

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND SHRI RAMLAL NEGI, JUDICIAL MEMBER

ITA No. 1963/MUM/2012  
(Assessment Year : 2006-07)

Aditya Birla Nuvo Limited  
(treated as agent of M/s. New Cingular  
Wireless Services Inc.&  
MMM Holdings LLC),  
Aditya Birla Centre, A-Wing,  
4<sup>th</sup> Floor, Mumbai – 400 030  
PAN:AAACI1747H ... Appellant

Vs.  
Dy. Director of Income-tax (Int. Tax) 4(1),  
Mumbai. .... Respondent

Appellant by : Shri Ronak G. Doshi  
Respondent by : Shri Jasbir S. Chouhan

Date of hearing : 01/10/2015  
Date of pronouncement : 20/11/2015

**ORDER**

**PER G.S. PANNU, AM:**

The captioned appeal filed by the assessee is directed against the order passed by the CIT(A)-11, Mumbai dated 08/12/2011 pertaining to the assessment year 2006-07, which in turn has arisen from the order passed by the DDIT(IT)-4(1) dated 25/03/2009 under section 163(1) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the assessee has raised the following two Grounds of appeal:-

*“GROUND I: TREATING THE APPELLANT AS AN 'AGENT' OF M/S NEW CINGULAR WIRELESS SERVICES INC., USA UNDER SECTION 163 OF THE ACT*

*1.1 On the facts and in the circumstances of the case, the CIT(A) erred in upholding the action of the Deputy Director of Income-tax (International Taxation) - 4(1), Mumbai ('the AO') in treating the Appellant as an 'agent' under section 163 of the Act of M/s. New Cingular Wireless Inc., USA ("NCWS") in respect of the purchase of shares in Idea Cellular Limited (ICL) from M/s. AT &T Cingular Services Inc. Mauritius ("ATTM"), a wholly-owned subsidiary of NCWS.*

*1.2 The Appellant prays that the action of the AO of treating the Appellant as an 'agent' under section 163 of the Act of CW be held as invalid in law.*

*GROUND II: TREATING THE APPELLANT AS AN 'AGENT' OF M/S MMM HOLDINGS LLC ( NOW SUCCEEDED BY NCWS) UNDER SECTION 163 OF THE ACT*

*2.1 On the facts and in the circumstances of the case, the CIT(A) erred in upholding the action of the AO in treating the Appellant as an 'agent' under section 163 of the Act of M/s. MMM Holdings LLC ("MMM") (now succeeded by NCWS) in respect of the purchase of shares in ICL from ATTM, a wholly-owned subsidiary of NCWS.*

*2.2 The Appellant prays that the action of the AO of treating the Appellant as an 'agent' under section 163 of the Act of MMM be held as invalid in law.”*

3. The appellant company is incorporated under the provisions of the Companies Act, 1956, and in order to appreciate the controversy in the present appeal, the following facts are relevant. The assessee-company vide an agreement dated 28/09/2005 purchased 37,17,80,740 shares of Idea Cellular Limited( in short 'Idea') from AT &T Cellular Private Limited, Mauritius (ATTM) for a consideration of USD 150 Million. While remitting the consideration for acquisition of such shares, no tax was deducted at source as assessee had obtained a certificate from the Department for 'Nil' tax deduction at source. Subsequently, an order under section 163(1) of the Act was passed on 25/03/2009,

whereby it was noticed that M/s. New Cingular Wireless Services Inc. USA (hereafter referred to as NCWS), which was holding company of ATTM was the real holders of the shares of Idea. As per the Department, by way of the agreement dated 28/09/2005 in realty shares were purchased by the assessee from NCWS and not from ATTM. Therefore, as per the Department, the resultant income on such a sale also arose, accrued and was received by NCWS. As per the Department, such income was taxable in the hands of NCWS as capital gain as it involved transfer of capital asset situated in India, namely the shares of Idea. Consequently, the assessee was treated as an agent of NCWS with respect to the payment of amount of USD 150 million, within the meaning of section 163(1) of the Act.

4. Subsequently, vide an order dated 22/1/2010, the assessee has also been held as an agent under section 163(1) of the Act of NCWS as successor of M/s.MMM Holdings LLC( in short MMMH), which later on merged with NCWS. Both the aforesaid stands of the Department have been affirmed by the CIT(A), against which assessee is in appeal before us.

5. Before us, the Ld. Representative for the assessee quite fairly conceded that the position brought out by the CIT(A) is in consonance with the judgment of the Hon'ble Bombay High Court in the case of Aditya Birla Nuvo Ltd. vs. DDIT(IT), 342 ITR 308 (Bom). The Hon'ble Bombay High Court while dealing with a Writ Petition filed by the assessee against the orders passed under section 163(1) of the Act had affirmed the stand of the Department.

6. Following the aforesaid precedent, we, therefore, dismiss the Grounds of appeal raised by the assessee because the decision of the CIT(A) is in consonance with the judgment of the Hon'ble Bombay High Court in the case of Aditya Birla Nuvo Ltd. (supra).

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 20/11/2015.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER  
Mumbai, Dated 20/11/2015

Sd/-  
(G.S. PANNU)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**