

आयकर अपीलीय अधिकरण "L" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "L" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.5702/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT (IT) 2(1)(1) 1713, 17 th Floor, AIR India Bldg, Nariman Point, Mumbai 400021		Cameron Australasia Pty. Ltd. C/o Pricewatercooper Pvt. Ltd. Plot No. 18A, PWC House, Gurunanak Road, Bandra (W), Mumbai 400050
स्थायी लेखा सं./PAN : AA ECC0202H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

CO. No.34/Mum/2018

arising out of आयकर अपील सं./I.T.A. No.5702/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

Cameron Australasia Pty. Ltd. C/o Pricewatercooper Pvt. Ltd. Plot No. 18A, PWC House, Gurunanak Road, Bandra (W), Mumbai 400050	बनाम/ v.	DCIT (IT) 2(1)(1) 1713, 17 th Floor, AIR India Bldg, Nariman Point, Mumbai 400021
स्थायी लेखा सं./PAN : AA ECC0202H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri. Gautam Thacker
Revenue by :	Shri. V. Vidhyadhar,DR

सुनवाई की तारीख / **Date of Hearing** : **23-05-2018**

घोषणा की तारीख / **Date of Pronouncement** : **01-06-2018**

आदेश / ORDER

PER BENCH,

This appeal by the revenue and cross objection by the assessee arise out of the order of learned CIT-A dated 30/6/2016, and pertain to assessment year 2012 - 13.

2. The grounds of appeal raised in revenues appeal read as under:-

1. *Whether on the facts and in circumstances of the case and in law the CIT(A) has erred in directing the AO to independently determine the taxability of revenues from separate, independent and divisible scope of work under the contract and allowed relief to the assessee.*
2. *Whether on the facts and in circumstances of the case and in law the CIT(A) has erred in not holding the contract awarded by ONGC to be a composite one, whereas, on identical facts the Authority of Advance Ruling, New Delhi in the case of MERO Asia pacific Pte Ltd. AAR No. 981 of 2010 has held the contract to be composite and the amount received towards offshore supply by the assessee is taxable in India.*
3. *Whether on the facts and in circumstances of the case and in law the CIT(A) has erred in holding held that since such repair work is undertaken at the overseas workstation the question of taxability of such receipts from repair work as attributable to PE does not arise and directed the AO to delete the addition made for the revenues earned by the assessee from repairs activity under ONGC contract.*
4. *Whether on the facts and in circumstances of the case and in law the CIT(A) has erred in directing the AO to determine the taxability of revenue of the assessee from project management services as per the provisions of section 44BB of the Act and not as per section 44DA of the Act.*
5. *Whether on the facts and in circumstances of the case and in law the CIT(A) has erred in holding that in view of the relief allowed the computation of global profitability margin levied at 13.27% does not stand. If relief is allowed regarding taxability u/s 44DA is upheld, the profitability percentage needs to be upheld too.*
6. *The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer restored.*
7. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. The grounds raised in cross objection read as under:-

1. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income tax (Appeal)-s6, Mumbai, erred in not quashing the Assessment Order passed under Section 143(3) r.w.s. 1440(3) of the Income-tax Act, 1961 ('the Act') even when notice under Section 143(2) of the Act was not served within the specified time-limit.*
2. *On the facts and in the circumstances of the case and in law, if the question numbers i, 2 and 3 raised in the grounds of appeal of the Department are held in the affirmative, then the income, if any, ought to be computed as per the provisions of Section 4468 of the Act.*
3. *On the facts and in the circumstances of the case and in law, without prejudice to above cross-object ion (i) and (2), if income is not computed as per the provisions of Section 4488 of the Act, then the*

income, if any, shall be computed based on the global profitability after considering all the expenses provided in the global financial statements.
4. *The Respondent craves leave to add to, alter, amend, vary, omit or substitute the aforesaid grounds of cross objections.*

4. We first take up on assessee's cross objection number one as it goes to the root of the matter.

5. In the said cross objection it has been urged that Ld. CIT-A has erred in not quashing the assessment order even when the notice under section 143 (2) was not served within the specified time limit.

6. In this regard it is the contention of the learned counsel of the assessee that this ground was duly raised before the authorities below. It has been submitted that learned CIT-A despite noting the said ground raised by the assessee has held that in view of his finding on merits this ground of appeal becomes otiose and hence rejected.

7. Upon hearing both the counsel and perusing the records we are of the opinion that if a decision is challenged before the first appellate authority both on the issue of validity of jurisdiction as well as merits of the case, the adjudication on the issue of jurisdiction can by no stretch of imagination be liable for rejection on the ground that findings have been given on merits of the case. We find that what the Ld CIT-A has done in effect is that he has decided upon the merits of the issue in favour of the assessee and has hence left the issue of assessee's challenge to the validity of jurisdiction undecided.

8. Now the assessee is aggrieved by such an action of the learned CIT-A and has raised cross objection before the ITAT. we find that honourable Madras High Court in the case of CIT vs Ramdas Pharmacy 77 ITR 276 had expounded that an appellate authority cannot decide only one issue arising out of many issues and decline to go into to the other issues raised before it on the ground that further issues will not arise in view of the finding on the issue decided by it. It was expounded that if the applet authority declines to consider and decide the other issues it could only protract and delay the proceedings, for the assessee has to get the decision of the appellate authority on the initial point set aside by approaching a higher appellate authority and thereafter again go before the appellate authority for the

decision on the other issues left undecided by it earlier. It was held that this will amount to multiplication proceedings under the act. It was further expounded that subordinate courts and tribunal's should as far as possible give their views on all the points raised before them so that the higher courts will have the benefit of the decision on other points also if the necessity arises.

9. Examine the present issue on the touchstone of above said case law, we are of the considered opinion that the action of Ld. CIT-A directly false under the ambit of Hon'ble High Court order. The Ld. CIT-A has left undecided one important issue. Hence in our considered opinion this issue raised by the assessee needs to be remitted to the file of learned CIT-A. Learned CIT-A is directed to complete his appellate order by deciding on this issue which was duly raised before him by the assessee. After the order of learned CIT-A is complete upon adjudication of this issue, both the parties will be at liberty to file necessary appeals as and if necessary.

10. Accordingly this issue is remitted to the file of Ld. CIT-A. In view of our order remitting the preliminary issue to the file of learned CIT-A so as to complete his order, other issues raised in these appeals are not being adjudicated.

11. Both the counsel fairly agreed to the above proposition.

12. In the result these appeals are allowed for statistical purposes

Order pronounced in the open court on 01.06.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 01.06.2018 को की गई ।

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, dated: 01.06.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI