

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1892/Chny/2019  
&

**Cross-Objection No.92/Chny/2019**  
निर्धारण वर्ष /Assessment Year: 2008-09

The Dy. Commissioner –  
of Income Tax,  
Corporate Circle-3(1),  
Chennai.

(अपीलार्थी/**Appellant**)

v. M/s.Thiru Arooran-  
Sugars Ltd.,  
No.112, Eldorado, 5<sup>th</sup> Floor,  
Nungambakkam High Road,  
Chennai-600 034.  
[PAN: AAAC 2382 B]  
(प्रत्यर्थी/**Respondent/Cross-Objector**)

Department by : Mr.D.Hema Bhupal, JCIT  
Assessee by : Mr.Kiran Dhanateja, CA  
सुनवाई की तारीख/Date of Hearing : 09.03.2023  
घोषणा की तारीख /Date of Pronouncement : 31.03.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, AM:**

This appeal filed by the Revenue and Cross-Objection filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-7, Chennai, dated 31.03.2019, and pertains to assessment year 2008-09. Since, the facts are identical and issues are common, for the sake of convenience, appeal filed by the Revenue & Cross-Objection filed by the assessee are being heard together and disposed off, by this consolidated order.

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**2.** The brief facts of the case are that the assessee is a Public Limited Company engaged in the business of manufacturing and marketing of Sugar and industrial alcohol. The assessee filed its return of income for the AY 2008-09 on 22.01.2010 admitting a loss of Rs.37,06,55,787/-. A search operation was carried out in the premise of M/s.Praj Industries Ltd., Pune, on 03.04.2012 and a sworn statement u/s.132(4) of the Income Tax Act, 1961 (in short "the Act") was recorded from one Mr.Aniruddha V.Phadke, Associate Vice President (Commercial) of M/s.Praj Industries Ltd., where he had admitted that M/s.Praj Industries Ltd., has engaged in over invoicing its sales to the clients and returning the extra amount in cash to the parties. In one of the seized documents, it was alleged that some items containing the noting Thiru. The assessment of the respondent company was re-opened and assessment has been completed u/s.143(3) r.w.s.147 of the Act, on 10.05.2016 and made addition of Rs.2,76,21,000/- u/s.69A of the Act, on account of alleged cash received from M/s.Praj Industries Ltd. On appeal, the Ld.CIT(A), Chennai, vide order dated 31.03.2019 deleted the additions made by the AO and held that there is no direct evidences to prove direct involvement of the respondent company in the issue of the receipt of cash as alleged by the AO. Aggrieved by the order of the Ld.CIT(A), the present appeal is filed by the Department.

**3.** The Ld.AR for the assessee submitted that the appeal filed by the Revenue on 21.06.2019, i.e. after grant of moratorium by the Hon'ble NCLT vide order dated 07.06.2019 is not maintainable. The Ld.Counsel for the

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assessee submitted that the Hon'ble NCLT Chennai Bench has ordered the liquidation of the assessee vide order dated 08.04.2021. Further, the claim of the Department has also been rejected by the liquidator. Therefore, the present appeal filed by the Revenue is not maintainable and needs to be dismissed.

**4.** The Ld.DR, on the other hand, fairly admitted that the Hon'ble NCLT ordered for liquidation of the company and further, the claim made by the AO for recovery of taxes has been rejected by the liquidator. However, submitted that there is no bar under the Act for recovery of outstanding demand and thus, appeal filed by the Revenue is maintainable.

**5.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The fact with regard to liquidation of company by a final order of the Hon'ble NCLT dated 08.04.2021 is not disputed by the Revenue. Further, it is an admitted fact that in terms of sec.238 of the Insolvency & bankruptcy Code (in short "I & B Code") r.w.s. 178 of the Act, the provisions of the code have an overriding effect overall other central & state statutes and this legal position has been upheld by the Hon'ble Supreme Court in the case of PCIT v. Monnet Ispat and Energy Ltd., in SLP No.6483 of 2018 order dated 10.08.2018. Therefore, the present appeal filed by the Revenue during moratorium period is **ab initio** and deserves to be dismissed. Further, apart from the liquidation process, the liabilities of the respondent company

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have been crystalized and the net assets were transferred to a new investor pursuant to a scheme u/s.230(1) of the Companies Act 2013 approved by the Hon'ble NCLT vide order dated 02.05.2022. In view of the Hon'ble NCLT order dated 02.05.2022, pending proceedings including proceedings under Income Tax Act, 1961, relating to period prior to the NCLT order shall abate all the admitted liabilities shall be dealt as per the order of the Hon'ble NCLT in terms of waterfall mechanism prescribed u/s.53 of the I & B Code. At this stage, it is necessary to rely on the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., in Civil Appeal No.8129 of 2019 order dated 13.04.2021, wherein the Apex Court has held that once resolution plan is approved by adjudicating authority u/s.31 of I & B Code, the claim has been provided in the resolution plan shall stands frozen and will be binding on the corporate debtors and its employees, members, creditors, including Central Government. In this case, the Hon'ble NCLT ordered liquidation of respondent company under I & B Code and further, the claim of the Department has been rejected. Therefore, we are of the considered view that appeal filed by the Revenue after the moratorium period is not maintainable and thus, the appeal filed by the Revenue is dismissed as not maintainable.

**6.** In the result, appeal filed by the Revenue is dismissed.

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**CO No.92/Chny/2019:**

7. Since the appeal filed by the Revenue has been dismissed as not maintainable, the Cross-Objection filed by the assessee against the order of the Ld.CIT(A), is also not maintainable and thus, Cross-Objection filed by the assessee is dismissed as not maintainable.

8. In the result, appeal filed by the Revenue in ITA No.1892/Chny/2019 & Cross-Objection filed by the assessee in CO No.92/Chny/2019 for the AY 2008-09 are dismissed as not maintainable.

Order pronounced on the 31<sup>st</sup> day of March, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> March, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF