

IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.1229/Mum/2018
(Assessment Year :2013-14)

&

ITA No.1231/Mum/2018
(Assessment Year :2014-15)

M/s. Twinkle Enviro Tech Pvt. Ltd., 317/318, Parvati Industrial Estate, Sun Mill Compound Lower Parel (W) Mumbai – 13	Vs.	ITO(TDS) 2(3)(2), Mumbai Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road (W) Mumbai - 02
PAN/GIR No.AAACT4038N		
(Appellant)	..	(Respondent)

ITA No.1371/Mum/2018
(Assessment Year :2013-14)

ITO(TDS) 2(3)(2), Mumbai Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road (W) Mumbai - 02	Vs.	M/s. Twinkle Enviro Tech Pvt. Ltd., 317/318, Parvati Industrial Estate, Sun Mill Compound Lower Parel (W) Mumbai – 13
PAN/GIR No.AAACT4038N		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Murali Mohan
Date of Hearing	13/06/2022
Date of Pronouncement	27/06/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

ITA No.1229/Mum/2018 (A.Y.2013-14) Assessee appeal & ITA No.1371/Mum/2018 (A.Y.2013-14) Revenue appeal

These cross appeals in ITA No.1229/Mum/2018 & 1371/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-60, Mumbai in appeal No.CIT(A)-60/IT-74/ITO(TDS)-2(3)(2)/2016-17 dated 29/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.201(1A)/201(1) of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.1231/Mum/2018 (A.Y.2014-15) Assessee appeal

This appeal in ITA No.1231/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-228/DCCC-2(4)/2016-17 dated 24/01/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2016 by the Id. Dy. Commissioner of Income Tax, Central Circle-2(4), Mumbai (hereinafter referred to as Id. AO).

Since identical issues are involved in all these appeals, all these appeals are taken up together and are being disposed off by this consolidate order for the sake of convenience.

2. The assessee in A.Y.2013-14 has raised the following grounds:-

1. *The Ld. CIT (Appeals) erred in confirming the stand taken by Ld. I.T.O (TDS) by treating the sale proceeds as deposit and non availing compensation as interest.*
2. *The Ld. CIT (Appeals) erred in confirming the order of Ld I.T.O (TDS) which was against the settled and accepted principles by Income Tax Authorities in the regular income tax assessment of the Appellant from year to year consistently.*
3. *The Ld. CIT (Appeals) erred in confirming the stand taken by the Ld. I.T.O (TDS)) by holding the appellant company was under obligation to refund the sales proceeds of membership for non availing the eligible holidays and /or premature encashment.*
4. *The Ld. CIT (Appeals) erred in confirming the stand taken by the Ld. I.T.O (TDS) by making the provisions of TDS applicable to non availing compensation by invoking the provisions of section 194A of the Income Tax Act, 1961.*
5. *The Ld. CIT (Appeals) erred in confirming the stand taken by the Ld. I.T.O (TDS) by treating the Appellant as assessee in default in terms of section 201 (1) (and 201(1A).*
6. *The Ld. CIT (Appeals) erred in confirming the stand taken by Ld. I.T.O (TDS) by making the provisions of section 206AA of the Income Tax Act, 1961 applicable to the appellant.*
7. *The Ld. CIT (Appeals) erred in not allowing the Mercantile system of accounting while treating part of the NAC as interest and further erred in not directing the Ld. I.T.O (TDS) to consider so called interest in the respective year.*
8. *The Appellant reserves the right to add, to alter and to amplify the Grounds of Appeal.*

3. None appeared on behalf of the assessee. At the outset, we find that assessee's case has been referred to Hon'ble National Company Law Tribunal (NCLT) for Insolvency Resolution Process and an Interim Resolution Professional (IRP) has been appointed in the assessee company. In view of the order passed by the Hon'ble NCLT, we are of the considered view that since the proceedings under Insolvency and Bankruptcy Code (IBC) have already been initiated and moratorium has been declared for prohibiting all the proceedings against the corporate debtor including execution of any judgement, decree or order in any Court of law, Tribunal, Arbitration Panel or other authority, present appeals in the present format are not maintainable, being not filed by Mr. Devendra Jain, Interim Resolution Professional who is empowered to file

appeal only on approval of the committee of the creditors. Hence, both the appeals (the assessee as well as the Revenue) are liable to be dismissed being not maintainable at this stage. We find that the Id. IRP had not impleaded himself in the instant case before us by filing a revised Form No.36. The Form No.36 available in our record is the one signed by the erstwhile Director of the assessee company. As per Section 14 of the Insolvency and Bankruptcy Code, 2016, no proceedings shall remain pending with any Court or Tribunal, once the Insolvency Resolution Proceedings had been initiated on a Corporate Debtor. It is not in dispute that the assessee company is a Corporate Debtor. Similarly, the Revenue has also not filed Revised Form No.36 by impleading the IRP in the instant case.

4. In view of the above, we deem it fit and appropriate to dismiss the appeal of the assessee as well as the revenue as not maintainable with a liberty given to Id. IRP and Revenue to prefer Miscellaneous Application, if so desired, after the completion of Insolvency Resolution Process, in which event, these appeals shall be restored.

5. In the result, appeals of the assessee as well as the Revenue are dismissed as not maintainable.

Order pronounced on 27/06/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/06/2022

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai