



Ion Exchange India Limited
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

माननीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ IT(TP)A. No. 1688/Mum/2017

(निर्धारण वर्ष / Assessment Year:2011-12)

Ion Exchange (India) Ltd. Ion House, 4 th Floor Dr. E. Moses Road, Mahalaxmi Mumbai-400 011.	बनाम/ Vs.	DCIT-6(3)(1) Aaykar Bhavan M.K. Road Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACI-1726-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपील सं./ IT(TP)A. No. 1759/Mum/2017

(निर्धारण वर्ष / Assessment Year:2011-12)

DCIT-6(3)(1) Aaykar Bhavan M.K. Road Mumbai-400 020.	बनाम/ Vs.	Ion Exchange (India) Ltd. Ion House, 4 th Floor Dr. E. Moses Road, Mahalaxmi Mumbai-400 011.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACI-1726-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri P.R.V. Raghavan- Ld. AR
Revenue by	:	Shri Rignesh K Das –Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	17/07/2019
घोषणाकीतारीख / Date of Pronouncement	:	31/07/2019



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member):-

1. These are cross-appeals for Assessment Year [AY] 2011-12 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-56, Mumbai [CIT(A)], *Appeal No. CIT(A)-56/TP/DCIT-6(3)(1)/2016-17/80-I* dated 30/11/2016 on certain grounds of appeal. Although the registry has noted a delay of 14 days in filing of revenue's appeal, however, upon perusal of Authorisation Memo dated 10/03/2017, we find that the impugned order was received by the revenue on 12/01/2017 as against 30/11/2016 as mentioned in Column No. 9 of Form 36. Therefore, finding the appeal in order, we proceed to adjudicate the cross-appeals as argued before us.

2. The grounds raised by the assessee read as under: -

The following Grounds of Appeal are without prejudice to one another: -

1) Principles of natural Justice and lack of reasoning: -

- (i). The Commissioner of Income-tax (Appeals) 56, Mumbai (CITA) has erred in law and on facts in not disposing off your Appellants' objections about non appreciation of the documents and submissions filed before AO and AO's insistence of seeking documents which were / are beyond the control of your appellants, like confirmation of transaction from M/s. JB Interlink.
- (ii). The learned CIT(A) ought to have followed the ratio of the binding decision of the Hon'ble Supreme Court in the case of ACCT Vs Shukla and Bros (2010) 30 Vs 114 (SC).
- (iii). The learned CITA has erred in law and on facts in not disposing of the ground nos. 1(i) to 1(iv) specifically by way of a speaking order.

3) Transfer Pricing Adjustment

a. Sale and purchase of Engineering Items Rs.7,71,566/- :-

The learned CIT(A) has erred in upholding the TPO's adjustment of prices. Nowhere it has been mentioned in the TP Rules or in the CBDT Guidelines that the TPO is empowered to make a comparison of each transaction separately.

b. Sale of Resin and Chemicals Rs.2,31,096/-



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The learned CITA has erred in upholding the TPO's adjustment of prices. Nowhere it has been mentioned in the TP Rules or in the CBDT Guidelines that the TPO is empowered to make a comparison of each transaction separately.

4) Purchase of Inputs:-

(i) The learned CIT(A) has erred in law and on facts in not disposing of the ground nos. 7(i) to 7(viii) specifically by way of a speaking order and instead passed a general order vide para 7 at pages 14 & 15 of the Appellate Order.

(ii) The learned CIT(A) has erred in law and on facts in not resolving or asking for a remand report from the Deputy Commissioner Income-tax 6(3)(1), Mumbai (AO), on the issue of how AO applied independent mind to the information. Instead, the CIT(A) concluded at page 14 that"..... It is stated in this regard that the AO has relied upon such investigation conducted by the Sales Tax Department and concluded that the said transaction of Purchase of inputs in the case under consideration are bogus". The CIT(A), has thus not disposed off Grounds of appeal no. 1(ii) nor has he obtained any remand report from the AO,

(iii) The learned CIT(A) has erred in law and on facts in concluding that at page 14 " In these regards, it is stated that, the invoices submitted in respect of the impugned purchases are not genuine as is noted from the fact that they do not have genuine phone numbers & existence in reality." The CITA, has thus not disposed off Grounds of appeal no. 7(ii) nor has he obtained any remand report from the AO.

(iv) The learned CIT(A) has erred in law and on facts in stating that at page 14 " ...Further, during the proceedings, the Ld. AR was specifically called upon to produce the principal officer of M/s. JB Interlink to substantiate their claim of genuine transaction....." Such a direction was never given to your Appellant. The CIT(A), has thus not disposed off Grounds of appeal no. 7(v) and did not appreciate the contents of para 10 of your Appellants' written submission dated Oct. 10, 2016. Your appellants have also filed a Rectification Application before the CIT(A) to rectify the above factual error and the same is not yet disposed off.

(v) The learned CIT(A) has erred in law and on facts in stating that at page 14 " ...Further, in various cases concerning bogus transaction, it has been observed that the payment made via banking channels are later on withdrawn and received back by the payee in cash. The Appellant, during the proceedings, was asked to provide the bank statement of M/s. JB Interlink so as to verify that the money that has been paid is by no means returned back to the appellant and the transaction involves no bogus element. However, the appellant failed to produce the bank statement of the party on record.....". Such a direction was never given to your Appellant. The CIT(A), has thus not disposed off / did not appreciate the contents of para 10 of your Appellants' written submission dated Oct. 10, 2016. Your appellants have also filed a Rectification Application before the CIT(A) to rectify the above factual error and the same is not yet disposed off.

(vi) The learned CITA has erred in law and on facts in not disposing of the various case laws by stating that onus of proving is always on the person who makes the claim and not on the Revenue.

(vii) The learned CIT(A) has erred in law and on facts in not discharging his responsibility of finding out the factual position of the case and in upholding the AO's stand.

5) Initiation of penalty proceedings:-

The CIT(A) has erred in law and on facts, in paragraph 9 at page 19 of the Appellate Order, in upholding that this ground is premature at this stage.



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6) Relief/Prayer: - In view of the aforestated factual and legal position, we humbly request Your Honours to -

- (i). To modify the appellate Order of the CIT(A) to the above extent;
- (ii). delete the above-mentioned addition made by the AO in the Assessment Order; and
- (iii). any other relief as Your Honours may deem fit and appropriate, may please be granted.

Your Appellants crave, leave to add, to amend, to alter, to substitute, to modify and / or to withdraw any or all of the foregoing Grounds of Appeal *on or before* the time of Hearing.

The grounds raised by the revenue read as under: -

(i) Whether on the facts and circumstances and in law, the Ld. CIT(A) erred in deleting the addition of Rs,28,90,060/- made on account of interest free advances to AEs while benchmarking the imputed interest free loans by relying upon the RBI's Master Circular in respect of External Commercial Borrowing (ECB), Which does not take into account the geographical perspective of the international transactions and violated the very spirit of transfer pricing provisions.

ii) Whether on the facts and circumstances and in law, the Ld. CIT(A) erred in fact and law while benchmarking the imputed interest on interest free loans by relying upon the RBI's Master Circular in respect of External Commercial Borrowings (ECB), which is not one of the approved methods for determining arm's length price?

iii) Whether on the facts and circumstances and in law, the Ld. CIT(A) erred in fact and law while benchmarking the imputed interest on interest free loans by relying upon the RBI's Master Circular in respect of External Commercial Borrowings (ECB), which is under a government / RBI scheme and is, therefore, not an uncontrolled benchmark for loan transactions?

iv) Whether on the facts and circumstances and in law, the Ld. CIT(A) erred in fact and law while benchmarking the imputed interest on interest free loans by relying upon the RBI's Master Circular in respect of External Commercial Borrowings (ECB), without comparing the loan transaction with similar uncontrolled loan transaction, in same countries and same currency and under similar circumstances?

v) Whether on the facts and circumstances and in law, the Ld. CIT(A) in respect of disallowance of Rs. 22,99,503/- u/s 14A of the Income tax Act erred in directing the AO to follow the directions of the ITAT in the order dated 10.02.2014 in A. Y. 2008-09 and thus exercised jurisdiction beyond control as the ITAT in the above order in A.Y. 2008-09 referred the issue to the A.O. for fresh examination which power is not vested with the CIT(A) u/s 250 of the Income Tax Act.

vi) Whether on the facts and circumstances and in law, the Ld. CIT(A) in respect of disallowance of Rs. 79,00,000/-/- on account of Interest-free Advance erred in directing the AO to follow the directions of the ITAT in the order dated 10.02.2014 in A.Y. 2008-09 and thus exercised jurisdiction beyond control as the ITAT in the above order in A.Y. 2008-09 referred the issue to the A.O. for fresh examination which power is not vested with the CIT(A) u/s 250 of the Income Tax Act.

vii) Whether on the facts and circumstances and in law, the Ld. CIT(A) in respect of disallowance of Rs.11,09,17,104/- on account of interest expenditure on investment for



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controlling interest in subsidiary companies erred in directing the AO to follow the directions of the ITAT in the order dated 10.02.2014 in A.Y. 2008-09 and thus exercised jurisdiction beyond control as the ITAT in the above order in A.Y. 2008-09 referred the issue to the A. O. for fresh examination which power is not vested with CIT(A) U/s.250 of the Income Tax Act.

viii) "Whether on the facts and circumstances and in law, the Ld. CIT(A) in respect of disallowance of Rs.68,117/- on account interest on borrowed capital attributable to capital WIP erred in directing the AO to follow the directions of the ITAT in the order dated 10.02.2014 in A.Y. 2008-09 and thus exercised jurisdiction beyond control as the ITAT in the above order in A.Y. 2008-09 referred the issue to the A.O. for fresh examination which power is not vested with the CIT(A) u/s 250 of the Income Tax Act.

ix) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,967/- on account of Employees' Contribution to Provident Fund u/s. 36(1)(via) of the I T Act, without appreciating that assessee has committed violation of provision of section 36(1)(via).

x) The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.

3. It is an admitted position between both the representatives that most of the issues in cross-appeals are covered by the earlier orders of Tribunal in assessee's own case. Our attention has been drawn to the documents placed in assessee's paper book, which we have considered. In the above background, we proceed to adjudicate the issues raised in the cross-appeals.

4.1 The assessee being resident corporate assessee is stated to be engaged in manufacturing, trading and sale of water treatment plants, chemicals and other consumer products. The assessee deals in Zero-B range of domestic water purifiers and engaged in designing and installation of water treatment plants and waster water treatment plants. The assessment for impugned AY was framed u/s 143(3) r.w.s. 144C(4) of the Income Tax Act, 1961 on 12/03/2015 wherein the income of the assessee was determined at Rs.19.49 Crores after certain additions / disallowances & adjustments as against returned income of Rs.17.91 Crores filed by the



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assessee on 29/11/2011 which was revised on 21/03/2013. The Ld. first appellate authority allowed part relief to the assessee vide order dated 30/11/2016 which has given rise to the cross-appeals before us.

4.2 In the above background, we find that following issues crop-up in cross-appeals: -

No.	Particulars	Amount (Rs.)
A.	Transfer Pricing Issues: -	
1.	TP addition on account of Sale of Engineering Items etc.	7,71,566/-
2.	TP addition on account of Sale of Resins & Chemicals	2,31,096/-
3.	TP addition on account of Loans & Advances to AE	28,90,060/-
		38,92,722/-
B.	Non- Transfer Pricing / Corporate Tax Issues: -	
4.	Disallowance u/s.14A	22,99,503/-
5.	Interest free advances to Group Companies	1,90,390/-
6.	Interest Expenditure on investment in subsidiary companies	26,73,102/-
7.	Interest on Borrowed Capital	68,117/-
8.	Alleged bogus purchases	65,87,295/-
9.	Disallowance u/s.36(1)(va)	37,967/-

4.3 Transfer Pricing Issues

Certain international transactions being carried out by the assessee and reported in Form No. 3CEB were referred to Ld. Transfer Pricing Officer u/s 92 CA(1) for determination of Arm's Length Price [ALP]. The Ld. TPO, vide order u/s 92 CA (3) dated 26/11/2014 proposed certain Transfer Pricing adjustment as per the following details: -

4.3.1 TP addition on account of Sale of Engineering Items etc.

The assessee is stated to have sold engineering items, water treatment plants aggregating to Rs.22.97 Crores to its various AEs during the year and benchmarked the same using Cost plus Method. During the proceedings, the assessee submitted detailed comparison chart showing



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price charged by it from its AEs and non-AEs. After considering +5% variations, the price less charged from AEs amounted to Rs.7.71 Lacs which was proposed as TP adjustment. The Ld. first appellate authority confirmed the adjustment by noticing that the assessee accepted the similar adjustment made in AY 2008-09.

The only submissions by Ld. Authorised Representative for Assessee, Shri PRV Raghavan, are that the adjustment of Rs.7,43,226/- arising out of contract no.5800100051 is not warranted since the same is within tolerance range of $\pm 5\%$. Our attention has been drawn to Page No. 748 of the paper book to support the same. The Ld. DR has submitted that the same would require verification by Ld. TPO/ AO. Therefore, while confirming the stand of first appellate authority with respect to balance addition, the stated adjustment of Rs.7,43,226/- arising out of contract no.5800100051 stand remitted back to the file of Ld. TPO / Ld. AO to ascertain the fact that the same is within the tolerance range of $\pm 5\%$. If so, the addition to that extent shall stand deleted. Ground No.3(a) of assessee's appeal stands allowed for statistical purposes to that extent.

4.3.2 TP addition on account of Sale of Resins & Chemicals

Similarly, the assessee sold resins and chemicals to its AE aggregating to Rs.9.12 Crores and benchmarked the same using Comparable Uncontrolled Price Method (CUP). Similar other transactions aggregating to Rs.1.33 Crores were benchmarked using Cost Plus Method (CPM). The Ld. TPO, after considering invoice-wise pricing, worked out TP adjustment of Rs.2.31 Lacs against the same. The Ld. first appellate authority



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confirmed the adjustment by noticing that the assessee accepted the similar adjustment made in AY 2008-09. Upon due consideration, following the rule of consistency, we hold that no infirmity could be found in the decision of Ld. first appellate authority. Ground No.3(b) of assessee's appeal stands dismissed.

4.3.3 TP addition on account of Loans & Advances to AEs

The third TP adjustment was on account of advances to AEs. It transpired that the assessee had given interest free advances to its AEs situated at Singapore, Bangladesh, USA and Oman. However, no interest was charged against the same. The assessee worked out notional interest of Rs.19.51 Lacs and submitted that the same was already offered to tax in the computation of Income. However, noticing that no security was provided against the loans and similar transactions were benchmarked @14.29% in AY 2011-12, the Ld. TPO adopted the same rate and worked out adjustment of Rs.48.41 Lacs. After adjusting the amount of Rs.19.51 Lacs already offered by the assessee, the net adjustment, thus proposed, worked out to be Rs.28.90 Lacs.

The Ld. first appellate authority directed Ld. AO to follow the directions of the Tribunal as given in AY 2008-09. Since Ld. first appellate authority has directed Ld. AO to follow the directions of Tribunal for AY 2008-09, no infirmity could be found in the same. The revenue is unable to controvert the fact that the said ruling was applicable to the facts of this year also. No distinguishing features or facts could be pointed out. Ground No. 1 to 4 of revenue's appeal stands dismissed.



4.4 Non- Transfer Pricing / Corporate Tax Issues: -

4.4.1 Disallowance u/s 14A

During assessment proceedings, it transpired that although assessee earned exempt income of Rs.26.74 Lacs during the year, however no disallowance was offered u/s 14A. The Ld. AO, invoking the provisions of Section 14A r.w.s. 8D worked out aggregate disallowance of Rs.22.99 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.16.66 Lacs and expense disallowances u/r 8D(2)(iii) for Rs.6.33 Lacs.

The Ld. first appellate authority directed Ld. AO to follow the directions of the Tribunal as given in AY 2008-09 wherein the issue was restored back to the file of Ld. AO with certain directions.

4.4.2 Interest free advances to group company.

It transpired that the assessee advanced an amount of Rs.79 Lacs to its subsidiary namely M/s. Ion Exchange Envirofarms Ltd. as interest free advance. During the year, there was no movement of funds. It was noted that the assessee had borrowed funds and was paying interest on the borrowings. The assessee could not establish the business purpose of advancing these loans. The Ld. AO worked out average rate of borrowings @17.85% and applying the same to proportion of peak borrowing vis-à-vis total of owned and Borrowed funds (being 13.50%), worked out effective rate of interest as 2.41%. Applying this rate to advances of Rs.79 Lacs, disallowance of Rs.1.90 Lacs was worked out u/s 36(1)(iii) on account of interest on borrowing used for non-business purposes.



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The Ld. first appellate authority directed Ld. AO to follow the directions of the Tribunal as given in AY 2008-09 wherein the issue was restored back to the file of Ld. AO with certain directions.

4.4.3 Interest Expenditure on investment in subsidiary companies

During assessment proceedings, it transpired that the assessee invested aggregate sum of Rs.11.09 Crores in its various subsidiaries, which led Ld. AO to treat the corresponding interest expenditure to be capital in nature. The assessee drew attention to the fact that the assessee made additional investments during the year only in two subsidiaries situated at USA and Bangladesh. It was submitted that the purpose of investment was to promote the business and products and not to earn dividend income. Further, the investments were made out of internal accruals and not out of borrowed funds. In the alternative, it was submitted that rate of 2.41% may be applied to work out the disallowance. This rate was nothing but the rate computed by Ld. AO for making disallowance u/s 14A. Accepting the alternative submissions, Ld. AO worked out disallowance of Rs.26.73 Lacs and added the same to the income of the assessee.

The Ld. first appellate authority directed Ld. AO to follow the directions of the Tribunal as given in AY 2008-09 wherein the issue was restored back to the file of Ld. AO with certain directions.

4.4.4 Interest on Borrowed Capital

This disallowance was made since the assessee had capital work-in-progress in the books of account and therefore, the disallowance was to be made as per Section 36(1)(iii). Treating the capital work-in-progress to be



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extension of existing business, Ld. AO worked out disallowance of Rs.68,117/- which was computed as 2.41% of capital WIP.

The Ld. first appellate authority directed Ld. AO to follow the directions of the Tribunal as given in AY 2008-09 wherein the issue was restored back to the file of Ld. AO with certain directions.

4.4.5 Upon due consideration, we find that Ld. first appellate authority has directed Ld. AO to follow the directions of Tribunal for AY 2008-09 and therefore, no infirmity could be found in the same. The revenue is unable to controvert the fact that the said ruling was squarely applicable to the facts of this year also. No distinguishing features or facts could be pointed out. Therefore, Ground Nos. 5 to 8 of revenue's appeal stands dismissed.

4.4.6 Bogus purchases:

It was noted that the assessee made purchases of Rs.65.87 Lacs from an entity namely *J.B. Interlink* which was declared as *Hawala Dealer* in AY 2009-10. The Ld. AO, treating the purchases as bogus purchases added the same to the income of the assessee.

The Ld. first appellate confirmed the stand of Ld. AO by relying upon the decision of Hon'ble Supreme Court in **CIT V/s Durgaprasad More [82 ITR 540]**.

Our attention is drawn to the fact that similar addition was made on account of purchases made from the same entity in AY 2009-10. The Tribunal restricted the impugned additions to 12.5% of *alleged bogus purchases* vide ITA No.5969/Mum/2016 order dated 28/03/2018. Facts being *pari-materia* the same, to maintain judicial consistency, we restrict the impugned



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additions to 12.5%. Ground No. 4 of assessee's appeal stands partly allowed.

4.4.7 Disallowance u/s.36(1)(va)

Upon perusal of Tax Audit Report, it was noted that there was delay in depositing of certain statutory dues viz. Employees Contribution towards ESIC and PPF aggregating to Rs.0.38 Lacs. The Ld. AO disallowed the same u/s 36(1)(va).

The Ld. first appellate directed Ld. AO to follow the decision of Hon'ble Supreme Court in **CIT V/s Alom Extrusions Ltd. [319 ITR 306]**.

Since Ld. first appellate authority has directed Ld. AO to follow the binding judicial precedent in the shape of decision of Hon'ble Supreme Court, no infirmity could be found in the same. Ground No.9 of revenue's appeal stands dismissed.

4.5 Ground No. 1 of assessee's appeal has not been pressed before us by Ld. AR. Ground No. 3 of assessee's appeal stands partly allowed for statistical purposes. Ground No. 4 of assessee's appeal stands partly allowed. Ground No. 5 contest initiation of penalty. The same being premature do not require any adjudication on our part. Ground No. 6 is general in nature.

4.6 Ground Nos. 1 to 9 of revenue's appeal stands dismissed. Ground Nos. 10 & 11 are general in nature.



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Conclusion

5. The assessee's appeal stand partly allowed to the extent indicated in the order. The revenue's appeal stands dismissed.

Order pronounced in the open court on 31st July, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 31/07/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

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उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.