

**The adjustment of income tax refunds, which are assets of the corporate debtor, against pre-CIRP tax demands during the moratorium period is a form of recovery and is expressly prohibited by Section 14 of the IBC**

The **Ahmedabad Bench of the National Company Law Tribunal (NCLT)** in the case of **Wind World (India) Ltd vs Income Tax Department [IA No. 996 of 2025]** dated **March 06, 2026**, has clarified that in view of the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016, (IBC), the powers conferred upon the Income Tax Department under Section 245 of the Income Tax Act, 1961, cannot be exercised during the subsistence of a moratorium under Section 14 of the IBC.

The NCLT ruled that the adjustment of income tax refunds, which are assets of the corporate debtor, against pre-CIRP tax demands during the moratorium period is a form of recovery and is expressly prohibited by Section 14 of the IBC. Consequently, any such adjustment is illegal, arbitrary, and void, and the amount so adjusted or withheld must be refunded to the corporate debtor, along with any applicable statutory interest, to be made available for the insolvency resolution process.

The NCLT observed that while Section 245 of the Income Tax Act empowers the department to set off refunds against outstanding tax dues, this power is not absolute. Section 238 of the IBC contains a non-obstante clause that gives the IBC primacy over any inconsistent provisions in other laws, including the Income Tax Act.

The Tribunal held that once a moratorium under Section 14 is in effect, all actions of recovery or enforcement of pre-CIRP claims are prohibited. Invoking Section 245 during the moratorium would defeat the protection granted by Section 14 and frustrate the objective of preserving the Corporate Debtor's assets. Since IBC overrides the Income Tax Act in case of any inconsistency, the power under Section 245 of the Income Tax Act cannot be exercised during the CIRP.

The Tribunal noted that the refunds were determined under Section 143(1) of the Income Tax Act and had crystallized into amounts payable to the Corporate Debtor, thus constituting its assets. The Tribunal found the Respondent's actions to be in clear violation of Section 14 read with Section 238 of the IBC. Hence, it held the adjustments to be illegal and arbitrary, and declared that the amounts adjusted are void and must be restored to the Corporate Debtor.

The Tribunal also observed that the refunds arose from tax returns filed by the Resolution Professional during the CIRP. Once determined under Section 143(1) of the Income Tax Act, the refund becomes a crystallized receivable of the Corporate Debtor.

Referencing the duties of the Resolution Professional under Section 18 and Section 25 of the IBC to preserve and protect the assets of the Corporate Debtor, the Tribunal held that these refunds form part of the insolvency estate. Any unilateral adjustment would lead to a depletion of these assets, frustrating the objective of value maximization under the IBC. The Tribunal therefore concluded that the income tax refunds are indeed assets of the Corporate Debtor and must remain under the control of the Resolution Professional.