

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1705 of 2025**

**IN THE MATTER OF:**

**Principal Commissioner of Income-Tax-3, Ahmedabad                      ...Appellant**

**Versus**

**Kiran Shah,  
Liquidator of Shri Jalaram Rice Industries Pvt. Ltd.                      ...Respondent**

**Present:**

**For Appellant                      :   Mr. Aman A. Mir, Advocate.**

**For Respondent                      :   Mr. Ankur Mittal, Mr. Srijan Jain, Advocates with  
Mr. Kiran Shah, Liquidator in person.**

**O R D E R**  
**(Hybrid Mode)**

**24.02.2026:**        Heard learned counsel for the Appellant and learned counsel for the Respondent. This appeal has been filed against the order dated 17.09.2025 in IA/1347(AHM)2024 in CP(IB) 616 of 2018 by which order application filed by Liquidator has been allowed. Brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) CIRP process against the Corporate Debtor – M/s Shri Jalaram Rice Industries Private Limited commenced vide order dated 12.04.2019. Company was put to liquidation by order dated 19.09.2019.
- (ii) The Successful Auction Purchaser has deducted Tax at source from sale consideration and deposited the same with Income Tax Department. The Successful Auction Purchaser had deposited an

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amount to the tune of Rs.18,77,000/- during the A.Y.2022-23 towards Tax deducted at source.

- (iii) The Liquidator filed Income Tax Return for refund of an amount of Rs.18,64,640/- for the year 2022 along with interest totalling to an amount of Rs.19,39,039/-.
- (iv) On 04.11.2022, the Income Tax Department sent an intimation under Section 143(1) of the Income Tax Act, 1961 stating that there is no payment due to the Company under liquidation, in as much as the claim for income-tax refund has been adjusted against the outstanding demand and interest payable under Section 220(2) of the Income Tax Act, 1961 for an earlier assessment year i.e. demand pertaining to the A.Y. 2011-12.
- (v) After receiving the said intimation, the Liquidator filed an application before the Adjudicating Authority being I.A. No.1347 (AHM) 2024. Prayers have been extracted in Para 1 of the order.
- (vi) The Adjudicating Authority after hearing the parties has allowed the application and directed the Income Tax Department to refund the entire TDS amount.

2. Challenging the order, the Income Tax Department has come up in this appeal. Learned counsel for the Appellant submits that when the demand was due from the Corporate Debtor for A.Y. 2011-12, the Department was fully entitled to set off the said amount from the TDS which was deposited by

the Liquidator. It is submitted that due to above reason the refund was not allowed. Learned counsel for the Appellant has relied on Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

3. Shri Ankur Mittal, learned counsel for the Liquidator submits that in the present case, the Income Tax Department has not filed any claim and no claim having been filed, there is no question of set off with respect to any demand pertaining to year 2011-12. Learned counsel for the Liquidator has placed reliance on judgment of this Tribunal in **“Om Prakash Agarwal vs. Chief Commissioner of Income Tax (TDS), Company Appeal (AT) (Ins.) No.624 of 2020”** decided by this Tribunal on 08.02.2022.

4. We have heard learned counsel for the parties and perused the record.

5. The submission which has been pressed by learned counsel for the Appellant is relying on Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Regulation 29 provides as follows:

**“29. Mutual credits and set-off.**

*Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.”*

6. Regulation 29 is part of Chapter V, which deals with ‘Claims’. Regulation 29 deals with ‘Mutual credits and set-off’. Thus, in the Liquidation

proceeding where there are mutual dealing and any claim is due, set off is fully permissible. It has also been clearly accepted by judgment of this Tribunal as well as judgment of the Hon'ble Supreme Court in **“Bharti Airtel Limited and Ors. vs. Vijaykumar V. Iyer & Ors., AIR 2024 SC 27”** and **“Devrajan Raman, Liquidator of Kotak Urja Pvt. Ltd. vs. Principal Commissioner of Income Tax, Company Appeal (AT) (Ins.) No.977 of 2023”**.

7. There is no dispute to the proposition that set-off is permissible in the liquidation proceeding but present is not a case of any set off in claims filed by the Department of Income Tax. Admittedly, the Income Tax Department has not filed any claim in the liquidation proceeding of the Corporate Debtor. The amount was deposited by the Successful Auction Purchase by deducting Tax Deducted at source and Income Tax Return was filed by the Liquidator where refund was claimed. In the present case it was not permissible for the Income Tax Department to set off any demand pertaining to A.Y. 2011-12. It was open for the Appellant to file a claim and then could have claimed set off in accordance with law. In any view of the matter, in the present case, Appellant having not filed any claim question of claiming set off does not arise.

8. The Adjudicating Authority noticed the facts and gave its observations in Para 11 and 12, which are as follows:

*“11. It is observed that the while the assets of the Corporate Debtor were liquidated through e-auctions, the successful bidders have deducted the TDS in terms of the provision of the income Tax Act. The applicant*

*has filed the income tax return of the corporate debtor on 31.10.2022. As per the said return, the corporate debtor was entitled for a refund of an amount of Rs. 18,64,640/- along with interest of Rs. 74,576/- totalling to an amount of Rs.19,39,039/-. However, the respondent department has adjusted the said refund against outstanding demand on 04.11.2022. The applicant on 05.11.2022, has appraised the department that the said refund cannot be adjusted against outstanding demand. The applicant has also raised the grievances before the respondent and has made follow up and sent various reminders but the said refund is not yet credited to the account of the Corporate Debtor.*

*12. It is a settled position that as per Section 238 of the IBC 2016, the provisions of the Code 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. Also, Section 178(6) of the Income Tax, Act, 1961 creates an exception in relation to the Insolvency and Bankruptcy Code by giving primacy over the Income Tax Act, 1961. As per Section 36 of the IB Code, the said refund amount forms the part of the Liquidation Estate and therefore, it could only have been realised in accordance with Section 53 of the IBC. Therefore, the objection of the department regarding valid set-off under Income Tax Act appears to be inconsistent. Hence, we do not find any merit in the submissions made by the respondents.”*

9. We, thus, are of the view that the Adjudicating Authority did not commit any error in allowing the application. We do not find any error in the order impugned warranting interference by this Tribunal. Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

*Archana/md*