

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 125/Bang/2025
Assessment Year : 2017-18

M/s. Metrik InfraProjects Pvt. Ltd., Rep by: M/s. Maniveera Structure Pvt. Ltd., No. 2, 11 th Floor, “Solus”, 1 st Cross, J C Road, Bangalore – 560 027. PAN: AAGCM8605C	Vs.	The Income Tax Officer, Ward – 4(1)(4), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar, Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	03-12-2025
Date of Pronouncement	:	02-03-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the Ld.Addl/JCIT(A)-1, Delhi dated 26/11/2024 in respect of the A.Y. 2017-18 and raised the following grounds:

“1. The order passed by the authorities below insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.

2. The Appellant denies itself liable to be assessed at Rs.3,75,13,702/- as against the returned income of

Rs.2,97,19,347/- for the assessment year 2017-18, on the facts and circumstances of the case.

3. The learned CIT(A) ought to have provided another opportunity of hearing in the interest of natural justice before dismissing the appeal on the facts and circumstances of the case.

4. The learned CIT(A) has erred in upholding the order of the learned assessing officer as the revenue was seized of the fact that the appellant was going through insolvency proceedings under the IBC, on the facts and circumstances of the case.

5. The resolution plan in the case of the appellant has been approved by the Hon'ble National Company Law Tribunal, Special Bench, Bangalore vide IA No.373/2022 in CP(IB) No.60/BB/2020 under section 9 of the Insolvency Bankruptcy Code, 2016, ("IBC") dt:08.09.2023, thus, there cannot be any demand recoverable from the appellant, on the facts and circumstances of the case.

6. Grounds on disallowance of marketing expenses, Rs.76,66,832/-:

a. The authorities below are not justified in disallowing a sum of Rs.76,66,832/- incurred towards marketing as the same is allowable under section 37 of the Act.

b. The expenditure incurred is of revenue in nature and for the purpose of business, thus the expenditure deserves to be allowed on the facts and circumstances of the case.

7. Grounds on disallowance of interest expenditure on delayed TDS remittance, Rs.1,27,523/-:

a. The authorities below have failed to appreciate that the interest expenditure incurred on delayed remittance of TDS is Rs.1,04,186/- which has already been disallowed in the computation of income and no further disallowance is warranted on the facts and circumstances of the case.

b. The sum of Rs.2,31,709/- reported in tax audit report pertains to total interest, including interest accounted in subsequent period, though paid before the due date of filing of the return of income and only a sum of Rs.1,04,186/- pertains to impugned assessment year which has been disallowed by the appellant in the return of income, thus no additional disallowance is warranted on the facts and circumstances of the case.

8. The Appellant denies the liability to pay interest under section 234 of the Act in view of the fact that there is no liability to additional tax as determined by the learned Assessing Officer on the facts and circumstances of the case.

9. The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.

10. In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

2. The brief facts of the case are that the assessee is a builder and property developer and filed their return of income on 31/10/2017 and incurred a loss of Rs. 2,97,19,347/-. Thereafter the assessee's case was selected for complete scrutiny under CASS and notices u/s. 143(2) as well as u/s. 142(1) were issued. The AO had proposed to disallow the expenditure incurred towards the branding and marketing fees and sought for the details about the said expenditure. The assessee had not furnished the details and therefore the AO had made the disallowance u/s. 37 of the Act treating the said expenditure as capital expenditure. The AO agreed to grant the depreciation at 25% treating the said expenditure as an intangible asset. Similarly, the balance interest on the delayed payment of TDS which was not added in the computation was also added as income u/s. 37 of the Act.

3. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the expenditure disallowed by treating the same as capital expenditure is not correct. The assessee had not appeared before the Ld.CIT(A) and therefore the Ld.CIT(A) had dismissed the appeal on the ground of non-prosecution by the assessee.

4. In the meanwhile the insolvency proceedings were initiated by the Operational creditor u/s 9 of the code for initiation of Corporate Insolvency Resolution Process against the assessee. M/S Maniveera Structure P Ltd

was selected as the Resolution applicant and they took over the management of the assessee company. Therefore the present appeal has been filed by the Resolution Applicant on behalf of the assessee company before this Tribunal.

5. At the time of hearing, the assessee initially submitted that the assessee was going through the insolvency proceedings under the Insolvency Bankruptcy Code and a resolution plan was also approved by the Hon'ble National Company Law Tribunal, Special Bench, Bengaluru and therefore the demands could not be recoverable from the assessee. The Ld.AR further submitted that even though the fact of the insolvency proceedings are informed to the revenue as early as 2021, through the letter issued by the newly appointed resolution professional Shri Vinay Mruthyunjaya, no further action has been taken by the revenue to include the demands in the resolution plan and therefore at this point of time, revenue cannot claim the demands from the assessee in view of the provisions of the Insolvency Bankruptcy Code 2016 and also in view of the order passed by the National Company Law Tribunal in which the National Company Law Tribunal has approved the resolution plan. The Ld.AR further submitted that even though there is a demand, the same could not be invoked in view of the above said Insolvency Bankruptcy Code proceedings and therefore the impugned demand based on the impugned order could not be enforced against the assessee and therefore prayed to allow the appeal on this sole reason. The Ld.AR also filed a small paper book in support of his above submissions.

6. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

7. We have heard the arguments of both sides and perused the materials available on record.

8. As seen from the documents submitted in the paper book, as early as on 16/04/2021, there is a moratorium order passed by the National Company Law Tribunal, Bengaluru Bench in C.P.(IB) No. 60/BB/2020 dated 16/04/2021. Thereafter the newly appointed resolution professional had sent a communication to the department on 13/09/2021 informing about his new assignment. We have also perused the approval of the resolution plan given by the National Company Law Tribunal, Bengaluru in which the Tribunal had accepted the resolution plan dated 09/08/2022 given by the Resolution Applicant M/S Maniveera Structure P Ltd. In the said approval order, in paragraph no. 18, the National Company Law Tribunal had observed as follows:

“18. This tribunal vide order dated 22.12.2022 directed the applicant to file revised Form –H and affidavit with regard to clarifying the treatment of government dues, if any, in view of Judgment of Hon’ble Apex Court in the matter of State Tax Officer vs Rainbow Paper Limited and also affidavit with regard to preferential transaction. And further, it was also directed to file two page note regarding the nil value provided under the plan and to the amount claimed. The compliance to the above order was made vide diary Nos. 305, 306, 307 and 308 dated 17.01.2023 and an affidavit was filed clarifying the treatment of Government dues, in view of the judgment in the matter of State Tax Officer vs Rainbow Papers Limited. It was stated that no claims were submitted by any of the statutory authorities in the relevant claims form prescribed by the Code despite intimations sent to the relevant statutory authorities, as well as in response to the public Announcement dated 27.04.2021 for the invitation of claims. Further, it is submitted that the resolution plan provides for treatment of statutory dues under Clause 21, Part D of the Resolution Plan. The Resolution Applicant has assumed the liquidation value of the Company for the purpose of this Resolution Plan to be NIL. As a result, under the Resolution Plan, the value to be paid the Statutory Authorities is NIL in accordance with the liquidation waterfall provided under Section 53 of the Code is NIL. Accordingly, the requirement of Section 30(2)(b) of the Code to pay at least liquidation value to Operational Creditors does not apply in this case. Further, Clause 21.1. of the Resolution Plan states that as on the date of submission of resolution plan, no claims were received from Statutory Authorities and the same is considered as final. Therefore, the resolution plan reflects NIL statutory

dues to be paid as the Government Authorities as they have not submitted claims with proof to IRP / RP in the manner as provided in the Code.”

9. In the above said approval order, it was mentioned that the value to be paid to the statutory authorities is Nil in accordance with the liquidation waterfall provided u/s. 53 of the Code. The Tribunal further observed that the resolution plan reflects Nil statutory dues to be paid as the Government authorities have not submitted claims to prove IRP/RP in the manner as provided in the Code. As seen from the said findings, the Government authorities had not made any claim with regard to their demand within the time granted by the Tribunal. Even after the approval order, no such steps were taken by the Government authorities including the revenue and therefore the approval order approving the resolution plan dated 09/08/2022 has become final. Therefore, the revenue had missed the opportunity to claim their statutory dues before the concerned authorities when the insolvency proceedings are undergoing against the assessee. Therefore, even though there is a demand, it could not be enforced against the assessee in view of the resolution plan approved by the National Company Law Tribunal on 08/09/2023.

10. We have also perused an order passed on the appeal filed by the revenue against the proceedings of the National Company Law Tribunal, Ahmedabad Bench wherein the similar claim of the revenue was not accepted by the Tribunal on the ground that the demands of the income tax department is not part of the resolution plan or not preferred at the relevant time. In paragraph nos. 22 and 23, the following observations were made by the National Company Law Tribunal in the appeal filed by the Assistant Commissioner of Income Tax wherein the revenue had made a claim that their outstanding income tax demands raised by the corporate debtor was not taken into consideration while approving the resolution plan.

“22. The Learned Counsel for the applicant has relied on the judgment of Hon’ble NCLAT in the matter of “Genius Security and Allied Services vs Shivadutt Bannanje and Another” Company Appeal (AT) (CH) (Insolvency) No. 110 of 2021 dated 07.04.2022. Relevant para are as under:

“36. As per the decision of the CoC the 2nd respondent submitted its revised resolution plan dated 03.08.2020. in the Plan Schedule 4 deal with financial proposal for all stakeholders and Schedule-6 deal with payment to creditors and cost of resolution plan and means of finance. Sub-clause- (iv) of Schedule 4 a provision is made to pay a sum of Rs. 8 Crore towards a Financial Creditors Debt. Further, a provision is made to homebuyers who form part of Financial Creditors. Sub clause (xii) of schedule 4 of plan dealt with proposal for operational creditor. It is stated that the total claims filed by Operational Creditors of the company is for an amount of Rs. 3,03,05,776/- out of which claims aggregating to Rs. 99,50,075/- have been verified and admitted for the purposes of CIRP by resolution professional. It is also stated that claims in relation to workmen’s dues as verified and admitted by the resolution professional is shown as nil.

37. Even in plan the outstanding government dues, taxes etc. which was admitted as operational creditor, nil payment has been proposed under the plan towards payment of any Government dues, taxes etc. With regard to the payment of operational creditor sub reads as: the liquidation value is insufficient for payment to the operational creditor of the company as the Liquidation value is insufficient to satisfy the claims of even the secured financial creditor in full and nil payment has been proposed under the resolution plan towards the claims of operational creditor. A sum of Rs. 50 Lakh has earmarked for payment towards CIRP cost. It has been categorically stated that the payment to unsecured creditor including operational creditors and dues to Government/Statutory dues and equity shareholders shown as nil.....

45. From the perusal of the resolution plan this Tribunal finds that there is no infirmity or illegality in the plan as approved by the Committee of Creditors”.

23. The Applicant has further placed on record the decision of Hon’ble NCLAT, Principal Bench, New Delhi in the case of “Dharmindra Constructions Pvt.Ltd. &Anr vs Rajendra Kumar Jain, Resolution Professional of Kudos Cheme Ltd. & Ors dated 18.01.2023 in Company Appeal (AT) (Insolvency) No. 1477 of 2022 wherein it is held that operational creditors are only entitled for minimum of the Liquidation value and there being no breach of any provisions of the Code.”

11. From the said facts, the revenue had missed an opportunity to claim the outstanding demands and to include the same in the resolution plan even though they have knowledge about the insolvency proceedings of the assessee company. In such circumstances, we are of the view that the outstanding demands which was not claimed and included in the resolution plan approved by the National Company Law Tribunal on 08/09/2023 could not be enforced against the assessee. In fact, the department has also not produced any records to show that the said claim was made before the National Company Law Tribunal and the said outstanding demands were included in the resolution plan. Therefore, the contention of the assessee has to be accepted and, on this ground, we hold that the outstanding demands as against the assessee could not be enforced. Even if we dismiss the appeal and the assessment order has been confirmed, the revenue cannot recover the dues in view of the resolution plan approved by the National Company Law Tribunal in IA No 373/2022 in CP(IB) No 60/BB/2020 dated 08/09/2023 and therefore the assessee has no grievance. We, therefore, of the view that the appeal filed by the assessee is an infructuous one since there could not be any demand based on the assessment order.

12. In the result, the appeal filed by the assessee is dismissed as infructuous.

Order pronounced in the open court on 02nd March, 2026.

Sd/-
(PRASHANT MAHARISHI)
Vice – President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 02nd March, 2026.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore