

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.756/M/2020
Assessment Year: 2016-17**

Dy. CIT, CC-5(3), Room No.1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Actif Corporation Ltd., 11/12, Raghuvanshi Mills Compound, S.B. Road, Lower Parel, Mumbai – 400 013 PAN: AACCD4014G
(Appellant)		(Respondent)

**ITA Nos.1335, 1336, 1337, 1338, 1339 & 1340/M/2018
Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12, 2013-14
& 2014-15**

**ITA Nos.203, 204, 205, 206, 207, 208 & 209/M/2020
Assessment Years: 2008-09, 2009-10, 2009-10, 2010-11, 2011-12,
2013-14 & 2014-15**

**ITA No.1518/M/2018
Assessment Year: 2009-10**

M/s. Actif Corporation Ltd., 11/12, Raghuvanshi Mills Compound, Lower Parel, Mumbai – 400 013 PAN: AACCD4014G	Vs.	Dy. CIT, CC-5(3), Room No.1906, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Smt. Shailja Rai, CIT- D.R. &
Shri Manoj Sinha, Sr. A.R.

Date of Hearing : 02 . 08 . 2022

Date of Pronouncement : 25 . 08 . 2022

ORDER**Per Bench :**

For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant M/s. Actif Corporation Ltd. (hereinafter referred to as the assessee) and appellant Dy. CIT, CC-5(3), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned orders dated 15.12.2017, 25.10.2019 & 25.11.2019 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] against the assessment order passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act') and against the confirmation of the penalty levied by the Assessing Officer (AO) under section 271(1)(c) of the Act on the identical grounds except the difference in amount of addition/disallowance inter alia that (grounds are taken from A.Y. 2008-09):

ITA No.1335/M/2018 A.Y. 2008-09

1. That the notice issued u/s 148 of the Income Tax Act, 1961 ("the Act") and reassessment order u/s 147 r.w.s. 143(3) of the Act dated 28.03.2016 passed by the Assessing Officer ("AO") are illegal, bad in law and without jurisdiction.

2. That the reassessment proceedings initiated u/s 147/148 of the Act are invalid for want of jurisdiction as the preconditions of Section 151 of the Act are not fulfilled.

3. That the AO and the Commissioner of Income Tax (Appeals) ("CIT(A)") have grossly erred on facts and in law in passing the orders without giving a sufficient and reasonable opportunity to the assessee to be heard. The orders have been passed in violation of principles of natural justice.

4. That the notice u/s 143(2) was not served within the prescribed period, hence the assessment order passed and the additions made therein are illegal, bad in law and without jurisdiction.

5. That Ld. CIT(A) failed to appreciate that AO has already considered all the material facts and evidences during the original assessment proceedings and reassessment proceedings initiated by the AO is merely on the basis of change of opinion, hence the reassessment order is liable to be quashed.

6. That the CIT(A) has failed to appreciate that there is no failure on part of the appellant to disclose material facts, hence the notice u/s 148 is illegal, bad in law and without jurisdiction.

7. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the assessment order u/s 147 r.w.s. 143(3) of the Act and the additions/disallowances made therein.

8. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the disallowance made wrongly & illegally by the AO by treating plant and machinery worth Rs. 1,08,24,97,875/- as bogus and thereby disallowing depreciation amounting to Rs. 16,23,74,681/- on the same.

9. That, on the facts and circumstances of the case, the CIT(A) erred in ignoring that the AO has wrongly and without any basis held that the payment for purchase of new plant and machinery was made out of loan.

10. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the disallowance of payment of interest expenses amounting to Rs. 19,000/-, made wrongly & arbitrarily by the AO by alleging that the same was made towards bogus purchases of plant and machinery.

11. That the additions/disallowances made by the AO and upheld by the CIT(A) are illegal and bad in law as the material collected at the back of the assessee and the statements recorded were never confronted to the assessee.

12. That the appellant was not allowed the opportunity to cross examine the persons whose statements are recorded and referred by the AO and CIT(A) in their orders, hence the disallowances/additions made are illegal and bad in law.

13. That, on the facts and circumstances of the case, the AO and CIT(A) have failed to properly construe and judiciously interpret the evidence filed and materials available on record, hence the addition/disallowance made is uncalled for.

14. That the addition / disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record.

15. That interest U/s 234B and 234D of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out.

16. All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.

17. The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the case of assessee for A.Y. 2008-09, 2009-10, 2010-11, 2011-12, 2013-14, 2014-15, 2015-16 & 2016-17 was reopened under section 147 of the Act and after providing opportunity of being heard assessment has been framed under section 143(3) read with section 147 of the Act by making various additions/disallowances. On the basis of assessment framed under section 143(3) read with section 147 of the Act for making various additions/disallowances penalty proceedings under section 271(1)(c) of the Act were initiated. Declining the contentions raised by the assessee the Ld. CIT(A) dismissed the quantum appeal filed by the assessee. The Ld. CIT(A) also dismissed the appeal filed by the assessee confirming the penalty levied by the Assessing Officer (AO) under section 271(1)(c) of the Act. The Ld. CIT(A) partly allowed the appeal filed by the assessee

challenging the order passed by the AO under section 144 of the Act which has been challenged by the Revenue.

4. Feeling aggrieved, the assessee as well as the Revenue have come up before the Tribunal by way of filing present cross appeals.

5. Despite issuance and service of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. At the very outset, it is brought to the notice of the Bench that the National Company Law Tribunal (NCLT) Ahmedabad Bench in CP No.(IB) 272/7/NCLT/AHM/2019 passed the order dated 26.11.2019 under section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) which is available on the file to the following effect:

“18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

(i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property Including

any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

8. Perusal of the file shows that Mr. Vinod Kumar Ambavat, Resolution Professional appointed in this case put in appearance on earlier occasion but for the last so many dates none appeared on behalf of the Resolution Professional nor he has filed amended form 36 in the present appeals.

9. In view of the order passed by the Hon'ble NCLT, we are of the considered view that since proceedings under insolvency and bankruptcy code have already been initiated and moratorium has been declared for prohibiting all the proceedings against the corporate debtors, present appeals in the present format are not maintainable, being not filed by Insolvency Resolution Professional (IRP) who can file appeal with approval of committee of creditors, hence all the aforesaid appeals are liable to be dismissed being not maintainable at this stage.

10. Resultantly, the aforesaid appeals filed by the assessee as well as Revenue are dismissed with liberty to file fresh appeals in proper format, duly verified by person authorized to file the return of income or to get the present appeals restored by moving an application.

Order pronounced in the open court on 25.08.2022.

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER
Mumbai, Dated: 25.08.2022.**

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.