

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITAs No.935, 936 & 937/Del/2023
Assessment Years 2016-17, 2016-17- & 2017-18

Unitech Machines Limited C/o Vivek Raheja, 908 D-Mall Netaji Subhash Place, New Delhi	Vs.	ACIT, Central Circle-25 New Delhi
TAN/PAN: AAACU0313P		
(Appellant)		(Respondent)

Applicant by:	None		
Respondent by:	Sh. Amit Katoch, Sr.DR		
Date of hearing:	12	06	2024
Date of pronouncement:	19	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned Appeals have been preferred by the Assessee against the respective orders passed by the CIT(A) for captioned assessment years as tabulated below:

Sr. No.	ITA/CO Nos.	Appeal	A.Y.	CIT(A) Order dated	Assessment Order/ penalty order dated	Remarks
1.	935/Del/2023	Assessee	2016-17	CIT(A), Delhi-31 order dated 27.01.2023	Penalty order dated 28.06.2019	Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.
2.	936/Del/2023	Assessee	2017-18	CIT(A), Delhi-31 order dated 27.01.2023	assessment order dated 10.12.2019	Assessment Order under section 144 of the Income Tax Act, 1961.
3.	937/Del/2023	Assessee	2016-17	CIT(A), Delhi-31 order dated 27.01.2023	Penalty order dated 25.12.2018	Assessment Order under section 143(3) of the Income Tax Act, 1961.

2. The assessee has raised its grievance by respective grounds of appeal seeking to challenge the additions/disallowances in the quantum assessment relevant to A.Y. 2016-17 and imposition of penalty under Section 271(1)(c) of such quantum additions. Similar challenge has been placed towards quantum additions in A.Y. 2017-18.

3. When the matter was called for hearing, none appeared for the assessee. It is seen from the case record that several opportunities have been given to the assessee. The matter was accordingly proceeded *ex-parte*.

4. The Id. DR for the Revenue relied upon the respective orders of the lower authorities.

5. It is seen from the first appellate order passed in all the three captioned appeals that the orders have been passed *ex-parte*. It is further noted from the first appellate order that the assessee is stated to have gone into insolvency proceeding and the NCLT Delhi Bench vide order dated 01.03.2019 declared moratorium in terms of Section 14 of IBC whereby it has prohibited the institution of suit or continuation of pending suits or proceedings against the assessee including the execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration panel or Other authority. Despite such position, the CIT(A) has proceeded *ex-parte* against the assessee in all the three cases.

6. As further noted, the appeal before the Tribunal against such appellate orders in the respective appeal has been filed by the Resolution Professional appointed by the NCLT. The order passed by the NCLT declaring moratorium is not available before the Tribunal.

7. The Tribunal in the case of *Spentex Industries Ltd. vs. ACIT in ITA No.4825/Del/2018 & ors., order dated 25.04.2024* has decided the issue as under:

“3. In view of the aforesaid, we proceed to dispose of the appeals ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials available on record. It is observed, certain

financial creditors of the assessee company filed application under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the assessee before the National Company Law Tribunal (NCLT), since, the assessee had failed to repay the debt liability. Post filing of the present appeals, the NCLT principal bench, New Delhi, has passed an order on 03-01-2020 admitting the application of the financial creditors and initiating CIRP against the assessee. Further, upon admission of the application of the financial creditors, moratorium under section 14(1) of the IBC has been imposed. A copy of the aforesaid order of learned NCLT is available on record.

4. Thus, in view of the moratorium granted by NCLT, all proceedings in any court of law, Tribunal etc. cannot continue. That being the position in law, no useful purpose is going to be served in keeping the appeals pending. Therefore, in our view, these appeals need to be consigned to the records.

5. In view of the aforesaid, we dismiss these appeals in limine. However, liberty is granted to the parties to seek revival of the appeals, in case, order of NCLT is either reversed or modified by any higher judicial Authority or if there is any change in factual or legal position or if it is necessary to do so in the interest of the parties.

6. In the result, the captioned appeals are dismissed for statistical purposes.”

8. In such peculiar backdrop, it is in fitness of things that the order of CIT(A) is set aside and restored to the file of the CIT(A). The CIT(A) shall adjudicate the issue afresh in the light of the decision rendered by the Co-ordinate Bench of the Tribunal in the case of *Spentex Industries Ltd. (supra)* and in accordance with law. The principles of natural justice shall be observed while adjudicating the issue arising in the appeal.

9. In the result, all the captioned appeal of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 19th June, 2024.

Sd/-

**[SUDHIR KUMAR]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat