. It is, therefore, not possible for the Adjudicating Authority, and consequently the NCLAT would be vested with the discretion that it vested in the committee of creditors.

b. The Committee of Creditors does not act in any fiduciary capacity to any group of creditors. On the contrary, it is to take a business decision based upon ground realities by a majority, which then binds all the stakeholders, including dissenting creditors.

c. The NCLAT judgment which substitutes system for the commercial wisdom of committee of creditors and which also directs admission of a number of claims which was done by the resolution applicant, without prejudice to its rights to appeal against the aforesaid judgment, must therefore be set aside.

d. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the Resolution Plan submitted by him has been accepted as this would amount to a Hydra head popping up which would throw into uncertainty amount payable by the successful resolution applicant.

e. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."

That the Hon'ble Supreme Court of India in "Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory versus Edelweiss Asset Reconstruction Company Limited" bearing Civil Appeal No. 8129/2019 vide judgment dated 13.04.2021, has held that:

"It is clear, that the mischief, which was noticed prior to the amendment of Section 31 of the I&B Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority including the tax authorities once the approval was granted to the resolution plan by the NCLT; on account of there being any ambiguity, the

State/Central Government continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims/dues owed to the State/ Central Government or any local authority including tax authorities which were not part of the resolution plan shall stand extinguished."

That the Hon'ble High Court of Rajasthan in "Ultratech Nathdwara Cement Ltd. (previously known as Binani Cements Ltd.) versus Union of India & Ors." In D.B. Civil Writ Petition No. 9480/2019 has held as under:

"Considered in the light of the ratio of the above judgment and the stance of the Hon'ble Finance Minister before the Upper House of the Parliament, it is clear that the financial creditors have to be given up residence in the ratio of payments when the resolution plan is being finalized. It is the financial creditors who are given right to vote in the committee of creditors whereas the operational creditors viz. Commercial Taxes Department of the Central Government or the State Government as the case may be, have no right of audience. The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to the resolution applicant to take over the same and begin the operation on a clean slate. For that purpose, the evaluation of all dues and liabilities as they exist on the date of finalization of resolution plan have been left in the exclusive domain of the resolution plan with the approval of COC. The courts are given an extremely limited power of judicial review into the resolution plan duly approved by the COC.

Therefore, in the view of the facts and circumstances of the cases and the plethora of judgments passed by the Hon'ble Apex Court and other Courts regarding validity and operation of the Section 31 of the Insolvency and Bankruptcy Code, 2016 (as amended up to date), the any claim of the income Tax Department against Assam Company India Limited which are prior to 20th September, 2018 are not maintainable in the eyes of law.

That in terms of Section 31 of IBC and plethora of judgments in respect of question of law involved in this matter, ACIL cannot be burdened with surprised claims which are of the period prior to the approval of the Resolution Plan and the same never formed part of the Resolution

Process, as Successful Resolution Applicant is making a new beginning and/or starting on a clean slate.”

8. We have also gone through the following documents:

“1) Copy of the order dated 20th September, 2018 passed by the Hon’ble National Company Law Tribunal, Guwahati in IA No.58/2018 in CP(IB) No. 20/GB/2017 approving the resolution plan of BRS Ventures Investment Ltd for Assam Company India Limited. (Annexure A)

2) Copy of the resolution plan of BRS Ventures Investment Ltd duly approved by the Committee of Creditors (COC) of Assam Company India Limited and Hon’ble National Company Law Tribunal, Guwahati (relevant paragraph 12.1) (Annexure B)

3) Copy of the order dated 10th February, 2021 passed by the Hon’ble National Company Law Tribunal Guwahati in I.A. no. 32 of 2020 wherein all the claims and demands of the Income Tax department raised on Assam Company India Limited prior to the period of approval of the resolution plan i.e. 20th September, 2018 are extinguished and/or waived. The Hon’ble Tribunal also held that since the Respondents did not filed any claims for the period from 1986-87 except 2013-14 and 2014-15 before the Resolution Professional / before the approval of the Resolution Plan, the left over claims of the Respondents from 1986-87 till the approval of the Resolution Plan, if it is filed now or in the future, is not to be entertained by the Resolution Applicant / Corporate Debtor. (Annexure C)”

9. We also find that the NCLT, Guwahati Bench in its order dated 10.02.2021 dealing with the various relief prayed by the assessee company disposed IA No. 32 of 2020 referring to the judgment of Hon'ble Supreme Court of India in the case of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others* in Civil Appeal No. 8766-67 of 2019 and other petitions vide order dated 15.09.2019 gave the following order disposing off the said IA No. 32 of 2020:

“16. Since the Respondents have not filed any claims for the period from 1986-87 except 2013-14 and 2014-15 before the Resolution Professional / before the approval of the Resolution Plan, the left over claims of the Respondents from 1986-87 till the approval of the Resolution Plan, if it is filed now or in the future, is not to be entertained by the Resolution Applicant / Corporate Debtor.

(1) Company can operate the Bank Account without any obstructions from the Income Tax Department.

(2) The Resolution Applicant / the Petitioner is hereby directed to strictly implement the Resolution Plan as approved in time without any violation.

(3) The Petitioner is further directed to file an Affidavit compliance report within 15 days of this order before the Registry stating the details of amount month wise that the Company has been paying all the statutory dues especially, EPF, Income Tax, GST etc. from the date of the Resolution Plan is approved till the order of this date.

(4) The Monitoring and Supervising Committee appointed during the approval of the Resolution Plan is directed to submit the Status Report of the implementation of the Resolution Plan approved, before this Registry within 21 days from today.

17. Accordingly the IA No.32 of 2020 is disposed of with the above observations and directions.”

10. We, therefore, in view of the discussion made herein above and the order of the Hon'ble NCLT, Guwahati Bench, are of the considered view that the instant bunch of appeals deserves to be dismissed being not maintainable. However, for the claims which have been allowed to be raised or admitted by the NCLT, Guwahati Bench and if they are raised in the instant bunch of appeals, then liberty is granted to the respective parties to file Miscellaneous Application for recalling of such issues within the time limit provided under the Act. Thus, all captioned appeals are dismissed as infructuous in terms indicated herein above.

I.T.A. No.: 104/Gty/2010
I.T.A. No.: 183 & 440/Gty/2013
I.T.A. No.: 12/Gty/2018
I.T.A. Nos.: 108, 109, 119, 120, 121, 123 & 161/Gty/2019
M/s. Assam Company India Limited
(Erstwhile Assam Company Limited).

11. In the result, I.T.A. No.: 104/Gty/2010 for Assessment Year: 2006-07, I.T.A. No.: 183/Gty/2013 for Assessment Year: 1998-99, I.T.A. No.: 440/Gty/2013 for Assessment Year: 2008-09, I.T.A. No.: 12/Gty/2018 for Assessment Year: 1986-87, I.T.A. No.: 108/Gty/2019 for Assessment Year: 2011-12, I.T.A. No.: 109/Gty/2019 for Assessment Year: 2012-13, I.T.A. No.: 119/Gty/2019 for Assessment Year: 2010-11, I.T.A. No.: 120/Gty/2019 for Assessment Year: 2011-12, I.T.A. No.: 121/Gty/2019 for Assessment Year: 2012-13, I.T.A. No.: 123/Gty/2019 for Assessment Year: 2014-15, I.T.A. No.: 161/Gty/2019 for Assessment Year: 2010-11 are dismissed as infructuous and not maintainable.

Kolkata, the 12th December, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 12.12.2022

Bidhan (P.S.)

I.T.A. No.: 104/Gty/2010
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M/s. Assam Company India Limited
(Erstwhile Assam Company Limited).

Copy of the order forwarded to:

- 1. M/s. Assam Company India Limited (Erstwhile Assam Company Limited), 52, Chowringhee Road, Kolkata-700 071.**
- 2. ACIT, Circle-2, Dibrugarh.**
3. CIT(A), Shillong.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata