

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1521/KOL/2019  
Assessment Year: 2014-15**

DCIT, Central Circle-4(1), Kolkata	Vs.	M/s. Impex Ferro Tech Ltd.
<i>(Appellant)</i>		<i>(Respondent)</i>
<b>PAN: AAACI5448R</b>		

**I.T.A. No.: 1640/KOL/2019  
Assessment Year: 2014-15**

M/s. Impex Ferro Tech Ltd.	Vs.	ACIT, Central Circle-4(1), Kolkata
<i>(Appellant)</i>		<i>(Respondent)</i>
<b>PAN: AAACI5448R</b>		

**Appearances:**

**Department represented by** : Praveen Kishore, CIT (DR).

**Assessee represented by** : None.

Date of concluding the hearing : 14-October-2025

Date of pronouncing the order : 27-October-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

These two cross-appeals filed by the Revenue and the assessee are against the order of the Commissioner of Income Tax (Appeals)-22, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2014-15 dated 29.03.2019, which has been passed against the assessment order u/s 144C/143(3)/145(3) of the Act, dated 26.12.2017. Since both



the appeals were heard together, relate to the same issues and therefore, they are being decided vide this common order for the sake of convenience and brevity.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 19 days. An application along with an affidavit seeking condonation of delay has been filed by the assessee stating as under:

*“In this case, the Ld. C.IT (Appeals)-22, Kolkata passed order u/s. 250 of the Act dated 29.03.2010 for A.Y. 2014-15 by partly allowing the appeal of the appellant-petitioner. The said order was received on 20.04.2019. Therefore, the appeal before this Hon'ble Tribunal should have been filed within 19.06.2019. However, the appeal has been filed before this Hon'ble Tribunal on 08.07.2019 (6 & 7th holidays), resulting in a short delay of 16 days beyond the prescribed due date for the following reasons.*

*1) That the said appellate order was handed over to the accountant of the petitioner-company for needful action, who was looking after the company's income-tax matter. He went on leave for a long period and inadvertently omitted to hand over the order and related papers to the authority concerned, which were kept in his drawer under lock.*

*2) That on his joining the duty on or about the last week of June, 2019, he consulted our Lawyer about future course of action in respect of the said order of Ld. C.I.T.(A), who advised that the order is an appealable order independently and hence we need to file an appeal before the Hon'ble Tribunal. However, by that time due date of filing the appeal before the Hon'ble Tribunal expired.*

*3) That having come to know of our duty to file an appeal, as aforesaid, the relevant papers in relation to the above matter were handed over to our Lawyer for preparation and filing of the appeal before this Hon'ble Tribunal, which has been filed on 08.07.2019 and in the process this short delay of 16 days beyond the prescribed due date has been occurred.*

*4) That there was no mala fide intention behind not filing the appeal within the prescribed time, because in that case the petitioner-company would be the sufferer by paying additional income-tax on such an income which is not taxable at all under the Act.*

5) *The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. [167 IT.R. 471 (SC)] has held that the Courts should have a pragmatic and liberal approach while considering the petition for condonation of delay. Their Lordships have also held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be preferred.*

6) *That the impugned unintentional delay of 16 days in filing of the appeal, therefore, is for the good and sufficient reason and hence it is requested that the said short delay may kindly be condoned and the appeal be admitted for disposal on merits of the case."*

1.2. Considering the application as well as the affidavit filed seeking condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

**I. ITA No. 1521/KOL/2019:**

*"1. That on the facts and in the circumstances of the case Ld. CIT(A) has erred in deleting the addition of Rs. 55,22,53,107/- by recording a finding that the AO has not rejected the books of accounts by invoking section 145(3).*

*2. That on the facts and in the circumstances of the case the finding of Ld. CIT(A) that the AO has not invoked the provision of section 145(3) is erroneous since the AO has invoked the said provision while passing the assessment order.*

*3. That on the facts and in the circumstances of the case the Ld. CIT(A)'s decision in deleting the addition of Rs. 55,22,53,107/- is erroneous since such decision is based on erroneous finding contrary to the facts available on record.*

*4. That on the facts and in the circumstances of the case the decision of the LD. CIT(A) may be reversed and the issue may be restored back to the file of AO for examination and verification.*



5. That on the facts and in the circumstances of the case Ld. CIT(A) has erred in deleting the addition of Rs. 2.25 crore on account of share capital and premium received by the assessee from M/s Indian Infotech and Software Ltd.

6. That on the facts and in the circumstances of the case the Ld. CIT(A) has failed to appreciate that neither the assessee nor the share subscriber M/s Indian Infotech and Software Ltd. discharged their primary onus in substantiating the creditworthiness of the subscriber company and genuineness of the transaction in terms of section 68 of the Act in any manner.

7. That on the facts and in the circumstances of the case the share subscriber company is a listed company having full-fledged operational activity as considered by the Ld. CIT(A) are irrelevant consideration for the purpose of section 68 of the IT Act.

8. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the arm's length price adjustment of Rs. 16,10,00,000/- made by the AO/TPO on account of purchase of high ash energy coal by the assessee from its associated enterprises.

9. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in considering internal CUP as the most appropriate method ignoring the fact that CUP method is used in product to product similarity with AEs and non-AEs but the assessee failed to provide CUP analysis like specification, product code, relevant time of purchase and other supporting documentary evidence

10. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in admitting the internal CUP method as the most appropriate method without appreciating the fact that, as per record, no compliance was made by the assessee during the Transfer Pricing Audit proceeding except for filing of the basic details and Transfer pricing study report (TPSR).

11. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred by not appreciating the fact apparent from record that, no compliance was made by the assessee against the detailed show cause notice dated 12.09.2017 issued by the TPO.

12. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred by admitting new facts based on new evidence/document which has not passed the test of Rule 46A of the Income Tax Rules, 1962 before admitting internal CUP as the most appropriate method.

13. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred without showing the sufficient cause which prevented the assessee



*from producing such facts and evidences during the Transfer Pricing Audit proceeding before the TPO and thereby violates Rule 46A of the Income Tax Rules, 1962.*

*14. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or hearing of this appeal.”*

2.1. The assessee is also in appeal before the Tribunal raising the following grounds of appeal:

**II. ITA No. 1640/KOL/2019:**

*“1. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in upholding the addition of Rs.26 crores u/s. 68 of the Act on account of share application money received from three promoter group companies and two non-promoter group companies solely on the ground of the appellant's alleged failure to establish the genuineness of transaction, although he did not dispute the identity and creditworthiness of those share investors.*

*2. That, the Ld. CIT(A) further erred in upholding the addition of Rs.26 crores u/s.68 of the Act alleging non-appearance of the director of the appellant-company in response to notice u/s. 131 of the Act when the basic documents are already on record to hold that the share application moneys received by the appellant against issuance of shares were genuine and hence mere failure of the director to appear before the A.O. cannot be the basis to make addition w/s.68 of the Act.*

*3. That, the Ld. revenue authorities without bringing any cogent material that the money belonged to the appellant has invoked provisions of sec.68 and made addition of Rs.26 crores in spite of the fact that all the three conditions as laid down in sec.68 have been fully satisfied in this case.*

*4. That, the Ld. CIT(A) on incorrect facts erred in upholding the downward adjustment of SDT of Rs. 16,10,00,000/- with three parties by wrongly assuming that these parties were reported by the tax auditor as related parties u/s.40A(2)(b) and transactions were also reported in Form 3CEB in spite of the fact that disclosure of these transactions were made in Form 3CD as per AS 18 due to existence of common key management since the same did not qualify under the criteria of sec.40A(2)(b).*

*5. That, the Ld. CIT(A) failed to appreciate that as none of these parties from whom the appellant made purchases in the domestic market had substantial interest in the appellant's business as per s.40A(2)(b), payments made to them did not fall under clauses (i) to (vi) of sec.92BA of the Act and*

*hence the downward adjustment of SDT of Rs. 16,10,00,000/- upheld by him is factually incorrect and liable to be quashed.*

*6. That, as the order of Ld. CIT(A) on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.*

*7. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”*

2.2 The assessee has filed an additional ground of appeal in ITA No. 1521/KOL/2019, which is the Revenue's appeal and is not the appeal of the assessee, which is as under:

*“That the reference made by Ld.AO to the Ld. TPO u/s 92CA(1) of the Act is without jurisdiction as per CBDT Instruction No 15/2015 dated 16th October 2015 and therefore the assessment order passed u/s 143(3) of the Act is time barred and liable to be quashed.”*

3. Brief facts of the case are that the assessee had filed its return of income for the AY 2014-15 on 21.09.2014 showing loss of ₹70,33,25,418/-. A survey was carried out at the office premises of VNG Mercantile Ltd. The assessee is primarily engaged in the business of manufacture and sale of Ferro alloys. The case was selected for scrutiny by the Assessing Officer (“the Ld. AO”) and the notice u/s 143(2) of the Act was issued and served upon the assessee. Subsequently other statutory notices were issued and the replies received were considered. The Ld. AO considered the submissions made by the assessee, went through the facts of the case and the judicial pronouncements and the legal issues involved, and thereafter assessed the total income of the assessee at ₹103,28,74,701/- u/s 143(3)/144C/145(3) of the Act. Penalty proceedings under the relevant provisions of the Act were also initiated. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who, vide the impugned order, partly allowed the appeal. Aggrieved with the order of the Ld. CIT(A), both the



assessee as well as the revenue have filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee; therefore, the case was heard with the assistance of the Ld. DR. It was submitted by the Ld. DR that in this case, the NCLT has passed an order and the Interim Resolution Professional has also been appointed. A copy of the order of the NCLT was also filed earlier on 23.07.2024 for the CIRP process started on 02.05.2024. A perusal of para 8(b) at page 14 of the order in **TP 17/KB/2022** in the matter of **Auroma Coke Limited vs. Impex Ferro Tech Pvt. Ltd.** order dated 02.05.2024 which is in the context of the petition filed u/s 9 of the Insolvency and Bankruptcy Code, 2016 and section 433(e)/433(f) of the Companies Act, 1956 shows that the Corporate Insolvency Resolution Process (CIRP) had been initiated on the petition filed u/s 9 of IBC, 2016 by **Auroma Coke Limited** and as per para 8(b), it has been ordered that there shall be a moratorium u/s 14 of the IBC. Since in this case, the petition u/s 9 of IBC, 2016 has been admitted and the CIRP has commenced and moratorium u/s 14 of the IBC, 2016 has been enforced, therefore, the appeal before the Tribunal becomes infructuous.

6. We have considered the submission made by the Ld. DR. In a similar case of the assessee, the appeal was dismissed as infructuous by the coordinate Bench after considering the fact that the CIRP had started. The relevant extract from the order in I.T.A. Nos. 292 & 293/KOL/2022 for A.Y. 2012-13 in which the constitution of the Bench was the same, is as under:

6. None appeared on behalf of the assessee; therefore, the case was heard with the assistance of the Ld. DR. It was submitted by the Ld. DR that in this case, the NCLT has passed an order and the Interim Resolution Professional

has also been appointed. A copy of the order of the NCLT was also filed earlier for the CIRP process started on 02.05.2024. A perusal of para 8(b) at page 14 of the order in **TP 17/KB/2022** in the matter of **Auroma Coke Limited vs. Impex Ferro Tech Pvt. Ltd.** order dated 02.05.2024 which is in the context of the petition filed u/s 9 of the Insolvency and Bankruptcy Code, 2016 and section 433(e)/433(f) of the Companies Act, 1956 shows that the Corporate Insolvency Resolution Process (CIRP) had been initiated on the petition filed u/s 9 of IBC, 2016 by **Auroma Coke Limited** and as per para 8(b), it has been ordered that there shall be a moratorium u/s 14 of the IBC. Since in this case, the petition u/s 9 of IBC, 2016 has been admitted and the CIRP has commenced and moratorium u/s 14 of the IBC, 2016 has been enforced, therefore, the appeal before the Tribunal becomes infructuous.

7. In a similar case, the Coordinate Bench of the Tribunal of the ITAT, Kolkata 'C' Bench in the case of **Kohinoor Steel (P.) Ltd. v. Income-tax Officer [2024] 159 taxmann.com 571 (Kolkata - Trib.)** have also held as under:

■ *It was observed that the operational creditor of assessee has filed the petition before the NCLT and as per the assessee's own case for its CIRP as per rule 4 of Insolvency & Bankruptcy Code (IBC), 2016 no proceedings can continue against the corporate debtor i.e. the assessee after the order of the NCLT. In view of this and drawing further force from the order of co-ordinate bench of Tribunal in the case of Palogix Infrastructure (P.) Ltd. v. Asstt. CIT [2022] 135 taxmann.com 73/193 ITD 329 (Kol. - Trib.) 2021 (10) TMI 1255-ITAT - KOLKATA, dated 27-10-2021 all the appeals before the Tribunal filed by the assessee is to be dismissed as infructuous. [Para 9]*

■ *It is pertinent to note that as per the provisions of section 14 of the IBC Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority shall be prohibited during the moratorium period. [Para 9.1]*

■ *Further, it is found that section 31 of the IBC relates to approval of the resolution plan and in terms of section 31(1) of the IBC on approval, the resolution plan becomes binding on corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force. The Supreme Court in the matter of Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweis Asset Reconstruction Co. Ltd. [2021] 126 taxmann.com 132/166 SCL 237 (SC) [2021] 9 SCC 657 has considered the scope of section 31 (1) of the IBC and has held that once the resolution plan is sanctioned under section 31(1) of the IBC, the claims provided in the plan will stand frozen and all such claims*

*which are not part of the plan will stand extinguished. [Para 9.2]*

■ ***The law is well settled that on the approval of the resolution plan in terms of section 31 of the IBC, the dues including the statutory dues of the Government or local authority, if not part of the resolution plan, gets extinguished and no proceedings in respect thereof for a period prior to the date of approval under section 31 would continue. The decision of the Calcutta High Court in West Bengal State Electricity Distribution Company Ltd. v. Sri Vasavi Industries Ltd. [2022] 143 taxmann.com 96/174 SCL 199 2022 (7) TMI 580 - CALCUTTA HIGH COURT makes it clear that any claim not made during the course of CIRP and before approval of resolution plan shall automatically be extinguished and the corporate debtor is deemed to start its operations with a clean slate after the resolution plan is approved. [Para 9.5]***

■ ***The provisions of section 238 of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. It has been consistently held by the Supreme Court that the IBC is a complete Code in itself and in view of the provisions of section 238 of the IBC, the provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. [Para 9.7]***

■ ***As per section 31 of the Code, resolution plan as and when approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the resolution plan. Thus, this will prevent State authorities and Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan. Thus, in view of the above, no proceedings can be initiated against the corporate debtor, that is, assessee-company including income tax proceedings and recovery of demand or giving effect of any order. It is well settled now that IBC has an overriding effect on all the acts including Income-tax Act which has been specifically provided under section 178(6) as amended with effect from 1-11-2016. [Para 9.8]***

■ ***A reading of the provisions under sections 13 and 14 of the Code along with the decision in Ghanashyam Mishra & Sons (supra), clearly shows that once the proceedings have commenced by institution of application under section 7 or 9 or 10 of the Code, the continuance of the pending proceedings is prohibited and when once they reach the logical conclusion with due***

*approval of the resolution plan by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. At any rate, for the time being, this appeal cannot be proceeded with during the continuation of the proceedings under the Code. [Para 9.9]*

■ *However, depending upon the result of such proceedings before the adjudicating authority in respect of the corporate debtor, appropriate steps if any, may be taken by the assessee. Therefore, the leave is to be granted to the assessee to seek the restoration of the appeal, if necessitated by the orders in the CIRP. [Para 9.10]*

■ *The issue of limitation in filing fresh appeal, if need be, has already been dealt with by the Supreme Court in NDMC v. Minosha (India) Ltd. [2022] 138 taxmann.com 73/172 SCL 675/8 SCC 384 wherein on consideration of section 60(6) of the Insolvency and Bankruptcy Code, 2016, it was held that the entire moratorium period will be excluded in computing limitation in respect of proceedings at the hand of a corporate debtor. However, the Assessing Officer is at liberty to make an application for re-institution of the instant appeal if resolution process ends in IBC, 2016. Accordingly, the appeal of the assessee is to be dismissed as infructuous. [Para 9.11]*

**{emphasis supplied}**

8. Since the provisions of IBC override the provisions of the IT Act, 1961 as is held in the judicial pronouncements cited above that the resolution applicant has to start on a clean slate and all litigations come to a stop, therefore, as is held in the decision of the Coordinate Bench in the case of **Kohinoor Steel (P.) Ltd.** (supra), the appeals of the Revenue or the assessee cannot continue as only the claims which are made part of the resolution plan can be enforced. Hence, both these appeals become infructuous and are hereby dismissed. In the event of the resolution plan not being accepted at any stage or being rejected for any reason, the assessee shall be at liberty to get the appeals revived before the Tribunal by filing an appropriate application within the limitation permissible.

9. In the result, both the appeals filed by the assessee are dismissed as infructuous.

9. Since the facts of the present case are identical, therefore, following the findings in the case of the assessee for the A.Y. 2012-13, as the appeals cannot continue on account of the provisions of IBC,



2016 and the moratorium imposed, we dismiss both the appeals i.e. of the assessee as well as of the Revenue on account of being infructuous. In the event of the resolution plan not being accepted at any stage or being rejected for any reason, both the assessee as well as the Revenue shall be at liberty to get the appeals revived before the Tribunal by filing an appropriate application within the limitation permissible.

10. In the result, both the appeals filed by the Revenue and the assessee are dismissed as infructuous.

**Order pronounced in the open Court on 27<sup>th</sup> October, 2025.**

*Sd/-*

**[George Mathan]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 27.10.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **DCIT, Central Circle-4(1), Kolkata.**
2. **ACIT, Central Circle-4(1), Kolkata.**
3. **M/s. Impex Ferro Tech Ltd., 35, Chittaranjan Avenue, 3<sup>rd</sup> Floor, Kolkata, West Bengal, 700012.**
4. CIT(A)-22, Kolkata.
5. CIT-
6. CIT(DR), Kolkata Benches, Kolkata.
7. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata