

आयकर अपीलीय अधिकरण, "डी" न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.726, 727, 728, 729 & 730/Mds/2015

निर्धारण वर्ष /Assessment year : 2006-07, 2007-08, 2008-09, 2009-10 &  
2010-2011

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(2)  
Chennai 600 034

**Vs.** M/s. Best & Crompton Engg.  
Projects Ltd,  
Parsn Complex,  
A Wing, 9<sup>th</sup> floor,  
602, Anna Salai,  
Chennai 600 034.

**(अपीलार्थी/Appellant)**

**[PAN AABC5248H ]  
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Durai Pandian, JCIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Subramanian, C.A.

सुनवाई की तारीख/Date of Hearing : 25-07-2016  
घोषणा की तारीख /Date of Pronouncement : 27-07-2016

**आदेश / ORDER**

**PER BENCH:**

These five appeals filed by the Revenue are directed against  
different orders of Commissioner of Income-tax (Appeals)-1, Chennai

dated 26.12.2014 and 29.12.2014 for the above assessment years passed u/s.143(3) and 250 of the Income Tax Act, 1961. Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience. We take up ITA No.726/Mds/2015 of assessment year 2006-2007 for adjudication.

**2.** The Revenue has raised the following grounds of appeal:-

*“2.1 The learned CIT(A) has failed to appreciate the applicability of Explanation 6 to Section 43(1) of the LT. Act whereby the cost in the hands of the transferee company shall be the same as in the hands of the transferor company.*

*2.2. The learned CIT(A) ought to have appreciated the fact that the decision of the Hon'ble ITAT relied on by him has not been accepted by the Department for the A.Ys.2002-03 to 2005-06 and appeal u/s.260A is pending before the jurisdictional High Court.*

*2.3. The learned CIT(A) has not given a specific finding as to the valuation of the assets acquired by the assessee as the transfer is between the holding company and the subsidiary company”..*

**3.** The Brief facts of the case are that the assessee company is engaged in Electrical contract and filed Return of income electronically on 25.11.2006 with total income of ₹24,25,299/- and the Return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s. 143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee

appeared from time to time and filed details. The assessee-company, namely M/s Best & Crompton Engineering Projects Ltd., is a wholly owned subsidiary of M/s Best & Crompton Engineering Ltd, which is doing the business of Electrical & Projects Contracting, like, erection of High Voltage Substations, Transmission Lines, Railway Electrification both in India and outside India; and these activities have been carried on by Best & Crompton Engineering Ltd from the year 1975. On 30.6.2001, relevant to assessment year 2002- 03, Best & Crompton Engineering Ltd transferred the Electrical & Projects Contracting Division alongwith its fixed assets, current assets and current liabilities to its wholly owned subsidiary company, Best & Crompton Engineering Projects Ltd. This transfer took place vide Agreement dated 13.11.2000 followed by other supplemental agreements executed on various other dates. This transfer took place on the basis of business-valuation-report obtained from M/s Ernst & Young Pvt. Ltd, a reputed Chartered Accountants company, according to which, the business of the Electrical & Projects Contracting Division of Best & Crompton Engineering Ltd as on 30.6.2001 was valued at ₹34.85 crores with reference to the supplemental agreement dated 31.10.2001. However, this value was originally fixed at ₹45.78 crores on the basis of original agreement. Thus, the business value of ₹34.85 crores was fixed as the

purchase consideration for the transfer of the Electrical Projects and Contracting Division, the break-up of which is given as under:

a	Towards written down value of fixed assets		4,80,69,143
b	Towards value of net current asset		
	- Value of current liabilities	37,40,07,014	
	Less: value of current liabilities	30,01,19,101	7,38,87,913
c	Towards value of technical proprietary information		10,00,00,000
d	Towards value of commercial /pre-qualification on rights.		12,65,42,944
	Total		34,85,00,000

The assessee has claimed depreciation @25% on both pre-qualification rights and technical know how on written down value Brought forwarded from assessment year 2002-2003. The Id. Assessing Officer made a elaborate findings in respect of claim of depreciation on the pre-qualification rights and technical knowhow and referred to the decision of the CIT (A)-VIII in ITA Nos. 358, 082 to 084/07-08, dated 27.05.2008 for assessment years 2002-03 to 2005-06 which was decided in favour of the assessee. Since the Department has filed an appeal before ITAT, the Id. Assessing Officer has made disallowance of depreciation and added to the Returned income and

passed order u/s.143(3) of the Act, dated 15.12.2008. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and explained the facts and also relied on the judicial decisions on the claim of depreciation. The Id. Commissioner of Income Tax (Appeals) considered the findings of the Id. Assessing Officer and submissions of the assessee and the provisions of law u/s.32(1)(ii) of the Act and Explanation 6 to Sec. 43(1) of the Act in respect of transfer of capital asset between holding company and the wholly owned subsidiary company and relied on the order of Co-ordinate Bench in assessee's own case in ITA No.1675 to 1678/Mds/2008, assessment year 2002-03 to 2005-06, dated 20.04.2011 and allowed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

**5.** Before us, Id. Departmental Representative argued that the Commissioner of Income Tax (Appeals) erred and not appreciated the applicability of Explanation 6 to Sec 43(1) in respect of cost in the hands of transferor and transferee of the company being the same and there is no specific findings on the valuation of asset. Further, the

Revenue having not satisfied with the ITAT order relied by the Id. Commissioner of Income Tax (Appeals) for the assessment years 2002-03 to 2005-06 in assessee 's own case has filed An appeal before Jurisdictional High Court and is pending and prayed for allowing the appeal.

**6.** Contra, Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and Co-ordinate Bench decision and vehemently opposed to the grounds.

**7.** We heard the rival submissions, perused the material on record and judicial decisions cited. The crux of the issue being the claim of depreciation on pre-qualification rights and technical know dealt by the Id. Assessing Officer in assessment order was already a subject matter of dispute in earlier years. Similar issue was considered by the Tribunal in assessee's case own for assessment years 2002-03 to 2005-06, wherein the Tribunal has held at para No.6 & 7 as under:-

*“6. With reference to the above admitted facts, it is not true that there is no basis for valuation of the intangible assets which are prequalification rights and technical proprietary information. There are numerous methods for valuation of business and the one such method which has been adopted by M/s Ernst & Young Pvt. Ltd. and it is evident in the report itself, which has dealt the issues extensively to arrive at the business valuation. We cannot attach much importance to the routine disclaimer appended to the report in question because*

normally every valuation report, being an estimation, contains such a disclaimer to avoid future litigation. A business valuation is definitely different from an audit report. The hiving off of the projects division was done with an intention to carry on the business of projects division in a better and efficient manner. Seemingly because the manufacturing units of Best & Crompton Engineering Ltd was not profitable and there were major problems which could affect the operations of the projects division, in our considered opinion, Explanation 2 and 2A appended to section 43(6) of the Act is not applicable in the given case as the pre-qualification rights and technical proprietary information were not forming part of the block of assets of the holding company namely Best & Crompton Engineering Ltd. No need to mention that hiving off of the Projects Division is a demerger and it does not amount to demerger in the given case. The assessee company could carry on business only on acquisition of prequalification rights, so, it can be safely epilogued that it is not simply a book entry, more particularly, because the customers of the company are Indian Railways, PSUs, like Power Grid Corporation, NTPC Ltd., and International Companies, to whom the business purchase agreement was submitted to prove the pre-qualification rights and this was the basis for awarding of tenders to the assessee when it had no qualification to bid on its own for tenders. The entire consideration of ` 34.85 crores for hiving off the Projects Division by the holding company was discharged by allotment of shares for ` 20 crores and the balance of ` 14.85 crores was unsecured loans which was paid by the assessee and the balance as on 31.3.2002 was only ` 1,03,11,000/- as is evident from the audited accounts dated 30.6.2001 and loan funds – Schedule 2 of the audited accounts as on 31.3.2002. The mode of discharge for purchase consideration and the details of amount discharged were submitted by the assessee vide letter dated 21.3.2005 as under:

		₹	₹
a	Equity shares allotted to holding company Best & Crompton Engineering Ltd.	20,00,00,000	
b	Unsecured loan from the holding company Best & Crompton Engineering Ltd	14,85,00,000	14,85,00,000
	Less: Repayemnt of loan from proceeds from preference share issue		9,31,00,000

	<i>Total</i>	<i>34,85,00,000</i>	<i>5,44,00,000</i>
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*7. Therefore, the cumulative effect from these facts is that the transfer of pre-qualification rights and technical proprietary information by the holding company was on account of genuine commercial considerations done, at arms length, based on the business valuation report, given by a reputed firm of Chartered Accountants and without which the assessee would not have been in a position to carry on the business and also to secure further business. In our opinion, this transaction cannot tantamount to only a paper transaction or sham transaction as there is no such evidence on record. Consequently, we do not find any error in the appellate order and we confirm the findings of the ld. CIT(A)''.*

Further, the contention of the Department before the Tribunal that the Revenue has not accepted the judgment of Tribunal and an Appeal u/sec. 260A of the Act has already been filed before Jurisdictional High Court and the same is pending. This Tribunal is of the considered opinion that mere filing of appeal before Hon'ble High Court cannot be a reason to take a different view. The order of Tribunal is binding on all the authorities in the State of Tamil Nadu and Union Territory of Pondicherry. Therefore, the Commissioner of Income Tax (Appeals) has rightly allowed the claim of the assessee by following the Tribunal order in own assessee case for earlier assessment years. We, respectfully following the Co-ordinate Bench decision, upheld the order of Commissioner of Income Tax (Appeals) and dismiss the grounds of the Revenue.

8. Similarly, the appeals of the Revenue in ITA Nos.727 to 730/Mds/2015 for assessment years 2007-08, 2008-09, 2009-10 & 2010-2011 are dismissed.

9. In the result, the appeals of the Revenue in ITA Nos.726 to 730/Mds/2015 for assessment years 2006-07 to 2010-2011 are dismissed.

Order pronounced on Wednesday, the 27th day of July, 2016, at Chennai.

Sd/-  
(चंद्र पूजारी)  
**(CHANDRA POOJARI)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-  
(जी. पवन कुमार)  
**(G. PAVAN KUMAR)**  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 27.07.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |