

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 4788/MUM/2015**

:

**A.Y : 2007-08**

DCIT-10(2)(2),  
Mumbai (Appellant)

Vs. M/s. Aditya Birla Minacs Worldwide  
Ltd. (now known as Minacs Ltd.)  
Symphony IT Park, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>  
floor, Behind Chandivali Ice Factory,  
Chandivali Farm Village,  
Mumbai 400 072.  
**PAN : AA ACT1567A** (Respondent)

**Appellant by : Shri Sunil K. Jha**

**Respondent by : Shri Ronak G. Doshi**

**Date of Hearing : 11/11/2019**

**Date of Pronouncement : 07/01/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the Revenue arises out of the order of learned CIT(A) dated 30.03.2015 and pertains to assessment year 2007-08.

2. The grounds of appeal raised in Revenue's appeal read as under :-

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in annulling the reassessment order by holding that the same as against the provisions of law without appreciating the fact that all the pre-requisites and*

*conditions laid down in section 147 of the Income-tax Act, 1961 have been fulfilled before reopening the assessment.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the reassessment was based on change of opinion without appreciating the fact that the issues discussed in the reasons recorded for reopening of the assessment viz., exclusion of interest income and foreign exchange gain from the profits eligible for deduction u/s. 10A, excess allowance of deduction u/s. 10A on account of transfer pricing adjustment made u/s. 92CA, disallowance of foreign exchange loss etc., have not been examined and no specific queries were raised in respect of the above issues during the original assessment proceedings.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the reassessment was based on presumption of misconceived notion of escapement of income which was not established by the A.O, without appreciating the fact that whether or not the material would conclusively prove escapement is not the aspect or concern at the stage of initiation of reassessment proceedings, but this aspect has to be examined subsequently during the course of reassessment proceedings.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not been able to appreciate that the Hon'ble Karnataka High Court in the case of CIT vs Rinku Chakraborty 242 CTR 425 has held that where in the original assessment income liable to tax has escaped assessment due to oversight and inadvertence or a mistake committed by A.O., the A.O has the jurisdiction to reopen the original assessment, which has been endorsed by the Hon'ble Delhi High Court in the case of Dalmia Pvt. Ltd. vs CIT (Delhi HC) vide order dated 28.09.2011 holding that, despite specific and pointed queries in section 143(3) assessment, A.O cannot be said to have formed any opinions, if explicit opinion is not recorded.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in not adjudicating the additions/disallowances on merits viz., (i) disallowance of agency fees of Rs.3,97,12,964/- paid to DBS Bank for arranging the loan (ii) disallowance of excess deduction u/s. 10A on account of exclusion of interest income of Rs.22,56,229/- (Rs.16,91,641/- in respect of Mumbai Unit and Rs.5,64,588/- in respect of Bangalore Unit) and exchange gain on loan given to others of Rs.3,04,95,834/- (Rs.79,76,035/- in respect of Mumbai Unit and Rs.2,25,19,799/- in respect of Bangalore Unit) (iii) disallowance of deduction u/s.10A allowed on the*

*addition of Rs.2,58,08,266/- made on account of adjustment in arm's length price u/s. 92CA of the Act, which is not allowable in view of provisions sub-section (4) of section 92CA of the Act.*

6. *The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O be restored."*

3. From the above grounds of appeal, it is noted that in ground nos. 1 to 4, the Revenue is challenging the order of learned CIT(A) wherein he has held that reopening was not justified.

4. After holding that the reopening was not justified, the learned CIT(A) has not adjudicated the grounds on merits as referred to in ground no. 5 above. The learned CIT(A) has dismissed this ground.

5. In this regard, learned counsel for the assessee submitted that learned CIT(A) has correctly held that reopening in this case is not justified inasmuch as it is a change of opinion. However, he submitted that assessee is also aggrieved that the learned CIT(A) has not adjudicated upon the merits of the case and has dismissed the same.

6. 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 merits can by no stretch of imagination be liable for non-adjudication and dismissed by CIT(A) on the ground that findings have been given on validity of reopening of the case. We find that what the learned CIT(A) has done in effect is that he has decided upon the validity of reopening

of the issue in favour of the assessee and has hence left the issue of assessee's challenge to the merits of the addition undecided and has dismissed the same.

7. Now, the Revenue and assessee both are aggrieved by such an action of the learned CIT(A). We find that Hon'ble 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 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 appellate 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 multiplicity of 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.

8. Examining the present issue on the touchstone of above said case law, we find that the order of learned CIT(A) here directly falls under the ambit of Hon'ble High Court's order as above. The learned CIT(A) has decided one issue and has left undecided another issue duly raised before him and dismissed the same. Hence, we are of the considered opinion that the issue raised on merits by the assessee needs to be remitted to the file of the 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 the 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.

9. Accordingly, this issue is remitted to the file of learned CIT(A). In view of our order remitting the issue on merits to the file of the learned CIT(A) so as to complete his order, other issues raised in these appeals are not being adjudicated.

10. In the result, this appeal by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 7<sup>th</sup> January, 2020.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 7<sup>th</sup> January, 2020

\*SSL\*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "K" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai