

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA NO. 3615/MUM/2024 : A.Y : 2013-14**

Asstt. Commissioner of Income  
Tax-8(2)(1), Mumbai.  
(Appellant)

Vs. MITC Metals Pvt. Ltd.,  
104, Shiv Ashish Complex,  
Diamond Road, Chembur,  
Mumbai 400 071.  
**PAN : AAKCS7989D** (Respondent)

**Appellant by : Smt. Sanyogita Nagpal**  
**Respondent by : None**

**Date of Hearing : 03/09/2024**  
**Date of Pronouncement : 03/09/2024**

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The Revenue has filed this appeal challenging the order dated 29.05.2024 passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' for short) and it relates to Asst. Year 2013-14.

2. The Revenue is aggrieved by the decision of CIT(A) in holding that the demand raised by the Assessing Officer through assessment order dated 26.05.2023 shall get extinguished in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 ('IBC' for short) and further holding that the assessment proceedings initiated by the Assessing Officer after the moratorium period is *void ab initio* under Section 14 of the IBC.

3. None appeared on behalf of the assessee. The learned DR submitted that the Assessing Officer passed the assessment order in the hands of Shree Vaishnav Casting Private Limited on 26.05.2023 in the reassessment proceedings initiated under Section 147 of the Income Tax Act, 1916 ('Act' for short). The above said company was merged into the present assessee, viz. MITC Metals Private Limited by virtue of order passed by National Company Law Tribunal (NCLT). The impugned assessment order was passed prior to the order passed by NCLT. At that point of time, the NCLT, vide its order date 11.03.2019, had imposed moratorium on initiation of any legal proceedings in terms of Section 14 of the IBC. In view of the above, the CIT(A) held that the assessment proceedings initiated after the imposition of moratorium is *void ab initio*.

4. The learned DR submitted that the moratorium will not affect the determination of the tax liability of the assessee and in this regard she placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of M/s. Embassy Property Developments Pvt. Ltd. vs State of Karnataka & Ors. (Civil Appeal No. 9170 of 2019 dated 03.12.2019) and also on the decision rendered by the Hon'ble Delhi High Court in the case of Power Grid Corporation of India Ltd. vs Jyoti Structures Ltd. dated 11.12.2017. The learned DR further submitted that the CIRP proceedings have since been completed by NCLT vide its order dated 31.07.2023. Accordingly, the learned DR submitted that the CIT(A) was not justified in holding the impugned assessment proceedings *void ab initio*.

5. We have heard the learned DR and perused the record. We noticed that the National Company Law Appellate Tribunal ('NCLAT' for short) has held in

the case of Mohan Lal Jain in the capacity of the Liquidator of Kaliber Associates Pvt. Ltd. vs ITO that there is no bar in making assessment during the period of moratorium, however, the order cannot be enforced, meaning thereby recovery of tax pursuant to the order cannot be made. We noticed that the view expressed by CIT(A) is contrary to the law declared by the NCLAT in the above said case. Accordingly, we find merit in the contentions of learned DR. Accordingly, we set-aside the order passed by CIT(A) and restore all the issues to his file for adjudicating them afresh in accordance with law. The assessee shall be provided adequate opportunity of being heard.

6. In the result, the appeal filed by Revenue is allowed.

Order pronounced in the open court on 3<sup>rd</sup> September, 2024.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 03/09/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai