

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2307/Kol/2016
Assessment Year: 2013-14**

Assistant Commissioner of Income-tax, Central Circle- 2(1), Kolkata.	Vs	Amrit Feeds Ltd., 158, Lenin Sarani, 2 nd floor, Kolkata-700013. (PAN: AACCA5571D)
(Appellant)		(Respondent)

&

**CO No.85/Kol/2018
In ITA No.2307/Kol/2016
Assessment Year: 2013-14**

Amrit Feeds Ltd.	Vs	Assistant Commissioner of Income-tax, Central Circle- 2(1), Kolkata.
(Cross Objector)		(Respondent)

&

**ITA No.1863/Kol/2018
Assessment Year: 2014-15**

Deputy Commissioner of Income-tax, Central Circle- 2(1), Kolkata.	Vs	Amrit Feeds Ltd.
(Appellant)		(Respondent)

&

**ITA No.1842/Kol/2018
Assessment Year: 2014-15**

Amrit Feeds Ltd.	Vs	Deputy Commissioner of Income-tax, Central Circle- 2(1), Kolkata.
(Appellant)		(Respondent)

&

ITA No.1718/Kol/2019
Assessment Year: 2015-16

Deputy Commissioner of Income-tax, Central Circle- 2(1), Kolkata.	Vs	Amrit Feeds Ltd.
(Appellant)		(Respondent)

Present for:

Assessee by : N o n e
Revenue by : Shri G. Hukugha Sema, CIT, DR & Shri Vijay
Kumar, Sr. DR

Date of Hearing : 16.01.2023
Date of Pronouncement : 28.02.2023

ORDER

PER Bench:

This is a bunch of four appeals and one Cross Objection. Department has filed its appeals for AYs 2013-14, 2014-15 and 2015-16. Assessee has filed its Cross objection for AY 2013-14 and appeal for AY 2014-15. In respect of appeal and Cross Objection for AY 2013-14, it is a recalled matter vide Misc. Application filed by the revenue which was allowed in MA No. 80/Kol/2018 vide order dated 29.06.2018. These appeals and Cross objection have been filed challenging various grounds as against the order of Ld. CIT(A).

2. Assessee is engaged in the business of manufacturing of poultry feeds. During the course of appellate proceedings, none represented the assessee before us and Shri G. H. Sema, CIT, DR and Shri Vijay Kumar, Sr. DR represented the department. On going through the records, it is noticed that the erstwhile authorised representative of

the assessee has placed on record, details about the proceedings before the National Company Law Tribunal (NCLT) under the provisions of Insolvency & Bankruptcy Code 2016 (IBC). It is noted that NCLT in the petition filed by the assessee vide petition no. CP/IB No. 440/KB/2018 had applied for initiation of Corporate Insolvency Resolution Process (CIRP) u/s. 9 of the IBC read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016. Against the said petition, NCLT delivered its order dated 22.10.2019 and appointed Shri Pankaj Kumar Tibrewal as the Insolvency Resolution Professional (IRP) having registration no. IBBI/IPA/001/1P/P-01577/2018-19/12410. NCLT vide its order, granted moratorium u/s. 14 of the IBC and directed the IRP to conduct CIRP under the provisions of IBC. In terms of this order by NCLT, the Board of Directors of the assessee company was suspended and the management and control was vested with CIRP.

2.2. From the records, we further take note of the e-mail dated 30.03.2021 which was sent by the IRP, Mr. Pankaj Kumar Tibrewal addressed to the Registry of ITAT, Kolkata Bench and also to the Official Liquidator Mr. Sunil Mohan Acharya who had been appointed as the liquidator of the assessee company. In this respect, order of NCLT, Kolkata Bench, Kolkata in IA No. 1027/KB/2010 in CP (IB) No. 440/KB/2018 u/s. 33 of the IBC dated 19.02.2021 is placed on record, according to which, the assessee as the corporate debtor has been ordered to be liquidated in terms of section 33(2) of the IBC read with sub-section (1) thereof.

2.3. The relevant direction given by NCLT, Kolkata in this respect is reproduced as under;

“a. IA No.1027/KB/2020 filed by Mr. Pankaj Kumar Tibrewal, RP of Amrit Feeds Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code read with sub-section (1) thereof.

b. Invoking the powers conferred by section 34(4)(c) of the Code, this Adjudicating Authority hereby appoints Mr. Sunil Mohan Acharya (Regn. No. TBIIIIPA-003/IP-N000174/2018-2019/12120, email: sunilmohanacharya58@gmail.com as the liquidator of the Corporate Debtor.

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d. Public Notice shall be issued III the same newspapers in which advertisements were issued earlier, i.e., in 'Financial Express' (English) and 'Ekdin' (Bengali) of Kolkata edition of the said newspapers stating that the corporate debtor is in liquidation.

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

f. The personnel of the corporate debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the corporate debtor.

g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the corporate debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the corporate debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor except to the extent of the business of the corporate debtor continued during the liquidation process by the Liquidator.

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the corporate debtor is been registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.”

3. Keeping the above facts in perspective, we take note of the e-mail dated 30.03.2021 whereby IRP had informed the Official

Liquidator Mr. Sunil Mohan Acharya in respect of the date of hearing fixed before this bench.

4. Having gone through the material placed on record, we observe that liquidation proceedings had commenced as per the order of NCLT, Kolkata (supra). We are aware that from the time of appointment of Official Liquidator, assessee company became defunct and the Official Liquidator stepped into the shoes of the assessee. In the present case, it is noted that the Official Liquidator has not appeared before the Bench in this set of appeals and cross objection. We also note that even from the moratorium period specified u/s. 14(1)(a) of the IBC, there had been no representation in the matter and the cases were adjourned on various hearings.

5. Pertinently, it is to be observed that in case of parallel proceedings under the Act and IBC, the IBC has an overriding effect over the provisions of the Act which has been decided by Hon'ble Apex Court in Principal Commissioner of Income-tax Vs Monnet Ispat & Energy Ltd. [2019] 107 taxmann.com 481 wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Act.

5.1. It is also trite to peruse section 178 of the Act which has been amended for the purpose of preventing any conflict with provisions of IBC Code which is reproduced as under:-

“178. (1) Every person—

(a) who is the liquidator of any company which is being wound up whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company; (hereinafter referred to as the liquidator) shall, within thirty days after he has

become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries of calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

[(3) The liquidator—

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income tax Officer under sub-section (2) ; and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under subsection (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force (except the provisions of the Insolvency & Bankruptcy Code, 2016)."

7. From the above observation and also by the decisions of co-ordinate bench of this Tribunal, we hereby dismiss the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants / Official Liquidator to recall the present order when the occasion warrants. The issue of limitation in filing fresh appeal, if need be, has already been dealt with in the judgement of Hon'ble Supreme Court in New Delhi Municipal Corporation vs Minosha India Ltd. [2022] 138 taxmann.com 73.

8. In the result, appeals filed by the Revenue and by the Assessee are dismissed.”

6. Similar issue was dealt by the coordinate bench of ITAT, Mumbai in the case of Pratibha Industries Ltd. Vs. DCIT [2022] 142 taxmann.com 295 (Mum.) which has held that where insolvency petition was filed against the assessee company and liquidation proceedings were in progress, as in case of parallel proceedings under the Act and IBC, the IBC had overriding effect over the provisions of the Act, thus, cross appeals filed by the revenue and assessee against the order of Ld. CIT(A) deserve to be dismissed. The relevant extract of the said decision is reproduced below for ease of reference:

“These cross appeals have been filed the Revenue and the Assessee challenging various grounds as against the order of Ld.CIT(A) pertaining to various assessment years.

*2. There is delay in filing the appeals in ITA No.7006 & 7007/Mum/2016 by 10 days. After hearing the parties, we deem it fit to condone the delay and admit appeals for adjudication.
 3 Pratibha Industries Ltd.*

3. The assessee company is engaged in the business of construction and development of infrastructure projects. During the course of the appellate proceedings, the Ld.AR representing the assessee company had submitted details with regard to the proceedings before the Hon’ble National Company Law Tribunal under various provisions of Insolvency and and Bankruptcy Code2016 initiated by Bank of Baroda as one of the lender of the assessee company. It was further stated that Hon’ble NCLT vide its order dated 01/02/2019 had appointed Mr. Sunilkumar Choudhary as Interim Resolution Professional & subsequently one Mr. Anil Mehta was appointed as Resolution Professional. As the Resolution Plan was rejected, for the purpose of liquidation, it is seen that the RP Mr. Anil Mehta having Registration No.IBBI/IPA-001/IP-P00749.2017-2018/11282 has been appointed as the Liquidator of the Corporate Debtor. It was submitted by the assessee company vide its letter dated 06/06/2022 that as per provisions of section 33(5) of the Insolvency & Bankruptcy Code-2016, no proceeding can be initiated or continued till the completion of liquidation proceedings. During the course of hearing the Ld.AR citing the above reasons, had sought for long adjournments and the Ld.DR on the other hand, did not produce any material to controvert assessee’s submission.

4. Having heard both the Ld. representatives and perused the materials placed on record, we observe that the liquidation proceedings has commenced as per the order of the Hon’ble NCLT, Mumbai, in assessee’s case thereby appointing Official Liquidator. We are aware that from the time of appointment of Official Liquidator, the assessee company became defunct

and the Official Liquidator steps into the shoes of the assessee. In the present 4 Pratibha Industries Ltd case, it is seen that the Official Liquidator has not appeared before us so far to present the case of the assessee. Even during the moratorium period specified under section 14(1)(a) of the IBC Code, the Ld. representative for the AR made no representation on several hearings and the case was adjourned on various hearings. This being so, upon considering the provisions of section 33(5) of the IBC Code, which is reproduced hereinbelow:-

33. (1) Where the Adjudicating Authority, —

(a), (b)(i) to (iii) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(2) to (4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

5. Therefore, we are of the considered opinion that no suit or other legal proceedings shall be initiated by or against the corporate debtor which is also applicable for pending proceedings and the Proviso to section 33(5) also provides prior approval of the Adjudicating Authority to be obtained by the Official Liquidator.

6. Pertinently, it is also to be observed that in case of parallel proceedings under Income-tax Act, 1961 and IBC, 2016, the IBC has an overriding effect over the provisions of the Income-tax Act which has been decided by Hon'ble Apex Court in Principal Commissioner of Income-tax Vs Monnet Ispat & Energy Ltd in Special Leave to Appeal (C) No(s). 6483/2018 & Ors dated 13/08/2018 wherein the Hon'ble Apex Court had observed that as per section 238 of IBC, the IBC Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. It is also trite to peruse section 178 of the Income-tax Act, 1961 which has been amended for the purpose of preventing any conflict with provisions of IBC Code which is reproduced as under:-

“178. (1) Every person—

(a) who is the liquidator of any company which is being wound up whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company; (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries of calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

[(3) The liquidator—

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income tax Officer under sub-section (2) ; and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under subsection (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force (except the provisions of the Insolvency & Bankruptcy Code, 2016)."

7. From the above observation and also by the decisions of co-ordinate bench of this Tribunal, we hereby dismiss the cross appeals filed by the Revenue and the Assessee with the liberty to the appellants / Official Liquidator to recall the present order when the occasion warrants. The issue of limitation in filing fresh appeal, if need be, has already been dealt with in the judgement of Hon'ble Supreme Court in New Delhi Municipal Corporation vs Minosha India Ltd. [2022] 138 taxmann.com 73.

8. In the result, appeals filed by the Revenue and by the Assessee are dismissed."

7. Considering the facts and circumstances of the present case and the observations noted above and also by following the decision of the coordinate bench of ITAT, Mumbai referred above, we hereby dismiss the appeals filed by the revenue and the assessee so also the cross objection filed by the assessee, with a liberty to both the assessee and the Official liquidator to recall the present order by filing appropriate

application within the permissible limitation, as and when the occasion so warrants.

7.1. In the present case also, as held by the coordinate bench of ITAT, Mumbai referred above, the issue of limitation in filing fresh appeal, if need be, is to be dealt in accordance with the decision of Hon'ble Supreme Court in the case of New Delhi Municipal Council Vs. Minosha India Ltd. (supra).

8. In the result, appeals filed by the revenue and the assessee as well as the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 28th February, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-20, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata