

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH, "C" KOLKATA

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.1079/Kol/2018
Assessment Year: 2012-13**

ACIT, Circle-1(1), Kolkata	vs	M/s. McNally Bharat Engineering Co. Ltd. 4, Mangoe Lane, Kolkata-700001. PAN: AABCM 9443 R
(Appellant)		(Respondent)

**C.O. No.76/Kol/2018
(Arising out of ITA No. 1079/Kol/2018)
Assessment Year: 2012-13**

M/s. McNally Bharat Engineering Co. Ltd. 4, Mangoe Lane, Kolkata-700001. PAN: AABCM 9443 R	vs	ACIT, Circle-1(1), Kolkata
(Cross-Objector)		(Respondent)

**ITA No.1080/Kol/2018
Assessment Year: 2013-14**

ACIT, Circle-1(1), Kolkata	vs	M/s. McNally Bharat Engineering Co. Ltd. 4, Mangoe Lane, Kolkata-700001. PAN: AABCM 9443 R
(Appellant)		(Respondent)

**C.O. No.77/Kol/2018
(Arising out of ITA No. 1080/Kol/2018)
Assessment Year: 2013-14**

M/s. McNally Bharat Engineering Co. Ltd. 4, Mangoe Lane, Kolkata-700001. PAN: AABCM 9443 R	vs	ACIT, Circle-1(1), Kolkata
(Cross-Objector)		(Respondent)

Present for:

Assessee by : Sonu Rathi, AR
Revenue by : Rakesh Kumar Das, CIT, DR

Date of Hearing : 18.04.2024

Date of Pronouncement : 22.04.2024

ORDER

PER SONJOY SARMA, JM:

These appeals preferred by the revenue against the order of ld. CIT(A) -22, Kolkata passed u/s 250 of the I.T. Act of for A.Y. 2012-13 and 2013-14 respectively. Both the orders has been passed vide order dated 28.02.2018. Against the impugned orders, assessee also filed two separate cross-objections for A.Y. 2012-13 and 2013-14 respectively.

2. At the outset, ld. counsel for the assessee submitted that in view of the orders of the ld. National Company Law Tribunal (hereinafter referred to as the 'NCLT') vide its order dated 29th April, 2022 ('Insolvency Commencement Order') had admitted the application for initiation of Corporate Insolvency Resolution Process ('CIRP') against the company in Company Petition No. CP (IB) 891/KB/2020 filed by Bank of India in accordance with section 7 of the Insolvency and Bankruptcy Code, 2016 and in consequent to ld. NCLT order, the Resolution Plan proposed by BTLEPC Ltd. ('Resolution Applicant') for the company was approved by NCLT on 19th December, 2023 by accepting the bid of the Resolution Applicant. All the liabilities raised against the assessee for the impugned assessment years have ceased to exist and the orders of assessing officer to be set aside. The ld. AR also stated that the resolution applicant is currently in the process of taking control over the affairs of the company and complying with the immediate legal requirements for the same.

3. We have heard the rival contentions and perused the material before us. The revenue filed above captioned appeals against the assessee-company for A.Y. 2012-13 and 2013-14 against the order passed by ld. CIT(A) setting aside the addition made by the assessing officer. The assessment u/s 143(3) of the Act for A.Y. 2012-13 was framed on 30.03.2016 and for A.Y. 2013-14 framed on 22.12.2016. So far as our understanding when assessment year 2012-13 & 2013-14 orders were passed the order of ld. NCLT was not available at that point of time, the ld. assessing officer had no action to examine the same and comes effect to the findings of the ld. NCLT at that point of time. We on the perusal of the assessment order do not find any reason referring to the submission if any made by assessee about the ld. NCLT order under these given facts and circumstances. The assessee is one hand pleading that in pursuance to the order of NCLT, Kolkata in I.A.(IB) No. 1391/KB/2023 in CP (IB) No. 891/KB/2020 dated 19.12.2023 all the tax liabilities of the assessee for the impugned assessment years are stand ceased. On the other hand, ld. assessing officer had no occasion to examine the effect of the orders of ld. NCLT. Therefore, since demand has been raised by the assessing officer has already been set aside by ld. CIT(A) passing the impugned order which is challenged before this Tribunal by revenue and in continuance of these appeals before this Tribunal. The ld. NCLT also extinguished all consequential demand while passing the order dated 19.12.2023. We, therefore, feel it necessary to examine the limited issue to the effect that whether the tax liability observed to cease on account of order of ld. NCLT (supra). We, therefore, restore the matter to file of

assessing officer solely to examine the effect of order in accordance with law. Since, we set aside the appeals of revenue to examine the effect in consequence to ld. NCLT order (supra). Therefore, the consequential cross-objections filed by the assessee are become infructuous. Accordingly, cross-objections filed by the assessee are dismissed.

4. In the result, the appeals of the revenue are allowed for statistical purposes and cross-objections filed by the assessee are dismissed.

Order pronounced in the open court on 22.04.2024

Sd/-

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata: 22.04.2024
Biswajit, Sr. P.S.

Copy to:

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

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata