

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.1580/Del/2025  
(ASSESSMENT YEAR 2013-14)

ITA No.1581/Del/2025  
(ASSESSMENT YEAR 2022-23)

Hi Tech Grain Processing Private Limited-In Liquidation, C/o Mr. Chanchal Dua- Liquidator Arck Resolution Professionals LLP 409, 4 <sup>th</sup> Floor, Ansal Bhawan 16, KG Marg (Connaught Place) New Delhi-110001.  PAN-AABCH3186L	Vs.	DCIT, Central Circle-1, Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Upvan Gupta, Adv.
Department by	Shri Manish Gupta, Sr. DR
Date of Hearing	11.08.2025
Date of Pronouncement	29.08.2025

**ORDER**

**PER MADHUMITA ROY, JM:**

Both the appeals filed by the assessee are directed against the orders both dated 17.01.2025 passed by the Ld. Commissioner of Income Tax (Appeals)-23, Delhi against the assessment orders passed under Section 147 r.w.s 144 and 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') for Assessment Years 2013-14 and 2022-23.

2. The initiation of proceedings by the Ld. Assessing Officer during the pendency of liquidation process before the NCLT is illegal and barred by law and liable to be quashed as the case made out by the assessee in support of which the Ld. AR has relied upon the judgement passed by the Hon'ble Apex Court in the case of CIT vs. Moser Baer India Limited in Civil Appeal No.4704 of 2024.

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3. The brief facts leading to the case are that the assessee company has filed its return of income under Section 139 of the Act for Assessment Year 2013-14 declaring a total income of Rs.5,63,29,750/-. Subsequently, the case of the assessee was reopened under Section 147 of the Act. Notice under Section 148 of the Act was issued to the assessee for escaping assessment on

account of accommodation entries of Rs.26,35,88,650/- dated 28.06.2022. Subsequently, the notice under Section 142(1) dated 27.01.2023 was issued whereupon the assessee on 15.02.2023 replied that the company is under going the liquidation process and the Hon'ble NCLT, New Delhi, by and under the order dated 31.10.2019 had initiated Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor in the matter of the assessee and also applied moratorium on all legal proceedings under the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"). The copy of the said NCLT order dated 31.10.2019 was dully attached to the said reply. In that view the matter, the initiation of the proceedings during the period of moratorium are illegal and unsustainable in terms of the provisions of Insolvency and Bankruptcy Code, 2016 as contended by the Ld. AR.

4. We have heard the rival submissions made by the respective parties and we have also perused the material available on record.

5. In fact, the Assessing Officer passed the assessment order dated 02.12.2019 for Assessment Year under consideration upon making addition of Rs.26,35,88,650/- on account of accommodation entries. The Hon'ble NCLT by and under the order dated 13.04.2022 directed for liquidation of the assessee company, a copy whereof has been filed before us. It is the case of the assessee that in terms of the Section 33(5) of the Act, when a

liquidation order has been passed no suit or other legal proceedings shall be instituted against the Corporate Debtor. In that view of the matter, the assessment order is void ab initio and liable to be quashed. It is relevant to mention that the Code overrides the Income Tax Act as per the judgments passed by different judicial forum. The Official Liquidator namely Sh. Chanchal Dua has also filed a report before us main contention whereof is as follows:

*“4. That a Claim of Rs. 49,87,69,182/-was also received from HDFC Bank for their Term Loan to the Corporate Debtor, which was admitted by the liquidator for Rs.48.86.32,429/-, HDFC Bank had Exclusive First Charge on one Noida Property of the Corporate Debtor, which was not relinquished by them to the Liquidation Estate, which has been sold and realised by HDFC Bank under Section 52 of the IBC 2016.*

*5. That during the Liquidation Process, all the Physical Assets of the Corporate Debtor have been Sold and Realised by the Liquidator and the realised amount have been distributed in accordance with Section 53 of IBC 2016, keeping a provisional amount for further estimated liquidation/contingency expenses. The details of the Amount Distributed upon realization from the Sale of Assets, have been given below:*

S. No.	Secured Financial Creditor	Claim Amt. Admitted (in INR)	Distribution amount as per Section 53 of the Code (in INR)
1	State Bank of India	2,92,61,89,196	6,06,87,174
2	HDFC Bank	44,82,04,036	92,92,949
3	Bank of India	57,79,79,820	1,19,89,242*
4	Union of India	47,23,11,063	97,97,217
5	Indian Bank	30,82,67,672	63,90,832
6	IndusInd Bank	15,98,98,454	33,13,765
7	SIDBI	6,94,46,255	14,40,767
	<b>Total</b>	<b>4,96,22,96,496</b>	<b>10,29,11,949</b>

*Net amount paid to Bank of India is Rs.1.12,99,242/- after setting off Rs.6,90,000/- (Corporate Debtor's FDR value with Bank of India)*

6. It is an admitted position, under the facts and circumstances of the matter, that the company is under liquidation not in a position to pay outstanding dues including taxes. Moreso, having regard to the Clause 33(5) of the Insolvency and Bankruptcy Code, 2016 barring institution of any legal proceeding against the corporate debtor, and the order passed by the Hon,ble Supreme Court in the case of CIT vs. Moser Baer India Limited (supra) we find no merit in the matter and the assessment order making addition of Rs.26,35,88,650/- affirmed by the First Appellate Authority is found to be void-ab-initio and unsustainable in the eyes of law and the order impugned is, thus, quashed.

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7. The issue involved in this appeal is identical as we have decided above in ITA No. 1580/Del/2025 and thus, the same is applied mutatis mutandis to this appeal and the same is allowed.

8. Both the appeals preferred by the assessee are allowed.

Order pronounced in the open court on 29.08.2025

**Sd/-**  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Dated: 29.08.2025

*Rohit, Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI