

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1772/Del/2022 : Asstt. Year : 2018-19

Berlian McDermott Sdn.Bhd., C/o Nangia & Co. LLP, A-109, Sector-136, Noida, Uttar Pradesh-201304	Vs	ACIT, Circle-1(1)(2), Intl. Taxation, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAGCB6291H		

SA No. 35/Del/2023 : Asstt. Year : 2018-19

Berlian McDermott Sdn.Bhd., C/o Nangia & Co. LLP, A-109, Sector-136, Noida, Uttar Pradesh-201304	Vs	ACIT, Circle-1(1)(2), Intl. Taxation, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAGCB6291H		

**Assessee by : Sh. Salil Kapoor, Adv. &
Sh. Vibhu Jain, Adv.**

Revenue by : Sh. Vizay B. Vasanta, CIT DR

Date of Hearing: 10.07.2023

Date of Pronouncement: 03.10.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal and Stay Application have been filed by the assessee against the order dated 09.06.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. The additional grounds filed by the assessee vide letter dated 03.03.2023 are as under:

"14. That, the DRP directions passed under Section 144C(5) of the Act is illegal, bad in law and without jurisdiction, as the same is not in conformity with law and the legal principles. The said order is in direct violation to the CBDT Circular No. 19/2019 dated 14.08.2019 and as such is illegal, liable to be quashed and deemed to have never been issued.

15. That the DRP directions dated 04.05.2022 and the final assessment order dated 09.06.2022 are illegal, bad in law, without jurisdiction and as such is barred by time limitation."

3. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal

under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T., this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to

allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

4. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

5. The pertinent facts relating to completion of assessment proceedings are as under:

- The DIN number quoted in the draft Assessment Order u/s 144C of the Income Tax Act, 1961 dated 30.09.2021 is ITBA/AST/F/144C/2021-22/1036060056(1).
- The DIN number quoted in the Assessment Order dated 09.06.2022 is ITBA/AST/S/143(3)/2022-23/1043393023(1)
- The DIN number was not quoted in the Order u/s 144C(5) dated 18.05.2022.

- The DIN was generated on 19.05.2022 written in handwriting is ITBA/DRP/M/144C(5)/2022-23/1043072206(1).
- The letter of intimation for order u/s 144C(5) dated 19.05.2022 is having DIN No. ITBA/DRP/S/91/2022-23/1043072217(1).
- In the above letter, it was informed that order u/s 144C(5) dated 04.05.2022 is having DIN No. ITBA/DRP/M/144C(5)/2022-23/1043072206(1).

6. The assessee argued before us that both the DIN numbers mentioned on the letter dated 19.05.2022 having DIN No. ITBA/DRP/S/91/2022-23/1043072217(1) as well as the DIN number of the order u/s 144C(5) mentioned in that intimation letter which is ITBA/DRP/M/144C(5)/2022-23/1043072206(1) are not existing on the website of the Income Tax Department.

7. To verify the veracity of the claim of the assessee and the arguments of the Id. AR, the Bench decided to examine the existence of the DINs quoted in the orders in the Court itself in the presence of CIT DR, Sh. Vizay Babu. The e-portal of the Income Tax Department has been examined wherein the "authenticate notice/order issued by ITD" has been entered. The OTPs received on the registered mobile number has been used to verify the authenticity of the notice/orders and the result came "no record found for the given criteria". The entire examination/verification of the DINs has been done in the

presence of the Income Tax Department Officers. No contrary evidence has been brought to our notice till today.

8. Hence, we hold that as the DINs purportedly issued by the Income Tax Department have been found to be not in existence and no record has been found, the Assessment Order is hereby quashed.

9. Owing to adjudication in the Income Tax Appeal, the Stay Petition becomes infructuous and hence dismissed.

10. In the result, the appeal of the assessee is allowed and the Stay Application of the assessee is dismissed.

Order Pronounced in the Open Court on 03/10/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/10/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR