

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1140/Mum/2023
(Assessment Year :2012-13)**

DCIT-16(1) Mumbai Room No.439, 4 th Floor Aayakar Bhavan M.K.Road, Mumbai-400 020	Vs.	M/s. Digicable Network India Ltd. B-8, Marol Industrial Area, Next to MIDC Police Station, Andheri (E) Mumbai – 400 093
PAN/GIR No.AACCD6110D		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Smt. Riddhi Mishra
Date of Hearing	20/07/2023
Date of Pronouncement	31/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 07/02/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.144 for the A.Y.2012-13.

2. In the grounds of appeal, Revenue has raised the following grounds:-

“Whether on the facts and in the circumstances of the case, the LD CIT(A) erred in directing the assessing officer to allow the set-off of unabsorbed depreciation against the addition made u/s 68 of the Act despite therein judicial prudent established in the case of Commissioner of Income Tax Trichur Vs Kerala Sponge Iron Ltd((2017) 79 taxmann.com 350 (Kerala)) held that the income has been treated as unexplained cash credit under section 68 of the Act. Once it is so done for the purpose of set off or any other purpose, the said unexplained income cannot be treated as business income under any one of the head provided under section 14 in which the question of set off does not arise.”

3. At the outset, ld. DR submitted that here in this case the assessee company has gone into Insolvency process under IBC code and it is under Corporate Insolvency Resolution process. Department has already filed proof of claim in respect of income tax dues. NCLT has reserved the order on 02/01/2023 regarding the approval of resolution plan. Accordingly, in view of the aforesaid fact that already assessee company is under Insolvency Resolution Process and department has to get clearance from the Resolution Board and approval of the Resolution plan therefore, appeal of the Revenue is dismissed in limine till it is allowed. However, department would be at liberty to file application for recall of the order after the approval of the Resolution plan and furnishing of the proof of claim in respect of income tax dues. Accordingly, the appeal of the Revenue is dismissed in limine.

4. In the result, appeal of the Revenue is dismissed in limine.

Order pronounced on 31st July, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/ 07/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai