

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

IT(TP)A No.1201/Bang/2015
Assessment year : 2010-11

The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.	Vs.	M/s. Toyota Tsusho India Pvt. Ltd., Plot No.33 & 34, Bidadi Industrial Area, Bidadi Ramanagar Taluk, Ramanagar District – 562 109. PAN: AADCS 6230N
APPELLANT		RESPONDENT

IT(TP)A Nos.350/Bang/2015 & CO No.41/Bang/2017 [in IT(TP)A No.1201/Bang/2015]
Assessment year : 2010-11

M/s. Toyota Tsusho India Pvt. Ltd., Plot No.33 & 34, Bidadi Industrial Area, Bidadi, Ramanagar Taluk, Ramanagar District – 562 109. PAN: AADCS 6230N	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.
APPELLANT / CROSS OBJECTOR		RESPONDENT

Appellant by	:	S/Shri Ved Jain & Darpan Kriplani, Advocates
Revenue by	:	Shri C.H. Sundar Rao, CIT(DR)(ITAT)-I, Bengaluru.

Date of hearing	:	11.01.2018
Date of Pronouncement	:	31.01.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

These cross appeals are preferred by the assessee as well as the revenue relating to AY 2010-11. In the revenue's appeal, the assessee has also filed the Cross Objections.

2. During the course of hearing, the Id. Counsel for the assessee has contended that the revenue's appeal is not maintainable as it has been filed against the directions of the DRP, whereas the appeal ought to have been filed against the assessment order passed consequent to the directions of the DRP. In support of his contentions, the Id. Counsel for the assessee has contended that the TPO has passed an order on 31.01.2014 and consequent thereto draft assessment order was passed on 18.03.2014 against which the assessee filed objections before the DRP and the DRP has passed directions vide order dated 12.12.2014. Consequently, final assessment order was passed on 30.01.2015. Thereafter, the assessee moved DRP for rectification of the directions u/s. 154 of the Act. The directions were rectified vide order dated 30.03.2015. Consequent to the rectified directions of the DRP, the AO passed final order on 20.03.2017, but this appeal was filed by the revenue on 31.08.2015 against the directions of the DRP which is not permissible under the law. As per the provisions of section 253(1)(d), an order passed by the AO under sub-

section (3) of section 143 or section 147 or section 153A or section 153C pursuant to the directions of the DRP or an order passed under section 154 in respect of such order; meaning thereby, only the assessment order passed consequent to the direction of the DRP is appealable before the Tribunal and not the order/directions of the DRP. It was further contended that since the revenue has filed an appeal against the directions of the DRP and not against the assessment order passed consequent to the directions of the DRP, the appeal is not maintainable and deserves to be dismissed. The Id. Counsel for the assessee further contended that if the revenue's appeal is dismissed being not maintainable, the assessee's appeal and its CO become academic as it has already got relief under rectification.

3. The Id. DR formally opposed the contentions of the assessee.

4. Having carefully examined the orders of the lower authorities, we find that undisputedly the DRP has passed an order u/s. 154 on 30.03.2015. Consequently assessment order was passed on 20.03.2017. But the revenue has filed the appeal on 31.08.2015 before the assessment order consequent to the directions of the DRP is passed. As per the provisions of section 253(1)(d), an order passed by the AO under sub-section (3) of section 143 or section 147 or section 153A or section 153C pursuant to the directions of the DRP or an order passed under section 154 in respect of such order, is appealable before the Tribunal and not the

directions of the DRP. In the light of these facts, we find that the appeal filed by the revenue is not maintainable as it is not filed against an appealable order. We accordingly dismiss the same being not maintainable.

5. Since the Id. Counsel for the assessee has categorically stated that its appeal and CO have become academic after the dismissal of the revenue's appeal as it has already got relief in rectification. In the light of the statement of the Id. Counsel for the assessee, we dismiss the appeal and CO of the assessee as being infructuous and academic.

6. In the result, the appeals of the revenue and the assessee as well as the CO by the assessee are dismissed.

Pronounced in the open court on this 31st day of January, 2018.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 31st January, 2018.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.