आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एस.एम.सी',मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL 'SMC', BENCH MUMBAI

श्री आर.के.गुप्ता, न्यायिक सदस्य के समक्ष

BEFORE SHRI R. K. GUPTA, JM

आयकर अपील सं./**ITA No.4255/Mum/2011**

(**निर्धारण वर्ष /** Assessment Year :2006-2007)

M/s Champagne Vineyards Ltd, Nav Bhavna Co-operative Society, Room No.5, 3rd Floor, Prabhadevi, Mumbai-400 025	Vs.	DCIT CIR 6(2) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AABCC 6296 N**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.4256/Mum/2011**

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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AABCC 6296 N**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Mr. Sunil Nahta & Mr. Mitul Goradia

राजस्व **की ओर से** /Revenue by : Mr. Mohit Jain

सुनवाई की तारीख / **Date of Hearing : 4th Dec., 2012**

घोषणा की तारीख/**Date of Pronouncement : 7th Dec. ,2012**

आदेश / O R D E R

These two appeals have been preferred by the assessee against the order dated 4-1-2011 of leaned CIT(A)-12, Mumbai relating to the assessment completed under Section 143(3) as well as under Section 115WE(3) of the Act for the assessment year 2006-07.

2. The assessee is objecting the inaction on the part of the learned CIT(A) in confirming the non-consideration of revised return filed during the assessment proceedings, which was in consonance with the scheme of demerger approved by the Hon'ble Bombay High Court.

3. The assessee filed return on 30-11-2006 declaring loss of Rs.35,26,381/-. The assessee filed a revised return during the assessment proceedings, which is beyond the time limit as provided under Section 139(5) of the Act. The Assessing Officer did not accept the contention of the assessee on the ground that scheme of demerger has been approved by the Hon'ble Bombay High Court only on 27-3-2008 and the revised return under Section 139(5) was to be filed before 31-3-2008. There are so many formalities were to be completed in respect of scheme of demerger approved by the Hon'ble Bombay High Court. Therefore, the assessee could not file the return in time.

4. The Assessing Officer observed that the provisions are very specific by which the revised return under Section 139(5) could have been filed on or before 31-3-2008. Accordingly, he did not accept the revised return and completed the assessment on the basis of the original return.

5. The learned CIT(A) has also confirmed the action of the Assessing Officer. Now, the assessee is in appeal here before the Tribunal.

6. The contention raised before the lower authorities are reiterated here before the Tribunal by learned AR of the assessee. Reliance has been placed on the decision of the Hon'ble Madras High Court in the case of **Pentamedia Graphics Ltd. Vs. ITO, reported in [2010] 236 CTR 204 (Mad)** and also on the decision of the Tribunal in the case of **Bharti Airtel Ltd. Vs. ACIT, passed in ITA No.3907/Del/2010, vide order dated 11-2-2011** for the assessment year 2006-2007. It was also submitted that on identical facts the Hon'ble Madras High Court has held that the return filed on a later stage i.e. beyond the stipulated time, has to be considered for the reason that the scheme of amalgamation takes effect from only on and from the date of the order sanctioning the scheme. In the present case, the scheme was sanctioned by an order which was received by the assessee only on 27-3-2008. They prepared the computation of income on the basis of demerger scheme approved by the Hon'ble Bombay High Court and filed return in the month of October, 2008. The assessment was pending, therefore, in view of the decision of the Hon'ble Madras High Court followed by the Delhi Bench of this Tribunal in the case of **Bharti Airtel Ltd.**(supra), the Assessing Officer should have been accepted the claim of the assessee.

7. On the other hand, learned DR placed reliance on the orders of the Assessing Officer as well as the learned CIT(A).

8. After considering the submission and perusing the material on record, I found that the assessee deserves to succeed on the issue. The order of the Hon'ble Bombay High Court approving the scheme of demerger was received only on 27-3-2008. Time for filing revised return under Section 139(5) was available only upto 31-3-2008. I noted that the Hon'ble Supreme Court in the case of **Marshall Sons & Co. (India) Limited Vs. ITO, reported in (1997) 138 CTR (SC) 1**, deals with the case of amalgamation particularly with reference to effective date from which the amalgamation is to take place. In that case, the assessee therein had its holding company in Calcutta and the subsidiary company in Madras. In December, 1982, the subsidiary company passed a resolution proposing to amalgamate with the holding company. An application by the holding company before the Calcutta High Court and an application by subsidiary company before the Madras High Court were made to grant the scheme of amalgamation that the entire undertaking of the subsidiary company was to be transferred to the holding company with effect from the transfer date viz. 1st January, 1982. The scheme was sanctioned on 21-11-1983 by the Hon'ble Madras High Court and on 11-1-1984 by the Hon'ble Calcutta High Court. Thereafter the ITO issued notice under Section 139(2) to the subsidiary company and called upon to file the return of income for the assessment years 1984-85 & 1985-86. The subsidiary company replied that there was no question of the subsidiary company filing returns for the aforesaid period after the amalgamation sanctioned w.e.f. 1st January, 1982. The writ filed before the Hon'ble Madras High Court was dismissed. However, the Hon'ble Apex Court allowed the issue in favour of the assessee. The Hon'ble Supreme Court pointed out that when the Court had not specified any date as the date of transfer or amalgamation, it would not be a reasonable to say that the scheme of amalgamation takes effect from only on and from the date of the order sanctioning the scheme. The Hon'ble Apex Court pointed out that till the scheme is sanctioned and on the scheme being granted, the business carried on by the transferor company, namely, subsidiary company in the reported decision, should be deemed to have been carried on for and on behalf of the transferee company and this is the necessary and logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. These observations were followed by the Hon'ble Madras High Court in the case of **Pentamedia Graphics Ltd.** (supra). Accordingly, the Hon'ble Madras High Court had held that the effective date, thus, given as 1st January, 1984 and going by Clause 7.2, the order of the Court sanctioning the scheme originally under order dated 12th October, 2004 and 8th November, 2004, followed by the order dated 29th November, 2007 modifying the scheme to be effective from 1st January, 2004, is binding on the respondents also. Hence, applying the decision of the Hon'ble Apex Court in the above referred to decision, the effectiveness of the scheme as approved, hence, cannot be ignored by a reference to section 139(5) of the Companies Act, 1956.

9. In the present case, the assessment was pending and during the assessment proceeding, the assessee had filed its revised return on the basis of the scheme of demerger approved by the Hon'ble Bombay High Court and, therefore, in my considered view, there was a reasonable cause for not filing the revised return within the stipulated period allowed upto 31-3-2008. Accordingly, I hold that the Assessing Officer should have passed the assessments on the basis of revised return and not on the basis of original return. Therefore, the orders of the authorities below are set aside and the Assessing Officer is directed to pass the assessments on the basis of the revised return which was revised on the basis of the decision of the Hon'ble Bombay High Court, who approved the Scheme of demerger.

10. In the result, appeals of the assessees are allowed as indicated above.

परिणामतः निर्धारिती की अपील उपरोक्तानुसार स्वीकृत की जाती है ।

Order pronounced in the open court on this 7th day of Dec.2012.

आदेश की घोषणा खुले न्यायालय में दिनांकः 7th Dec.,2012 को की गई ।

Sd/-
(आर.के.गुप्ता)
(R.K.GUPTA)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : **07/12/ 2012.**
प्र.कु.मि**/pkm,** नि.स/ **PS**

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**