

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : DELHI**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1506/Del/2022
Assessment Year: 2017-18

DCIT,
Central Circle-29,
Delhi.

Vs Era Infra Engineering Ltd.,
1107, Indraprakash Building,
21, Barakhamba Road,
New Delhi.

PAN: AAACE1268K

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri T. James Singson, CIT, DR
Date of Hearing	:	25.04.2023
Date of Pronouncement	:	28.06.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.1506/Del/2022 for AY 2017-18 arises out of the order of the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in appeal No.CIT(A), Delhi-27/10439/2019-20 dated 25.03.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2019 by the Id. Assessing Officer, Central Circle-17, Delhi (hereinafter referred to as 'Id. AO').

2. None appeared on behalf of the assessee. The notice sent to the registered address had been returned unserved. Hence, we proceed to dispose of this appeal on hearing the Id. DR and after perusing the material available on record.

3. The Revenue has raised the following grounds of appeal:-

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) ignored that the Indian Accounting Standard 37 prescribed by ICAI in respect of Contingent Asset clearly perverts that the disclosure of Contingent Assets can be disclosed only "when it is more likely than not that an inflow of benefits will occur" and the assessee had shown as Contingent Assets in its Note to the Balance sheet.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) ignored that the Onus always lies upon the assessee to substantiate its claim before the AO which assessee failed to do so during the course of assessment proceedings.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) ignored the definition of word accrual as per CBDT Notification No. 87/2016, dated 29.09.2016 which is as under:-

"Accrual" refers to the assumption that revenues and costs are accrued, that is, recognized as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.

4. Whether on the facts in the circumstances of the case, the Ld. CIT(A) ignored that the assessee had recorded as Contingent Assets in its Note to the Balance Sheet in the previous year which the assets relate to and hence, comes within the definition of "accrual".

5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) ignored that in the case law furnished by the assessee, the Hon'ble Apex Court observed that if income does not result at all, there cannot be tax. However, in the present case, the assessee has shown the said amount as a Contingent Asset which clearly indicates as per AS 37 there is a certain possibility of receiving income in future.

6. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was unaware of the fact that case of the company M/s Era Infra Engineering Limited was also assessed u/s 153A of the Income-tax Act, 1961 for AY 2011-12 to 2020-21 during the month of March 2022, as it was established that the assessee was engaged in unaccounted cash transactions as well as other activities with Sh. Manoj Kumar Singh and others.

7. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was unaware of the fact that the assessee remained non-compliant through out the assessment proceedings u/s 153A of the Income-tax Act, 1961 in response to various notices while on other hand the assessee attended appellate proceedings and submitted the desired documents, the

proceedings of which were instituted on 29.01.2020 before the appellate authority.

8. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was unaware of the facts that the case of the assessee had been admitted into corporate insolvency resolution process ("CIRP") by Hon'ble National Company Law Tribunal, Principal Bench, New Delhi vide its order dated 08th May 2018 in terms of provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") the fact of which was devoid in the Ld. CIT(A)-27's order dated 25.03.2022.

9. Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal."

4. We find that in ground No.8, the Revenue had categorically stated that the assessee had been admitted into the corporate insolvency resolution process by the Hon'ble National Company Law Tribunal (NCLT), New Delhi vide order dated 08.05.2018. The Id. AR before us also placed on record an order passed by the NCLT, New Delhi in C.A. No.997 (PB)/2018 IN C.P. No.IB-190(PB)/2017 dated 06.12.2018, wherein the corporate debtor (the assessee herein) was made liable to repay the amount granted by ICICI Bank Ltd. to Era Infrastructure (I) Ltd and Dehradun Highways Project Ltd; that the resolution professional was directed to admit the claim of the ICICI Bank as a financial debt in respect of obligations undertaken by the assessee herein under the credit facilities availed by Era Infrastructure (I) Ltd and Dehradun Highways Project Ltd. Consequentially, the resolution professional was directed to revise the list of financial creditors of the assessee herein by including the claim of ICICI Bank Ltd. The aforesaid order goes clearly to prove that the assessee herein is under the clutches of NCLT under Insolvency & Bankruptcy Code 2016 (IBC) . As per Section 14 of the Insolvency and Bankruptcy Code, 2016, no proceedings shall remain pending with any Court or Tribunal, once the Insolvency Resolution Proceedings had been initiated on a Corporate Debtor. It is not in dispute that the assessee company is a Corporate Debtor.

5. We find that the revenue vide Ground No. 8 had raised that the assessee is under the clutches of NCLT under Insolvency and Bankruptcy Code 2016. In the order dated 8.5.2018 and 6.12.2018 passed by the NCLT, the Interim Resolution Professional (IRP) is already on record and hence the revenue ought to have preferred this appeal before us by duly impleading the IRP on record. Hence, in view of Section 14 of I & B code there cannot be any continuation of any pending proceedings before this Tribunal. Hence, we deem it fit to dismiss the appeal of the revenue as not maintainable in the present format. However, liberty is given to the IRP to implead himself on behalf of the corporate debtor (assessee herein) by filing a Miscellaneous Application before us, if he so desires, in which event this appeal shall be restored. With these observations, the appeal of the revenue is hereby dismissed as not maintainable in the present format.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 28.06.2023.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 28th June, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi