

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.3265/DEL/2018
Assessment Year 2012-13

Jaypee Infratech Ltd., Sector-128, Noida Uttar Pradesh	v.	DCIT, Circle-I, Noida.
TAN/PAN: AABCJ9042R		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Kumar, CA		
Respondent by:	Shri Vipul Agarwal, JR Standing Counsel		
Date of hearing:	15	12	2022
Date of pronouncement:	15	12	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-I, Noida ('CIT(A)' in short) dated 29.09.2017 arising from the assessment order dated 23.08.2015 passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. When the matter was called for hearing, the Id. Counsel for the assessee pointed out that the State Bank of India has moved an application under Section 7 of the Insolvency and Bankruptcy Code (IBC) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the assessee. The Id. counsel further pointed out that as per Ground No.13 of the appeal, the assessee

had relied upon the moratorium pursuant to CIRP in assessee's case under the IBC. As per the Ground, it is the case of the assessee that pursuant to the said process and the order of NCLT dated 09.08.2017, the penalty proceedings could not be continued and were liable to be stayed and kept in abeyance. The Id. counsel thus alleged that the impugned appellate order of the CIT(A) arising from penalty order passed by the Assessing Officer is unlawful and beyond jurisdiction.

3. We notice that the Ground No.13 of the assessee's appeal pointing out subsistence of moratorium period has been overlooked by the CIT(A) and not addressed at all. Subsistence of moratorium period is fundamental and goes to the very root of the matter. We are however not privy to the order passed by the NCLT under IBC. We thus deem it expedient to set aside the order of the CIT(A) and remit the matter back to the file of the CIT(A) for adjudication afresh in the light of the Ground No. 13 of the appeal of the assessee. Needless to say, the action of the CIT(A) shall be governed by the overriding provisions of Insolvency and Bankruptcy Code.

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

Order pronounced in the open Court on 15/12/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER
DATED: /12/2022
Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER