

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)  
&**

**SHRI MAKARAND VASANT MAHADEOKAR (ACCOUNTANT MEMBER)**

**I.T.A. No. 3407/Mum/2025  
Assessment Year: 2021-22**

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| <b>JSW Steel Coated Products Ltd.</b><br>(Successor of M/s. Asian Colour Coated Ispat Ltd.)<br>JSW Centre, Bandra East<br>Bandra (East), S.O.<br>Mumbai - 400051<br><b>[PAN: AAFCA1873K]</b> | Vs. | <b>Deputy Commissioner<br/>of Income Tax, Circle –<br/>5(2)(1), Mumbai</b> |
| <b>(Appellant)</b>   |     | <b>(Respondent)</b>  |

|                    |                               |
|--------------------|-------------------------------|
| <b>Assessee by</b> | Shri Rakesh Joshi, A/R        |
| <b>Revenue by</b>  | Shri Vivek Perampurna, CIT DR |

|                              |            |
|------------------------------|------------|
| <b>Date of Hearing</b>       | 11.12.2025 |
| <b>Date of Pronouncement</b> | 31.12.2025 |

**ORDER**

**Per Smt. Beena Pillai, JM:**

Present appeal filed by assessee arises out of order dated 31/03/2025 passed by Ld.CIT(A) – 30, New Delhi [hereinafter “the Ld. CIT(A)”] for assessment year 2021-22 on the following grounds:-

- “1. On the facts and circumstances of the case and as well as in law, the Learned CIT(A) has erred in not giving clear direction to the Learned Assessing Officer to allow carry forward of business losses of previous assessment years amounting to Rs.39,26,81,14,808/-.
2. The appellant craves leave to add, amend, alter or delete the said ground of appeal.
3. On the facts & circumstance of the case, the Learned CIT(A) has erred in dismissing the appeal by treating the same as infructuous, without considering the facts and circumstances of the case.”

**Brief facts of the case are as under:-**

**2.** The assessee M/s. Asian Colour Coated Ispat Ltd. was amalgamated with M/s. JSW Steel Coated Products Ltd., (as per NCLT order dated 30/01/2023 with effect from the appointed dated 01/04/2022), the assessee before this *Tribunal*. It filed its original return of income on 11/03/2022 declaring Nil business income after setting off the brought forward loss of Rs. 649,98,41,752/- from earlier years pertaining to assessment year 2016-17 and 2017-18. The assessee also had brought-forward unabsorbed depreciation of Rs. 3,99,53,359/- pertaining to AY 2016-17. The amalgamation of Asian Colour Coated Ispat Ltd., with assessee was intimated to the assessing authority vide letter dated 02/03/2023. The return was processed by CPC and intimation u/s 143(1) was received by assessee on 21/10/2022 making an adjustment to the income and raising the demand of Rs.110,93,93,470/- after set off of refund of Rs. 3,19,47,386/-.

**2.1.** On receipt of the intimation u/s 143(1) of the Act, assessee filed request for rectification on 18/11/2022 wherein assessee submitted that, brought forward business loss pertaining to assessment year 2016-17 and 2017-18 and brought forward unabsorbed depreciation of 2016-17 was not granted to the assessee. While passing order u/s 154, the CPC computed the total income as Nil after granting the set off of brought forward business loss pertaining to 2016-17 and 2017-18 and brought forward depreciation pertaining to 2016-17, however, in doing so, the CPC passed order without allowing carry-forward of business loss amounting to Rs. 39,26,81,14,808/- pertaining to AY 2016-17,

2017-18 and 2018-19 stating that, the return of income for the captioned years was not furnished before the due date.

Aggrieved by the order passed by Ld.CPC, assessee preferred appeal before Ld.CIT(A).

**3.** The Ld.CIT(A) while considering the submissions of assessee observed and held as under:-

*“7. I have carefully examined the assessment order and the written submissions of the appellant. The grounds of appeal raised by the appellant are decided as under:*

*8. All the grounds including additional grounds raised by the appellant are discussed and decided as under:*

*I have carefully examined the assessment order, the written submissions of the appellant, and the order dated **26.10.2020** passed under section **31 of the Insolvency and Bankruptcy Code (IBC), 2016**, by the Hon'ble National Company Law Tribunal (NCLT). The assessment year under consideration, A.Y. **2021-22** (corresponding to F.Y. **2020-21**), relates to a period prior to the approval of the resolution plan by the Hon'ble NCLT. Consequently, the NCLT's order, which approved the resolution plan and extinguished pre-existing liabilities not specifically accounted for therein, is applicable to the impugned year.*

***8.1** Given the binding effect of the NCLT's order under section **31 of the IBC, 2016**, which takes precedence over conflicting provisions of other laws, including the Income-tax Act, 1961, the grounds of appeal such as the disallowance of carry-forward business losses and the adjustment of refunds against pre-resolution demands—are rendered moot. The approval of the resolution plan extinguishes the appellant's pre-resolution liabilities and entitlements, except those expressly preserved in the plan. As the appellant has not substantiated any provision in the resolution plan that preserves the tax claims or entitlements in question, the present appeal is rendered infructuous and is accordingly dismissed. The Assessing Officer is directed to give full effect to the Hon'ble NCLT's order in accordance with the provisions of the IBC, 2016, and to adjust the appellant's tax position for A.Y. 2021-22 in line with the stipulations of the resolution plan.”*

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this Tribunal.

**4.** The Ld.AR, at the outset, submitted that necessary details regarding the date of filing of the return was provided in the return of income. He drew our attention to page 58 of the paperbook wherein the details of losses to be carried forward to future years have been regarded and the date of filing of the return has also been mentioned therein for assessment years 2016-17, 2017-18 and 2018-19. The Ld.AR thus submitted that all necessary details are available on record which was not considered by the authorities below.

**4.1.** Subsequently, the Ld.AR referring to the decision of NCLT dated 26/10/2020 wherein the *Tribunal* had rejected the carry forward of loss while approving the resolution plan. It is submitted that against this order, assessee had preferred an appeal before National Company Law Appellate Tribunal (NCLAT), Principal Bench situated in New Delhi in Company Appeal (AT)(Insolvency) No. 992 of 2020. The Hon'ble NCLAT while considering this issue passed following order by observing as under:-

*“7. We have considered submissions made by learned counsel for the parties and perused the record. We may first notice the observations of the Adjudicating Authority made in paragraphs 237 and 238, which are to the following effect:*

*“237. It is being said in the resolution plan that the name of the company may be changed post the effective date. It is also being said that the company (CD) is not ordinarily permitted to carry forward its unabsorbed business losses in case of a change in the shareholding of such company in excess of 51% as per Section 79 of the Income-tax Act, 1961. This restriction does not apply if such change in shareholding takes place pursuant to a resolution plan approved under the IBC, provided that the jurisdictional principal commissioner of Income-tax or the jurisdictional commissioner of Income tax (as appropriate), is afforded reasonable opportunity to express his views in this regard. Accordingly, the Resolution Professional shall, or cause the Company to, serve a notice to*

*jurisdictional principal Commissioner of Income-tax or the jurisdictional commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the NCLT for its approval, and the Company should be permitted to carry forward its unabsorbed business losses notwithstanding a change in the shareholding of the company pursuant to this Resolution Plan.*

**238.** *With regard to this point, when all past liabilities are waived off, nothing has been left as liability, we do not believe this approval could be accorded to the company, therefore carrying forward of losses is not permitted.”*

**8.** *Section 79 of the Income Tax Act, 1961 which deals with carry forward and set off of losses in case of certain companies is to the following effect:*

**“79. Carry forward and set off of losses in case of certain companies.—** *Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year,—*

*(a) in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred;*

*(b) in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred—*

*(i) continue to hold those shares on the last day of such previous year; and*

*(ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated:*

**Provided** *that nothing contained in this section shall apply to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift:*

**Provided further** that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company:

**[Provided also** that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.]”

**9.** The Third Proviso of Section 79 sub-clause (b) provides that nothing contained in Section 79 shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

**10.** As noted above, Resolution Professional has during pendency of approval of the plan issued notice to the Income Tax Authorities but no objection was filed. We may notice the reply of the Resolution Professional where rationale behind Section 79 of the Income Tax Act, 1961 has been highlighted. In paragraphs 4 and 5 of the Reply following has been stated:

**“4.** That the rationale behind section 79 of the Income Tax Act, 1961 was to ensure that taxpayers do not purposely, and with mala fide intent, acquire loss making companies and thereafter enjoy tax benefits of such losses while conducting profitable businesses. Therefore, Section 79 provides that carry forward of losses will not be allowed where there is a change in shareholding of the company, unless the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.

**5.** Upon enactment of the Code, as a measure of incentive to resolution applicants that were acquiring companies through a resolution process, Section 79 of the Income Tax Act, 1961 was amended and proviso 2(c) was added, permitting companies undergoing resolution under the provisions of the Code to carry forward and set-off losses even if there was a change in voting power or shareholding pursuant to approval of Resolution Plan by the Adjudicating Authority. The rationale of amending section 79 of the Income Tax Act, 1961 was to encourage resolution applicants to

*submit resolution plans for revival of distressed companies so that such companies are not forced into liquidation.”*

**11.** *The amendment in Section 79 of the Income Tax Act, 1961 providing for exception in case of a company where change in shareholding takes place pursuant to Resolution Plan was with purpose and object. Thus, claim of carry forward of losses is not impermissible but can only be granted giving opportunity to the appropriate Income Tax Authority. The judgment of JSW Steel Ltd. vs. Ashok Kumar Gulla & Ors. (supra) relied by the counsel for the Appellant was also a case of Successful Resolution Applicant with regard to whom Adjudicating Authority has made observations in so far as carry forward losses was concerned. In paragraph 12 and 17 of the judgment following has been laid down:*

*“12. As to the determination of the issue of ‘carry forward losses’ of the ‘Corporate Debtor’, in spite of notice to the Income Tax Authority, no reply has been filed and no objection has been raised.*

*However, taking into consideration the submissions made by the counsel for the Appellant-‘JSW Steel Limited’ and taking into consideration the provisions of the Income Tax Act, 1961, including Section 79 and the Rules and Regulations framed thereunder, we hold that both the ‘Successful Resolution Applicant’ and the Income Tax Department will be guided by the Income Tax Act, 1961 and the Rules and Regulations framed thereunder. If the ‘Successful Resolution Applicant’ is entitled to ‘carry forward losses’ under Section 79 of the Income Tax Act, it may claim such benefit before the appropriate Authority, who will pass appropriate order in accordance with Section 79 of the Income Tax Act, 1961 and the Rules and Regulations framed thereunder.*

**17.** *In view of the discussions as made above, the part of the impugned order dated 19th December, 2018 so far as it relates to laying down conditions by the Adjudicating Authority is concerned, are set aside and deleted and substituted with clarification as made above. The rest part of the impugned order dated 19th December, 2018 as clarified vide order dated 16th April, 2019 approving the ‘Resolution Plan’ in favour of the Appellant is confirmed.*

*“The appeal is allowed with aforesaid observations. No costs.”*

**12.** *We, thus, are of the view that benefit of carry forward of losses can be availed by the Appellant subject of opportunity to be given to Income Tax Authority to pass appropriate orders in accordance with Section 79. We, thus, are of the view that observations in para 238 deserves to be deleted and are hereby deleted.”*

**4.2.** Per contra, the Ld.DR submitted that, Hon’ble NCLAT has allowed the benefit of carry forward loss to the assessee subject to

the opportunity to Income Tax Department, to consider the claim in accordance with Section 79 of the Act.

We have perused the submissions advanced by both the sides in light of the records placed before us.

**5.** Admittedly, there is no dispute at this stage regarding the allowability of carry forward of loss to the assessee. It is also noted that the assessee has also furnished the necessary documents in order to support its contention that, returned income for assessment year 2016-17 to 2018-19 was filed within the period as specified u/s 139(1) of the Act. Under such circumstances, we are of the opinion that assessee is eligible for carry forward of business loss pertaining to assessment years 2016-17, 2017-18 and 2018-19. We thus, remit this issue to the Jurisdictional Assessing officer (JAO) to consider the claim of assessee and to pass necessary orders in accordance with law.

**Accordingly, grounds raised by assessee stands allowed for statistical purposes.**

**In the result, appeal filed by assessee is allowed for statistical purposes.**

**Order pronounced in the open court on 31/12/2025**

**Sd/-**

**(MAKARAND VASANT MAHADEOKAR)  
Accountant Member**

**Sd/-**

**(BEENAPILLAI)  
Judicial Member**

Mumbai  
Dated: 31/12/2025  
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order

(Asstt. Registrar)  
**ITAT, Mumbai**