

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“J” BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA Nos. 2990, 2991 & 2992/Mum/2024  
(A.Ys: 2009-10, 2011-12 & 2012-13)**

Reliance Industries Holding Pvt Ltd [Successor of M/s Ekansha Enterprises Pvt Ltd] 84-A, Mittal Court, 224, Nariman Point, Mumbai – 400 021.	Vs.	DCIT – 3(3)(1) Aayakar Bhavan, Mumbai.
PAN/GIR No. AADCR5883J		
(Applicant)		(Respondent)

Assessee by	Shri Ronak Vasavada
Revenue by	Shri Pankaj Kumar, CIT(DR)

सुनवाई की तारीख/Date of Hearing	11.12.2024
घोषणा की तारीख/Date of Pronouncement	23.12.2024

आदेश / ORDER

**PER BENCH:**

The present appeals have been filed by the assessee challenging the common impugned order dated 03.04.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the Learned Commissioner of Income Tax (Appeals) – 56, Mumbai for the assessment years 2009-10, 2011-12 & 2012-13.

2. Since all the issues involved in these appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take ITA No. 2990/Mum/2021, A.Y 2009-10 as lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

*1. erred in dismissing the appeal file in the name of the predecessor in limine by alleging that the Appellant was not interested in pursuing the appeal.*

*2. erred in not appreciating the request for transfer of the appeal to CIT(A)-57, Mumbai, for consolidation with the appeal filed by the Successor against the same assessment order, which was already pending disposal with CIT(A)-57, and an alternate request for keeping the appeal in abeyance till disposal of appeal by CIT(A)-57.*

*Without prejudice to above, Assessment order passed in name and PAN of non-existent entity:*

*3. erred in not appreciating the fact that the order passed by the Assessing Officer u/s. 143(3) r.w.s 147, dated 26.4.2021, was null and void as the same was passed in name and PAN of the Predecessor which was a non-existing entity as on that date Challenging validity of reopening of assessment:*

*4. erred in upholding the assessment re-opened beyond 6 years by the AO on the alleged ground that the predecessor and M/s. Biometrix Marketing Pvt. Ltd. ("BMPL") were Associate Enterprise u/s. 92A(2)(j) of the Act and that the alleged guarantee commission pursuant to an options agreement between the parties, had escaped assessment.*

*5. failed to appreciate that assessment was reopened beyond a period of 6 years though requisite conditions prescribed in clause (d) of Explanation 2 to Section 147 were not fulfilled*

6. failed to appreciate that the retrospective amendment to the definition of "international transaction" was inserted by Finance Act, 2012, which cannot be applied retro-actively to allege that income of the Appellant had escaped assessment due to non-filing of report u/s. 92E of the Act.

Transfer pricing provisions could not apply in absence of any international transaction u/s. 92B of the Act:

7. erred in not appreciating that the Predecessor and BMPL were not Associated Enterprise u/s. 92A of the Act.

8. failed to appreciate that the Non-Disposal Undertaking ('NDU') provided by the Predecessor in the Options Agreement does not constitute an international transaction within the meaning of section 92B of the Act.

9. erred in not appreciating the fact that the predecessor could not be considered as a guarantor as the predecessor was not a party to any agreement with the lenders of BMPL.

10. erred in not appreciating that ALP could not have been determined on the basis of quote received by the AO from SBI in the present case..y

3. At the very outset, we noticed that the assessee has taken specific ground that the appeal filed in the name of the predecessor of the assessee was dismissed 'in limine'

4. After having heard the counsels for both the parties and having gone through the records, we noticed that as per the facts of the present case, Ekansha Enterprises Pvt. Ltd. having PAN AABCE4798B (EEPL) merged with Reliance Industries Holding Pvt. Ltd PAN: AADCR5883J (RIHPL) w.e.f 01.01.2015. However, the AO passed the order u/s 143(3) r.w.s. 147 on 26/04/2021 in the name of Ekansha Enterprises Pvt Ltd., a non-existing entity i.e the predecessor of the assessee.

5. As per assessee, by way of abundant precaution, RIHPL filed appeal against the said order of AO in both the names i.e. EEPL & RIHPL on 22/05/2021 before Ld. CIT(A). The reference No of appeal filed in the name of RIHPL before Ld. CIT(A) is NFAC/2008-09/10050891. This was in view of the fact that DIN in respect of captioned assessment order passed u/s 143(3) r.w.s. 147 on 26/04/2021 was generated in respect of PAN AABCE4798B being PAN of EEPL (M/s. Ekansha Enterprises Pvt Ltd.).

6. As per assessee, since the merger took place much prior to the order passed u/s 143(3) r.w.s. 148, therefore the correct assessee would be RIHPL w.e.f 01.01.2015. However, since the DIN in respect of the assessment order was generated in respect of PAN AABCE4798B being PAN of EEPL (amalgamating company). Therefore assessee was unable to file form -35 online on PAN of RIHPL. Therefore, the appeal was filed in the name and PAN of EEPL. Apart from this the assessee also filed appeal against the captioned assessment order in the name and PAN of RIHPL which is successor and raised grounds of appeal and contentions before Ld. CIT(A).

7. However, Ld. CIT(A) noticed that the assessee is not interested in pursuing his appeal therefore after considering the 'statement of facts', noticed that assessee has not replied to any of the notices of hearing or submitted any documentary evidence to prove his side, even after providing

sufficient and adequate opportunities, thus decided the same *ex-parte* by dismissing the appeal '*in limine*'. Whereas on the contrary Ld. AR submitted that proper opportunity was not granted by Ld. CIT(A) and thus the rights of the assessee has been prejudiced and therefore requested for fresh hearing before the Ld. CIT(A).

8. Be that as it may, in our view the interest of justice would be met in case the lis between the parties is decided on merits after providing fair opportunity of hearing to both the parties. In our view, Ld. CIT(A) should have decided the appeal after considering the merits instead of dismissing the same '*in limine*'. Therefore, considering the above factual and legal position, the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the CIT(A) to decide the matter afresh on merits preferably along with the appeal filed by RIHPL arising out of the same assessment order and by doing this, rights of the revenue would not be prejudice. However in case proper and sufficient opportunity is not given to the assessee then in that eventuality the rights of the assessee shall be prejudice. Thus in view of the above factual position the appeal of the assessee is restored to the file of CIT(A) to decide it afresh on merits by providing one more opportunity of hearing to the assessee. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings.

9. Before parting, we make it clear that our decision to restore the matter back to the file of the CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the CIT(A) independently in accordance with law.

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10. As the facts and circumstances in these appeals are identical to ITA No 2990/Mum/2024 for the A.Y 2009-10 (except variance in figures) and the decision rendered in above paragraph would apply mutatis mutandis for these appeals also. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

11. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 23.12.2024.

**Sd/-**  
**(OMKARESWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 23/12/2024

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai