

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.699/Kol/2023
Assessment year: 2011-12

M/s MSP Metalics Limited.....Appellant
1, Garstin Place, Orbit House,
3rd Floor, Room No.3B,
Kolkata - 700001.
[PAN: AACCA5907D]

vs.

ACIT, Circle-1(1), Kolkata.....Respondent

Appearances by:

Shri Amit Chowdhury, ACA, appeared on behalf of the appellant.
Shri P. P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 13, 2023

Date of pronouncing the order : September 26, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.05.2023 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee has moved an application, wherein, it has been stated as under:

"In this regard, most respectfully, it is submitted, that the appellant company taken over by the new management through insolvency proceedings (CIRP) under section 31 of the IBC vide NCLT order dated 11.07.2022. Copy of the NCLT order enclosed.

The appellant do not want to pursue the above appeal anymore in view of the recent Judgment of Ghanashyam Mishra and Sons Private Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) the Hon'ble Apex Court laid down the law that all claims not part of the resolution plan, shall stand extinguished and no person will be entitled to initiate continue any proceedings in respect to a claim, which is not part of the resolution plan.

In view of Apex Court decision, Finance Act 2022, has inserted section - 156A which authorizes the AO to modify the demand order issued under Section 156 in conformity with the order of the adjudicating authority, reducing the demand of tax, interest, penalty, fine, or any other sum.

In view of the Apex Court decision and insertion of section 156A of the Income Tax Act, demand has become infructuous. As such assessee don't want to pursue the above appeal before the Hon'ble ITAT and like to withdraw the above appeal."

3. The ld. counsel for the assessee, therefore, has submitted that he may be allowed to withdraw the present appeal. The ld. counsel however has been informed that the withdrawal of this appeal will not in any manner be treated as immunity from raising of the tax demand etc. by the department, subject to the exceptions, defence or legal remedies otherwise available to the assessee.

4. Subject to the above observation, the appeal of the assessee is hereby dismissed as withdrawn.

Kolkata, the 26th September, 2023.

Sd/-
[डॉक्टर मनीष बोर्ड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 26.09.2023.

RS

Copy of the order forwarded to:

1. M/s MSP Metallics Limited
2. ACIT, Circle-1(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches