

**आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI  
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./I.T.A. No. 3044/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2004-05)

|  |                     |   |
|--|---------------------|---|
| Asst. CIT-15(1)(2),<br>Room No. 403, 4 <sup>th</sup> Floor,<br>Aayakar Bhavan, M. K. Road,<br>Mumbai-400 020 | <b>बनाम/</b><br>Vs. | Bayer Croopsciences Ltd.<br>Bayer House, Central Avenue,<br>Hiranandani Gardens, Powai,<br>Mumbai-400 076 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACB 9651 K  |                     |   |
| (Revenue)  | :                   | (Assessee)  |

CO. No. 24/Mum/2017

(Arising out of ITA No. 3044/Mum/2015)

(निर्धारण वर्ष / Assessment Year: 2004-05)

|  |                     |                                       |
|--|---------------------|---------------------------------------|
| Bayer Croopsciences Ltd.<br>Mumbai-400 076 | <b>बनाम/</b><br>Vs. | Asst. CIT-15(1)(2),<br>Mumbai-400 020 |
| (Assessee)                                 | :                   | (Revenue)                             |

|                    |   |  |
|--------------------|---|--|
| <b>Revenue by</b>  | : | Shri Ram Tiwari                          |
| <b>Assessee by</b> | : | Shri Paras Savla<br>Ms. Keerthiga Sharma |

|   |   |            |
|---|---|------------|
| <b>सुनवाई की तारीख /<br/>Date of Hearing</b>      | : | 11.09.2017 |
| <b>घोषणा की तारीख /<br/>Date of Pronouncement</b> | : | 07.11.2017 |

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This Appeal by the Revenue and cross objection by the assessee arises out of the Order of the Commissioner of Income Tax (Appeals), Mumbai ('CIT(A)' for short) dated 23.02.2015 and pertains to the assessment year (A.Y.) 2004-05.

2. The grounds raised in Revenue's appeal read as under:
  1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the assessment completed u/s. 147 is bad in law.
  2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the assessment completed u/s. 147 is bad in law without taking into consideration that if a single valid reason is available for re-opening the assessment u/s. 147, the assessment is valid.
3. The grounds raised in the assessee's cross objection read as under:

**CO No.1: Addition of dividend income**

1.1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal) ('CIT(A)') erred in not adjudicating ground number 2 of the appeal before him which pertained to addition of Rs.18,55,543 in respect of dividend income.

1.2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not appreciating the fact that the said dividend income is exempt under Section 10(34) of the Income-tax Act, 1961 ('Act').

**CO No. 2: Addition of Book Profit on sale of Unit Scheme 64:**

2.1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not adjudicating ground number 3 of the appeal before him which pertained to addition of Rs. 6,22,000 in respect of book profit on sale of Unit Scheme 64.

**CO No. 3: Addition of Reversed Provision for Pension:**

3.1. On the facts and in the circumstances of the case and in law, die Learned CIT(A) erred in not adjudicating ground number 4 of the appeal before him which pertained to addition of Rs. 54,03,480 in respect of reversal of provision for pension.

3.2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred not appreciating the fact that the related provision has already been disallowed by the Assessee in the earlier years.

**CO No. 4: Disallowance of Restructuring Cost:**

4.1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not adjudicating ground number 5 of the appeal before

him which pertained to disallowance of addition of Rs.80,97,600 in respect of restructuring cost for amalgamation.

4.2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred not appreciating the fact that a rectification application under section 154 of the Act was pending before the AO with respect to the restructuring cost for amalgamation.

**CO No.5: Levy of Interest:**

5. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the action of the A.O. in levying interest under Section 234B, 234D and Section 220 of the Act.

4. The issue raised in the Revenue's appeal and the issue raised in cross objection read as under:

In this case the assessment was reopened as assessment framed u/s. 143 r/w s. 147 of the Act. In the above assessment order, the Assessing Officer added the following:

Computation of Total Income:

|   |                                     |            |           |               |
|---|-------------------------------------|------------|-----------|---------------|
| Total income as per order dated 30.03.2011 u/s. 154 |                                     |            |           | 100,15,30,306 |
| Add:  | Dividend income                     | (Para 4.2) | 18,55,543 |               |
|   | Profit on sale of US 64             | (Para 5.2) | 6,22,000  |               |
|   | Pension Provision                   | (Para 5.3) | 54,03,480 |               |
|   | Professional fees in excess of 35DD | (Para 6.2) | 80,97,600 | 1,59,78,623   |
|   | Total Income                        |            |           | 101,75,08,929 |

5. Against the above order, the assessee appealed before the Id. CIT(A) challenging both the validity of the reopening and the merits of the addition. The Id. CIT(A) in his appellate order quashed the reopening holding the same to be bad and not valid. The Id. CIT(A) declined to go into the merits of the grounds raised before him and did not adjudicate the same.

6. Against the above order of Id. CIT(A), the Revenue has filed an appeal challenging the order of Id. CIT(A) holding the reopening as invalid. The assessee has filed cross objection challenging that the Id. CIT(A) has erred in not adjudicating the grounds on merits raised before him.

7. Upon careful consideration, we note that the Id. CIT(A) has only adjudicated the issue of reopening and has not adjudicated the issue on merits.

8. Against this, the assessee has filed cross objection that the Id. CIT(A) should have adjudicated the grounds on merits duly raised before him. We find that the grounds raised on merits were duly raised before the Id. CIT(A), but he has not adjudicated the same. Higher courts have held that lower authorities should adjudicate on all the aspects appealed before them and complete their order for proper appreciation of the issues at the higher appellate level. Hence, we are of the opinion that the Id. CIT(A) needs to adjudicate on the merits of the issues raised before him in order to make his appellate order complete. Accordingly, we remit the issue on merits raised in the cross objection by the assessee which were also before the file of Id. CIT(A) to the file of Id. CIT(A). The Id. CIT(A) is directed to consider the issue on merits and pass a speaking order on the same. Needless to add, the assessee should be granted adequate opportunity of being heard. We make it clear that we have not considered the issue on the validity of reopening in any manner whatsoever. Both the

party is free to raise the necessary issues as desired after the order of the Id. CIT(A) is complete in terms of our remitting as above.

7. In the result, the appeal filed by the Revenue and the cross objection filed by the assessee stands allowed for statistical purposes.

*Order pronounced in the open court on 07.11.2017*

Sd/-  
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 07.11.2017

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**