IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER

I.T.A. No. 408/Asr/2016
Assessment Year: 2007-08

Income Tax Officer, Ward- 5(1), Amritsar. **(Appellant)**	**Vs.**	M/s Bhagat Industrial Corporation Ltd., V.P.O. Khasa, Amritsar [PAN: AAACB 7368P] **(Respendent)**

C.O. No. 21/Asr/2016
(In I.T.A. No. 408/Asr/2016)
Assessment Year: 2007-08

M/s Bhagat Industrial Corporation Ltd., V.P.O. Khasa, Amritsar [PAN: AAACB 7368P] **(Appellant)**	**Vs.**	Income Tax Officer, Ward- 5(1), Amritsar. **(Respendent)**

Appellant by	**Sh. Sanjay Dhariwal, CIT-DR**
Respondent by	**Sh. V. Wadhwa, C.A.**

Date of Hearing	**20.09.2021**
Date of Pronouncement	**20.09.2021**

ORDER

Per Bench:-

The present appeal filed by the Revenue and C.O. filed by the assessee feeling aggrieved by order of Ld. CIT(A)-2, Amritsar, on the ground mentioned in the memo of appeal and in Cross objection filed by the assessee.

2. At the outset Ld. CIT-DR had drawn our attention to page 14 of the CIT(A) Order wherein the CIT(A) has observed that Assessing Officer had failed to consider the scheme of merger, which the Hon'ble High Court subsequently approved. The Ld. DR had also filed the detailed written submission in support of the case of the Assessing Officer before us. It was the contention of DR the order of CIT(A) suffered from perversity and non-application of mind and premised on the document, which was neither filled before the Assessing Officer in the assessment year under consideration nor before the Ld. CIT(A) and therefore the entire order passed by the CIT(A) is required to set aside, and the order passed by the Assessing

Officer must be restored. In the written submissions filed by the Ld. DR it was mentioned as under:-

1. Assessment order u/s 143(3)/147 was passed in this case on 31.03.2015. The said order was challenged by the assessee before the CIT(A) and the ld. CIT(A) vide order dated 29.04.16 allowed the appeal of the assessee. Aggrieved with the order of the ld. CIT(A), the Revenue filed appeal before the hon'ble Tribunal and the assessee has filed cross-objections. The appeals were part heard on 16.09.2021 by the Hon'ble Bench and the undersigned has been directed to appear on 20.09.21, i.e., the next date of hearing. Meanwhile as per the request of the undersigned, the assessee has mailed the scheme which has been approved by the Hon'ble High Court vide order dated 17.12.2007.
2. Grounds of Appeal by Revenue are enclosed as Annexure-1 herewith. It is to be noted that addition of Rs. 11, 90,00,000 was made by the A.O. on account of money received from two companies, i.e., Bagga Millennium Pvt Ltd (Rs. 8,36,00,000) and Gursimran Millennium Liquor (India) Pvt Ltd. The assessee submitted two MoUs during the course of assessment regarding sale of its distillery unit Khasa Distilleries to BMPL and did not provide the full and correct information regarding sale/demerger of its distillery unit to BMPL or any of its subsidiaries. The assessee provided information in a piecemeal manner to avoid any inquiry by the A.O. which is clear from para 4.6, 4.7 and 4.8 of the assessment order. As the assessee could not explain the reasons of receipt of money from the above entities and nexus of money with business restructuring, therefore, the A.O. had added the money received by the assessee in the year under consideration.
3. Aggrieved by the order of the A.O., the assessee filed appeal before the CIT(A) and he allowed the appeal of the assessee. The order of ld. CIT(A) dated 29.04.2016 suffers from many perversities, which are highlighted as under-
   (a) On page-14 of the Order, the ld. CIT(A) has observed that the A.O. had failed to consider the scheme of demerger; however, as a matter of fact the assessee did not submit any scheme of demerger before the A.O. and it had furnished only two MoUs, contents of which are different from the scheme approved by the Hon'ble High Court, which will be discussed subsequently. It transpires from the Order of the ld. CIT(A) that he had passed the Order without having gone through the scheme approved by The Hon'ble High Court and the assessee also did not submit the copy of scheme before the ld. CIT(A) and it has only been furnished in the current proceedings on insistence of the undersigned and directions of the Hon'ble Bench.
   (b) While granting relief to the assessee on account of money received from one Gursimran Distilleries Pvt Ltd (GDPL), the ld. CIT(A) has placed reliance on the supplementary MoU dated 23.09.2006, while the name of GDPL does not appear in the sanctioned scheme at all. The ld. CIT(A) was misguided by the assessee by furnishing only two MoUs and not the sanctioned scheme. If all the transactions were in furtherance of the Supplementary MoU,

then the assessee should have got Rs. 30 crores as sale receipts and section 2(19AA) will not come into picture. The ld. CIT(A) has not appreciated the MoUs in correct perspective and totality of the facts.

(c) Even if the above vital aspects of the case are not considered, then also the ld CIT(A) has just accepted the contentions of the assessee without considering the ramifications and tax implications. It is a settled law that the powers of the CIT(A) are co-terminus with that of the A.O., therefore, the CIT(A) should have inquired the tax treatment of the money received by the holding company Biermann Card Co Pvt Ltd in the year under consideration.

(d) The ld. CIT(A) has observed on page-17 that-

" Therefore the appellant was not the beneficial recipient of the amount of Rs. 8.36 crore from BML or Rs. 3.54 crore received from GDPL during the year under consideration as stated above and no addition in respect thereof is called for as no sale/transfer of Khasa Distillery Unit of the assessee was affected during the year under consideration since the approval of the hon'ble High Court of the MoU dated 18.05.2006 was still pending. …The A.O. has made the addition of Rs. 11,90,00,000 for the reason that the scheme of demerger/merger/amalgamation was implemented or not is not clear in this year and was of unexplained nature and source to avoid possible leakage of revenue. This clearly shows that the addition was made by the A.O. for the reason that he never understood the scheme of demerger of Khasa Distillery Company of the assessee and such an addition cannot be sustained. Also no addition is called for as the source, nature and genuineness of the transactions of Rs. 8,36,00,000 and Rs. 3,54,00,000 was fully explained with supporting evidences and bank statements/books of account and the executed MoU and supplementary MoU."

It is submitted at the cost of repetition that neither any MoU or supplementary MoU is mentioned in the sanctioned scheme, nor name of GDPL is appearing in the sanctioned scheme. Further, the ld. CIT(A) was hearing appeal of a re-opened case in 2015-16, by which everything was completed. So, he could have very well examined all aspects of the transactions after sanction of the scheme by the Hon'ble High Court. It is to be further noted that one important sale transactions escaped the attention of the ld. CIT(A) mentioned even in the MoUs. This is referred in para 3.4 of the original MoU and para 1.6 of the supplementary MoU.

Para 3.4 of the original MoU dated 18.05.2006 reads as under-

" Out of the Sale Consideration, a sum of Rs. 1,35,00,000 shall be paid as consideration upon execution and registration of the sale-deed in favour of the Company(s) nominated by BML in respect of 32 acres of land at Khasa which is under control of companies managed by Mr Shashank Bhagat. The sale deeds shall be executed on or before the execution of the Lease Deed. The said companies shall continue to be owned and

managed by Mr Shashank Bhagat and Mrs Sulochana Bhagat till payment of total sale consideration."

Para 1.6 of the supplementary MoU reads as under-

" Lord properties Pvt Ltd means a company incorporated in India having its registered office at Ludhiana, which has become the registered owner of 32 acres at Khasa district Amritsar the shares of which shall eventually be transferred to BML upon the payment of the last instalment of Rs. 16,75,00,000 along with payments towards net

current assets readily convertible into money, owned by Lord Properties Pvt Ltd."

Further, para 5.2 of the supplementary MoU reads as under-

" BICL agreeing to execute the Lease Deed in favour of GDPL and GDPL executing the lease not later than 30th September, 2006 upon payment of Rs. 4.89 crore by GDPL to BCPL (3.54 crore) and Lord Properties (Rs. 1.35 crore)."

It is clear from the above facts that payment received from GDPL is sale consideration against transfer of land. It is to be further noted that at page no. 1 of the supplementary MoU (Page 24 of the Paper-Book filed by the assessee dated 26.09.2016) describes Lord Properties as under-

" Lord Properties Pvt Ltd is a company incorporated under the laws of India, having its registered office at 54, Janpath, New Delhi (hereinafter referred to as " LPPL" which term shall unless the context otherwise requires include its successors in interest and permitted assigns) through Mr Shashank Bhagat acting as Director of LPPL."

(e) The ld. CIT (A) could not get the entire picture of web of transactions for want of availability of the approved scheme. As per the Scheme, there was reduction in capital of the demerged entity. It has been mentioned in the approved scheme that issued, subscribed and paid-up capital of the resulting company will be reduced by Rs. 49,92,000 and after reduction the paid up capital would be Rs. 62,40,000. It has been clearly mentioned in the scheme that as an integrally connected part of the scheme and upon coming into effect of this scheme with effect from the Appointed Date, this reduction will happen as per the provisions of section 100-103 of the Companies Act read with Article 49 of the Articles of Association of the Resulting company.

It is clear from the above discussion that payment by GDPL was in lieu of land transaction and finding of the ld. CIT(A) in this regard was not based on the appreciation of correct facts.

4. Reverting to the scheme approved by the High Court, it is submitted that copy of the scheme furnished to the Hon'ble High Court as submitted by the ld AR of the assessee through e-mail is enclosed as Annexure-2 of the submissions. It is clear from the above scheme that 'appointed date' of the demerger was 01.04.2006 as per the scheme and therefore, this year and not the subsequent year (as claimed by the ld. AR of the assessee during hearing on 16.09.2021), is the relevant year for demerger. It is to be further noticed that original MoU dated 18.05.2006 and supplementary MoU dated 23.09.2006 do not find any mention in the approved scheme. Further, the name of company GDPL is nowhere mentioned in the said scheme, neither the land transaction of 32 acres at Khasa is mentioned in the scheme.
The differences on crucial issue in the approved scheme vis-à-vis MoU and supplementary MoU are tabulated as under-

S. No.	**Sanctioned Scheme**	**MoU dated 18.05.2006**	**MoU dated 23.09.2006**
1	The present Scheme of Arrangement (hereinafter referred to as "this Scheme") would involve transfer on a going concern basis of the Khasa Distillery Division ("Demerged Undertaking" as defined later in this Scheme) into Digvijay Chemicals Limited ("DCL"), with BICL focusing on the Remaining Business (as defined later in this Scheme) and in consideration thereof, issue of equity shares by DCL to the shareholders of BICL on a proportionate basis, pursuant to Section 394 and other relevant provisions of the Companies Act, 1956 and in compliance with the norms laid down under Section 2 (19AA) of the Income Tax Act, 1961. This restructuring is intended to provide greater business focus both in BICL and DCL.	Sale consideration is mentioned as Rs. 33.50 Cr to BICL against transfer of 92.14% issued and paid-up shares of the transferee company to BML (Para 2.1)	Sale consideration is mentioned as Rs. 30 Cr to BICL against transfer of 92.14% issued and paid-up shares of the transferee company to GDPL (Para 2.1)

	10.1 Upon the coming into effect of the Scheme and in consideration of the demerger of the Demerged Undertaking in the Resulting Company pursuant to Part II of the Scheme, the Resulting Company shall, without any further act or deed and without any further payment, issue and allot equity shares (hereinafter also referred to as the "New Equity Shares") at par on a proportionate basis to each member of the Transferor Company whose name is recorded in the register of members of the Transferor Company as holding equity shares on the Specified Date in the ratio of 5:522 i.e. 522 equity share of the Resulting Company of Rs. 2/- each (i.e. after reduction of paid-up value of shares of the Resulting Company pursuant to clause 9.1) to be issued for every 5 equity shares of the Transferor Company of Rs. 10/- each, held by the member. there is no mention of sale consideration as such.		
	No mention of refund of Rs. 5.22 Cr.in para 1 (C)(i), but otherwise definition is similar.	All assets of the Distillery undertaking comes within the definition of the ' Distillery Undertaking' **except for sales/purchase tax pending since 1989 for which a refund of approximately Rs. 5,33,00,000 plus interest**	All assets of the Distillery undertaking comes within the definition of the ' Distillery Undertaking' **except for sales/purchase tax pending since 1989 for which a refund of approximately Rs. 5,33,00,000 plus interest**

		is due to BICL. [Para 1.2(i)]	**is due to BICL. [Para 1.2(i)]**
		Payment of Rs. 8.36 crore already made by BML to BICL. (Para 3.1 & 3.2)	Payment of Rs. 8.36 crore already made by BML to BICL. (Para 3.1 & 3.2) Payment of Rs. 3.54 crore paid to BCPL (Para 3.3)
	Name of GDPL is not mentioned in the approved scheme.	No such clause, as is appearing in the supplementary MoU.	Whereas GDPL is a group company of BML in so far as H.S Bagga and K.S.Bagga with their respective family members, jointly own 80% of the equity share capital of GDPL the balance being held by

			Mr Ram Reddy and Mr Sunil Talwar. BML has assured and represented that GDPL is under their management control and ownership and the Board of Directors of BML have agreed that GDPL shall fulfil all responsibilities and obligation as envisaged in the MoU dated 18th May 2006 executed between BICL and BML.
	There is no mention of land transaction and LPPL in the scheme.	Out of the Sale Consider	Lord Properties Pvt Ltd

		ation, a sum of Rs. 1,35,00,000 shall be paid as consideration upon execution and registration of the sale-deed in favour of the Company (s) nominated by BML in respect of 32 acres of land at Khasa which is under control of companies managed by Mr Shashank Bhagat. The sale deeds shall be executed on or before the executio	means a company incorporated in India having its registered office at Ludhiana, which has become the registered owner of 32 acres at Khasa district Amritsar the shares of which shall eventually be transferred to BML upon the payment of the last instalment of Rs. 16,75,00,000 along with payments towards net current assets

		n of the Lease Deed. The said companies shall continue to be owned and managed by Mr Shashank Bhagat and Mrs Sulochana Bhagat till payment of total sale consideration (Para 3.4)	readily convertible into money, owned by Lord Properties Pvt Ltd (Para 1.6) Subject to the terms of this MoU, the parties agree that 100% of the total issued and paid-up share capital of the M/s Lord Properties Pvt Ltd shall be transferred in favour of GDPL against payment to be made in accordance with the preceding clause(Para 2.2)

5. It is clear from the above discussion that amount of Rs. 3.64 Cr received by BICL from GDPL is connected with the entire transactions, but deliberately kept out of the scheme in order to avoid any violation of section 2(19AA) of the Act. Therefore, the transactions are not mentioned in the scheme. The subsequent payment of Rs. 3.64 Cr by the assessee to BCPL will not save the assessee from tax implications. The difference of the sale amount of Rs. 3.50 crore between the original MoU and the supplementary MoU has escaped attention of the ld. CIT(A). **The assessee has not been able to explain the amount credited in its books of account to the extent of Rs. 3.64 Cr. and this amount is liable to be taxed in the hands of the assessee**. **Further, the 32 acre land transaction also escaped the attention of the ld. CIT(A). Thus, amount of Rs. 1.35 crore is also liable to be added in the hands of the assessee**.
6. **It is to be further mentioned that amount of Rs. 8.36 crore received by the assessee is also liable to be taxed in the hands of the assessee**, as it is deliberately not mentioned in the scheme of demerger. This amount might have been received by the assessee because of the default of the BML in implementing the MoU dated 13th May, 2006. Subsequent repayment by the assessee may be for some other transaction, as there is cobweb of transactions in this entire business restructuring scheme. It is clearly mentioned in para 11.2 of the MoU that the BICL will forfeit the amount of Rs. 16,75,00,000 if BML defaults in making payment of instalments. Although in the supplementary MoU, this default has been waived but there is strong possibility that the assessee has been paid in cash after squaring up the transactions in books in order to make the transactions within the parameters of section 2(19AA) of the Act. The amount of forfeiture might have been only Rs. 8.36 crore instead of Rs. 16.75 crore as a matter of compromise between the parties, as assessee had received only this amount till date of signing of the supplementary MoU.Further, the amount of refund of Rs. 5.33 Cr due to BCIL has not been mentioned in the scheme, as it would have violated the conditions specified in section 2(19AA) of the Act.
7. The Demerger has been defined in section 2(19AA) of the Act as under:

"demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

(*i*) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(*ii*) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(*iii*) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger:

[**Provided** that the provisions of this sub-clause shall not apply where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015;]

(*iv*) the resulting company issues, in consideration of the demerger, its shares to the

shareholders of the demerged company on a proportionate basis [except where the resulting company itself is a shareholder of the demerged company];

(*v*) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become share-holders of the resulting company or companies by virtue of the demerger,

otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(*vi*) the transfer of the undertaking is on a going concern basis;

(*vii*) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1.—For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2.—For the purposes of this clause, the liabilities referred to in sub-clause (*ii*), shall include—

(*a*) the liabilities which arise out of the activities or operations of the undertaking;

(*b*) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(*c*) in cases, other than those referred to in clause (*a*) or clause (*b*), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3.—For determining the value of the property referred to in sub-clause (*iii*), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils [such conditions as may be notified in the Official Gazette, by the Central Government].

[*Explanation 5.*—For the purposes of this clause, the reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified[5] by the Central Government in the Official Gazette.]

[Explanation 6.—*For the purposes of this clause, the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company—*

(i) *is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 (18 of 2013) or any other law for the time being in force governing such public sector companies in this behalf; and*

(ii) fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf.

As per the above discussion, as the assessee has violated the conditions mentioned in section 2(19AA) of the Act, therefore, this business restructuring cannot be termed as " demerger" as per the provisions of the Act. Hence, assessee is liable to pay capital gains tax. Therefore, it is requested to kindly confirm the additions made by the A.O. and allow the appeal of the Revenue. Furthermore, the matter may be restored back to the file of the A.O. to examine the entire gamut of the transactions and to ascertain whether it is a case of demerger or not as per the provisions of the Income-tax Act. Further, the necessary finding may also kindly be given in the case of Digvijay Chemicals Ltd u/s 150(1) of the Act as the value of each share has been reduced from Rs. 10 to Rs.2, but the money has not been returned to the shareholders and the company has earned capital gains to the extent of Rs. 49,92,000 by way of reduction in capital.

8. In the instant case the assessee has used colorable device to evade the tax liability, hence, the Hon'ble Tribunal should see the totality of the facts and circumstances and decide the matter. Reliance is placed upon the following judgements-

(a) **McDowell & Co. Ltd v CTO, 22 Taxman 11 (SC)** : The Hon'ble Supreme Court has held that-

"*So far as the contention that it is open to every one to so arrange his affairs as to reduce the brunt of taxation to the minimum, was concerned, the tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by restoring to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. Courts are now concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it.*"

(b) **Vipan Khanna v CIT& another , ITA No. 394/2010 (Punjab & Haryana High Court)**: The Hon'ble High Court upheld the decision of the Hon;ble Tribunal to remand back the matter to the CIT(A) observing that the genuineness of the documents relied upon by the appellant was required to be gone into by the CIT(A) properly.

(c) DLF Universal Ltd v DCIT, 36 SOT 1 (Delhi)(SB)

(d) Jeans Knit (P) Ltd v DCIT, 38 taxmann.com 112 (Kar)

(e) CIT v Wipro Ltd, 50 taxmann.com 21(Kar)

(f) CIT v Carlton Hotel (P) Ltd, 88 taxmann.com 257 (All)

3. Per contra, the Ld. AR for the assessee submitted that , on the direction of the Bench , the assessee have placed the copy of the scheme of demerger of assessee and DPCL approved by the Hon'ble High Court of Delhi vide decision dated 17.12.2007. We had asked the Ld. AR pointed out as to by which letter/document demerger scheme was placed before the Assessing Officer or before the CIT(A). However, despite his best effort, the Ld AR assisted by the assessee representative were not able to point out the date or the document by which the scheme of demerger was placed before the lower authorities. Faced by the said situation and failure to point out from the record that the scheme of the merger was placed before the lowere authority , moreparticulaly when the finding of CIT(A)(A) was based on conclusion that AO had not considered the demerger report . Ld. AR on the instructions of the assessee representative had fairly submitted that the matter may be remanded back to the file of the CIT(A) for denovo passing of the appellate order after considering the scheme and other documents . However, he also submitted , the scheme was considered by the Assessing Officer for the assessment years 2008-09 , CIT(A) and the Tribunal. In fact, Tribunal passed its order after considering the scheme in its order dated 22.07.2019.

4. In rebuttal the Ld. DR submitted that every assessment order is independent order and therefore the findings recorded by the Tribunal for the assessment year 2008-09 should not be considered while deciding the issue for the 2007-08 assessment year. Further, it was contended that the Ld. DR that the scheme was not filed by the assessee before the bench while passing the order for the AY 2008-09 .

5. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the course of hearing by both the parties . Ld. CIT(A) at page 14 have wrongly stated that the Assessing Officer has failed to consider this scheme of merger. At page 14 it was mentioned in the order as under:

"The Assessing Officer had failed to consider the scheme of demerger that the moneys for the transfer of the Khasa Distillery Unit of the assessee were to be received by the transferors of shares of the transferee company (M/s Digvijay Chemicals Ltd.) into which the demerged unit was merged after the Hon'ble High Court of Delhi's order."

6. In our considered opinion even the CIT(A) have failed to consider the effect of scheme which was undoubtedly between the assessee and Digvijay Chemical Ltd. , whereas ae per MOU assessee had received Rs. 8.36 crores from Bagga Millenium Pvt. Ltd. and at Rs. 3.54 crores from Gursimran Millennium Liquor (India) Pvt Ltd. Further Ld. CIT(A) had also

failed to consider the receipt of shares by Bagga Distillery on account of demerger and its tax implications , either in the hands of assessee or Digvijay Chemical Ltd. ,or in the hands of Bagga Millenium Pvt. Ltd. Further CIT(A) had failed to satisfy himself the nature of receipt of Rs. 8.36 crores from Bagga Millenium Pvt. Ltd. and at Rs. 3.54 crores from Gursimran Millennium Liquor (India) Pvt Ltd, i.e whether it was income of the assessee or not in the year under consideration. Further the CIT(A) has wrongly passed the order without discussing in detail the MOU, the scheme of demerger and the additional MOU. CIT DR in the detailed written submissions filed before us had highlighted various points which goes to the root of the matter and were not considered by the CIT(A) while passing the impugned appellate order.

7. In the light we deem it appropriate to remand back both the appeals and the CO to the file of the CIT(A) for de-navo decision of all the issues raised in the appeal in accordance with law . The CIT(A) is directed to consider all the document filed by the assessee including the memorandum of understanding ,scheme of demerger and the order passed by the Hon'ble High Court of proving the demerger. We make it abundantly clear that the Ld. CIT(A) while deciding the appeal shall consider the written submissions

reproduced herein above, filed by the CIT-DR during the course of hearing before us dated 20th September, 2021 . Further the CIT(A) shall not be influenced by the order passed by the Tribunal for the assessment year 2008-09. We make it abundantly clear that the order dated 22.7.2019 was passed by the coordinate bench in the peculiar facts and circumstances of the case, as the scheme of demerger, which was the bone of contention between the parties, was not filled , considered and referred by the coordinate bench while passing the order for the assessment year 2008 – 2009. The CIT(A) is directed to pass fresh speaking order, in terms of direction given herein above , after following the principle of natural justice and affording the opportunity of hearing to the assessee.

8. Nothing stated therein shall be construed as adjudication of any of the grounds raised by both the parties as, the bench has merely stated the facts which are necessary for remanding the matter.

9. In the light of the above, the appeal of the Revenue is allowed for statistical purposes and CO is also allowed for statistical purposes.

Order pronounced in the open court on 20.09.2021

Sd/-	Sd/-
(Dr. M. L. Meena)	**(Laliet Kumar)**
Accountant Member	**Judicial Member**

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Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

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