

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 944/Del/2018, A.Y. 1997-98

M/s. Kuber Mutual Benefits Ltd. M/s. Raj Kumar & Associates Chartered Accountants, 4435/7, Ansari Road, Daryaganj, Delhi-110002 PAN : AAACK4639E	Vs.	ACIT, Circle-5(1), New Delhi
Appellant		Respondent

ITA No. 1629/Del/2018, A.Y. 1997-98

ACIT, Circle-14(2), New Delhi	Vs.	M/s. Kuber Mutual Benefits Ltd. M/s. Raj Kumar & Associates Chartered Accountants, 4435/7, Ansari Road, Daryaganj, Delhi-110002 PAN : AAACK4639E
Appellant		Respondent

Appellant by	Sh. Rajkumar Gupta, CA
Respondent by	Mohd. Gaysuddin Ansari, CIT(DR)

Date of hearing:	06.06.2023
Date of Pronouncement:	06.06.2023

ORDER

Per Anubhav Sharma, JM :

1. Heard and perused the record.

2. It comes up that on 04 January, 2023, the bench has passed following order :-

“The Ld. counsel for the assessee seeks dismissal of revenue appeal and also assessee appeal for the reason that official liquidator has not been impleaded for pursuing the appeal.

The respective appeals filed by both the sides are inherently defective and cannot be proceed with. The order of Co-ordinate Bench similar circumstance in IT No. 1110/D/2011 and others order dated 14/02/2014 was referred to. The Revenue seeks time to examine the argument of the assessee and place its stance on record.

The matter is adjourned to 23-Mar-2023 (Thursday).

<i>Sd/-</i>	<i>Sd/-</i>
<i>Anubhav Sharma</i>	<i>Pradip Kumar Kedia</i>
<i>Judicial Member</i>	<i>Accountant Member”</i>

3. Thereafter case was listed on 23rd March, 2023 but there was no compliance. Today adjournment is sought by Ld. CIT-DR submitting that in terms of order of the bench dated 04.01.2023 the jurisdictional Assessing Officer has been asked to submit a report on the issue and provide a copy of NCLT order. In this context, it can be observed that in assessee’s own case for A.Y. 1996-97, ITA no. 1110/Del/2011 and A.Y. 2099-2000 ITA no. 1111/Del/2011 respectively the issue about necessity of Official liquidator as party has been adjudicated vide order dated 14.02.2014 by following observations in para no. 5 reproduced as under :

“5. We have considered the facts as far as the maintainability of the appeal is concerned. It is not in dispute that the assessee company is under liquidation and an official liquidator stands already appointed by the order of the Hon’ble Court. As per Companies Act, 1956, no doubt, powers of liquidator which includes the power to defend legal proceedings, civil or criminal are to be in the name and on behalf of the company. Section 178 of the Income Tax Act, 1961 (herein after ‘the Act’) recognizes the official liquidator as the concerned person in the case company is under liquidation. So it can be seen that the official liquidator has to defend the case if any filed against the company. In this case the revenue has filed the appeal against the assessee company without bringing the official liquidator in the array of parties. Therefore without notice to him, the official liquidator

would not be in a position defend any case filed against it. Therefore the appeal preferred by the revenue against the assessee company without bringing the official liquidator is bad for non-jointer of essential party. Therefore we hold that appeals preferred/by the Revenue in the instance cases as non-maintainable and therefore dismissed. Further we give liberty to the department to file fresh appeal by bringing on record the official liquidator if advised so.”

4. In the light of aforesaid as the parties have failed to bring on record the official liquidator, being a necessary party. **The appeals are dismissed** being defective with liberty to get the same restored as per law in case parties intend to contest by impleading the official liquidator.

Order pronounced in the open court on 6th June, 2023.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:-06.06.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI