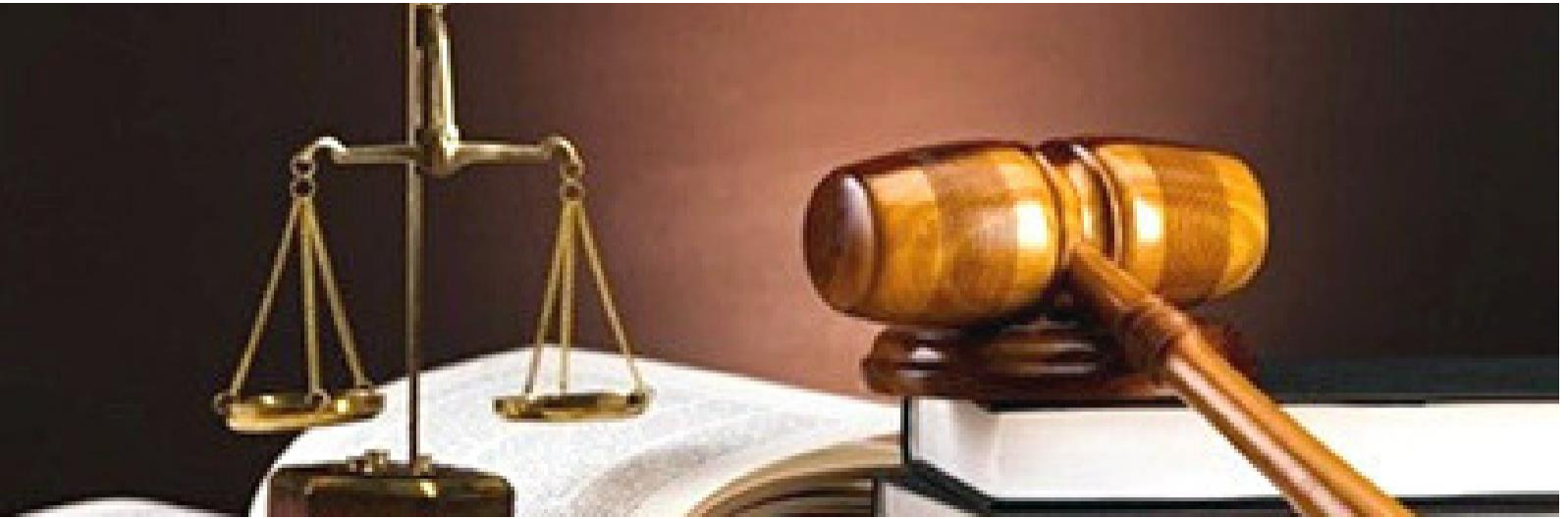


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Om Prakash Agrawal, Liquidator-S. Kumars Nationwide Limited Vs. Chief Commissioner of Income Tax (TDS)

Brief Facts

The liquidator sought exemption from deduction of 1% TDS by the purchaser of the property U/s. 194IA of the Income Tax Act. The liquidator sought that the Income Tax dues can be recovered by the department as per waterfall mechanism set out under Section 53(1)(e) of the Insolvency and Bankruptcy Code ('Code'). In view of the aforementioned facts, the NCLAT discussed the issue of if the provisions of u/s 194-IA of the Income Tax Act, 1961 are inconsistent with Section 53 (1) (e) of the Code.

Decision

- I. TDS under Section 194 IA is nothing but advance capital gain tax recovered through Purchaser on behalf of the seller. (Para 20)
- II. As per Section 194 IA of the IT Act, 1% TDS is recovered on priority to other creditors of the CD(transferor), which is partial capital gain tax, whereas, Section 53(1)(e) of the Code in waterfall mechanism provides that the Government dues comes fifth in order of priority.

By virtue of Section 238 of the Code, Section 53 (1)(e) of the Code shall have overriding effect on the provisions of the Section 194 IA of the IT Act. Otherwise also Section 53 starts with a non-obstante clause, whereas Section 194 IA of the IT Act, does not start with a non-obstante clause. (Para 21)

III. Therefore, the Liquidator of a Company in liquidation under the Code is not required to file Income Tax Return, then there is no question of claiming refund of TDS deducted under Section 194 IA of the IT Act. (Para 25)

Link of the Order

https://ibbi.gov.in/uploads/order/2021-02-12-102504-iqlo0_ebb949a712ff8e5fd90f8d6b25222b77.pdf



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