

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

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

**ITA No.1911/Kol/2019
Assessment Year: 2012-13**

Assistant Commissioner of Income-tax, Circle-11(2), Kolkata.	Vs.	Kilburn Chemical Ltd. 16 th Floor, Shantiniketan, 8, Camac Street, Kolkata- 700017. (PAN: AAACK1427A)
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e

Respondent by : Shri S. Datta, CIT, DR

Date of Hearing : 26.07.2023

Date of Pronouncement : 10.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-4, Kolkata vide Appeal No. 214/CIT(A)-4/15-16 dated 29.03.2019 passed against the assessment order by DCIT (OSD), Corporate Circle-4, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 23.03.2015 for AY 2012-13.

2. Ground of appeal of revenue is reproduced as under:

“That on the facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the provisions of section 50B by admitting the additional evidence without giving the AO the opportunity to examine and comment.”

3. On the last hearing held on 13.06.2023, it was noted by the Bench that “a letter dated 12.06.2023 has been received

from assessee company stating therein that the assessee company had went through Corporate Insolvency Resolution Process. Subsequently, resolution plan was approved by the Hon'ble NCLT vide order dated 16.12.2021. It has been further stated therein that after the approval of the resolution plan, the liabilities of the assessee company including the income-tax liability has stood extinguished and no proceedings in respect of claims prior to the approval of plan, can be initiated or continued. It has therefore been pleaded in the said letter that since the income-tax liability of the assessee company has stood extinguished, therefore, the present appeal has become infructuous. Ld. DR, however, wants to get instructions from the ld. PCIT in this respect. In view of this, adjourned to 26.07.2023.”

4. In view of the above, a specific query was raised by the Bench to the Ld. CIT,DR to which he candidly accepted that the appeal has become infructuous as resolution plan has been approved by the Ld. National Company Law Tribunal (NCLT) vide order dated 16.12.2021.

5. Before us, none appeared on behalf of the assessee, however, a written submission is placed on record, giving the details in respect of the corporate insolvency resolution process (CIRP) completed under the Insolvency & Bankruptcy Code 2016, in the case of the assessee. In the submission, assessee has submitted that as per the provisions of IBC and in terms of the order of Ld. NCLT, once resolution plan is approved, its binding on the corporate debtor i.e. the assessee and its employees, members, creditors, guarantors

and other stakeholders involved in the resolution plan including central government, any state etc. to whom a debt in respect of payment of dues arising under any law for the time being in force, are owed.

5.1. According to the assessee, in the present case, the order by Ld. NCLT refers to all the liabilities and demands of the Income-tax Department, crystallised or not and for all the years prior to the date of order i.e. 16.12.2021. The same is contained in para no. 26(c) of the said order. The same is extracted as under:

c.	The Resolution Applicant except for the payment mentioned in Annexure 4 shall not be liable to pay any Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Closing Date. It may also be clarified that any Tax liabilities pertaining to any period or action prior to the Effective Date, whether assessed or unassessed, whether crystallized or not crystallized by any of the relevant Government Authority shall be deemed to have been extinguished and written off on the NCLT Approval date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> ³⁰ .
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5.2. Accordingly, in the case of assessee, all the liabilities prior to the date of order i.e. 16.12.2021 stands extinguished

and thus, the present appeal is rendered infructuous.
Accordingly, the present appeal is dismissed as infructuous.

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

Order is pronounced in the open court on 10th August, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

Girish Agrawal)
Accountant Member

Date:10th August, 2023

JD, Sr. P.S.

Copy to:

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

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata