IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L"

Before Shri N.V. Vasudevan (JM) & B. Ramakotaiah (AM)

I.T.A.No. 3667/Mum/2005 (Assessment year : 2001-02)
I.T.A.No. 6923/Mum/2006 (Assessment year : 2001-02)
I.T.A.No. 4685/Mum/2005 (Assessment year : 2001-02)

Hindalco Industries Limited Century Bhawan Dr. Annie Besant Road Worli, Mumbai-400 025. PAN : AAACH1201R	Vs.	DCIT (IT) 1(1) Scindia House 1st Floor, Room No. 117 N.M. Road Ballard Pier Mumbai-400 038.
APPELLANT		RESPONDENT

I.T.A.No. 4968/Mum/2005 (Assessment year : 2001-02)

DCIT (IT) 1(1) Scindia House 1st Floor, Room No. 117 N.M. Road Ballard Pier Mumbai-400 038.	Vs.	Hindalco Industries Limited As Agent of M/s. Alcan Inc., Century Bhawan 3rd Floor Dr. Annie Besant Road Worli, Mumbai-400 025. PAN : AAACH1201R
APPELLANT		RESPONDENT

Assessee by : S/Shri S.E. Dastur,
Pankaj Toprani &
S.M. Bandi
Department by : Shri Narender Singh

ORDER

PER N.V. VASUDEVAN, JM :-

ITA No. 4685/Mum/2005 and ITA No. 4968/Mum/2005 :

ITA No. 4685/Mum/2005 is an appeal by the Hindalco Industries Limited, as agent and representative assessee of M/s. Alcan Inc.(Canada) {herein after referred to as Hindalco}; while ITA No. 4968/Mum/2005 is an appeal by the revenue. Both these appeals are directed against the

order dated 31.3.2005 of learned CIT(A)-XXXI, Mumbai relating to A.Y. 2001-02 arising out of proceedings u/s. 147 of the Act read with section 163 of the Act.

2. ITA No. 3667/Mum/2005 is an appeal by Hindalco against the order dated 21.2.2005 of learned CIT(A)-XXXIII, Mumbai relating to A.Y. 2001-02; whereby learned CIT(A) confirmed the order of the Assessing Officer passed u/s. 163 of the Act, treating Hindalco as representative assessee of M/s. Alcan Inc (Canada).

3. Facts and circumstances under which, these appeals arise for consideration are as follows :-

Alcam Aluminium Limited (Alcan) is a company incorporated under the laws of Canada. After taking necessary approval from the Reserve Bank of India (RBI) from time to time, Alcan had acquired 3,88,44,324 shares in Indian Aluminium Company Limited (Indal) over a period of time. Alcan has agreed to sell its entire holdings in Indal at an agreed price of Rs. 190/- per share to Hindalco. Alcan being a non-resident company and holding shares in a company incorporated in India is governed by the provisions of section 45 read with section 48 of the Income Tax Act, 1961 (ITA). Therefore it is liable to pay tax in respect of gains made from sale of shares in Indal. Under the provisions of section 195 of the Act, any person responsible for paying to a non-resident any sum chargeable to tax under the Act has an obligation to deduct income tax at the time of making payment at the rates in force. Under section 197(1) of the Act the recipient of the payment can make an application to the Assessing Officer for issue of a certificate regarding no deduction of tax or deduction of tax at a lower rate by the person making payment. If the Assessing Officer is satisfied with such claim by the recipient of the payment, he shall issue a certificate as may be appropriate. On the basis of such certificate the person making payment shall deduct tax at rates specified in such certificate.

4. Alcan filed an application dated 26.4.200 u/s. 197(1) of the Act before the Assessing Officer praying that the Assessing Officer issue a requisite certificate u/s. 197(1) of the Act. Alcan computed it's tax liability on sale of shares to Hindalco as follows :-

Computation of total gains		INR
Capital gains/(loss) in respect of shares acquired by utilizing Canadian $		323,366,347
Capital gains/(loss) in respect of shares acquired by utilizing US$		(270,148,177)
Capital gains/(loss) in respect of bonus shares		3,123,912,736
Total capital gains		3,177,130,906
Total capital gains : (rounded off to)		3,177,130,910
Statement of taxes payable :		
Total capital gains		3,177,130,910
Taxes payable @10% on long term capital gains		317,713,091
Less : taxes deducted at source		400,000,000
Balance amount refundable		82,286,909

The Assessing Officer by his letter dated 30.5.2000 directed Hindalco to deduct a sum of Rs. 40 crores as tax from and out of amounts payable to Alcan. The certificates specifically refer to the fact that the calculation as given by the assessee was provisional and subject to change at the time of regular assessment as per the provisions of Income Tax Act. Hindalco made payment of Rs. 40 crores to the Central Government account being tax deducted at sources in two installments of Rs. 38,72,41,882/- on 30.5.2000 and Rs. 1,127,58,118/- on 31.5.2000. The Assessing Officer issued a certificate dated 23.6.2000 u/s. 197(1) of the Act certifying receipt of the aforesaid payment. The transaction of sale of shares by Alcan to Hindalco was completed on 31.5.2000. Therefore the transfer by sale of the shares took place during the previous year relevant to A.Y. 2001-02 attracting charge to capital gain tax in A.Y. 2001-02.

5. Alcan filed return of income for A.Y. 2001-02 on 31.10.2001 declaring total income of Rs. 317,71,30,910/-. The Assessing Officer issued notice u/s. 143(2) of the Act dated 22.10.2002 and notices u/s. 142(1) dated 22.10.2002, 14.11.2003 and 4.2.2004.

6. When the assessment proceedings against Alcan were in progress as above, the Assessing Officer issued a notice u/s.163 dated 4.2.2004 to Hindalco proposing to treat Hindalco as Agent of Alcan in respect of income which Alcan received on sale of shares to Hindalco. The Assessing Officer proposed to treat Hindalco as Agent and representative assessee of Alcan u/s. 163(1) of the Act. In reply, Hindalco submitted that the proposed action u/s. 163(1) of the Act is without jurisdiction and unsustainable in law. It was submitted by Hindalco that the proposed action of treating it as a representative assessee of Alcan was for A.Y. 2001-02. It was contended by Hindalco that having regard to the scheme and intent of the Act and more particularly of the provisions of section 160(1)(i) read with section 161(1), 162 and 163, no person could be treated as a 'Agent' in relation to a non-resident after the expiry of the previous year corresponding to the assessment year in question to fasten with a vicarious liability of the non-resident company after the expiry of two years and 10 months from the end of previous year ended 31.3.2001 corresponding to A.Y. 2001-02, was improper. The transactions of sale and purchase of shares in question were made and completed in the financial year 2000-01 (A.Y. 2001-02) and the payment to the non-resident company was made during the said financial year. Thus, the concerned non-resident company was in receipt of income during that year and Alcan is not entitled to receive from Hindalco any income for the concerned transaction during the current year. The remittance of the net amount was made after during the tax of Rs. 40,00,00,000/- in the financial year 2000-01 as per the certificate u/s. 197(1) dated 30th May 2000, issued by JCIT, Spl.Rg-36, Mumbai. In the circumstances aforesaid, there is no factual or legal basis for treating Hindalco as an 'Agent' of the non-resident company M/s. Alcan Inc. The Assessing Officer however by order dated 20.2.2004 treated Hindalco as Agent of Alcan for the reasons :-

> "The argument put forward by HIL are not acceptable for the following reasons :-

(a) HIL fulfills the conditions as applicable to it is evident enough from a plain reading of section 163(1) and the facts of the case as narrate above.

(b) Section 163(1) is contained in Chapter XV(c) of the I.T. Act, 1961 which deals with 'Representative assessee-Special cases' and begins with the Headnote 'who may be regarded as an agent'. The relevant provisions of section 163(1) are given as under :-

"For the purposes of this Act, 'agent' in relation to a non-resident includes any person in India-

- Who is employed by or on behalf of the non-resident; or
- Who has any business connection with the non-resident; or
- From or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
- Who is the trustee of the non-resident; and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India……."

c) For the relevant A.Ys. i.e. 2001-02, the following facts are well established;

i) HIL had business connection with the non-resident i.e. Alcan

ii) the non-resident (here Alcan), is in receipt of income directly from HIL, and

iii) HIL has acquired a capital asset in India, by means of transfer from Alcan.

d) Section 160(1)(i) clearly states that 'for the purpose of this Act, 'representative assessee' means :-

(i) in respect of the income of a non-resident specified in sub-section(1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163.

e) Further, section 149(3), which prescribes the time limit for notice to be issued u/s. 148 for reopening an assessment, stipulates the following :-

> "If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or re-computation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be

> issued after the expiry of a period of two years from the end of the relevant assessment year."
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> In the present case, the relevant A.Ys. 2001-02, and thus notice u/s. 148 could be issued in the case of HIL for A.Y.2001-02 till 31.3.2004. This time limit has not yet expired.
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> On the basis of the above, the arguments put forward by HIL, are rendered otiose. M/s. Hindalco Industries Ltd., is held to be a Representative assessee in relation to M/s. Alcan Inc., a non-resident company for A.Y. 2001-02, as it fulfils the conditions laid down in section 163(1)(b) and 163(1)(c) and further it has acquired from Alcan a non-resident capital asset in India by ……..of a transfer during A.Y. 2001-02."

7. On 16.3.2004 the Assessing Officer passed an order u/s. 143(3) of the Act on Alcan determining the capital gain as follows :-

A) Long term capital gains on shares acquired in CAD (as per para 6.11)
Rs. 84,93,97,375/-

B) Long term capital gains(loss) on shares acquired in USD (as per computation filed alongwith return)
(-)Rs. 27,01,48,177/-

C) long term capital gains on bonus shares (as per para 8.4) Rs. 333,74,29,856/-
Total long-term capital gains Rs. 391,66,79,054/-

Tax on the above by applying the rate of 20% was computed at Rs. 78,33,35,581/-.

8. Prior to the passing of the above assessment order in the case of Alcan on 23.2.2004, the Assessing Officer issued notice u/s. 147 to Hindalco as Agent of Alcan proposing to assess the very same capital gain in the hands of Hindalco as Agent of Alcan. On 15.3.2004 a day prior to passing of the order of assessment in the case of Alcan, the Assessing Officer passed an order of assessment in the case of Hindalco assessing the very same capital gain in the hands of Hindalco as Agent of Alcan.

9. Against the order dated 20.2.2004, treating Hindalco as agent of Alcan u/s. 163(1) of the Act, Hindalco filed appeal before learned CIT(A), who by order dated 21.2.2005 dismissed the said appeal. Against this order, Hindalco has filed appeal before the Tribunal which is ITA No. 3669/Mum/2005. Against the order of the Assessing Officer assessing capital gain in the hands of the Hindalco as Agent of Alcan, Hindalco filed appeal before learned CIT(A) who by order dated 31.3.2005 confirmed the assessment but deleted the levy of interest u/s. 234B of the Act. Against the said order of learned CIT(A), Hindalco has filed appeal before the Tribunal which is ITA No. 4685/Mum/2005 and the revenue has filed appeal which is ITA No. 4968/Mum/2005.

10. We have already referred to the fact that on 16.3.2004, the Assessing Officer assessed capital gain in the hands of Alcan on the same basis and figures as was made in the assessment in the case of Hindalco as Agent of Alcan u/s. 147 read with section 163 of the Act. Against this order of the Assessing Officer, Alcan filed an appeal before the learned CIT(A). Learned CIT(A) by his order dated 16.4.2004 dismissed the appeal filed by Alcan. Alcan filed appeal against the order of learned CIT(A) before the ITAT. The ITAT by it's order dated 30.4.2007 since reported as Alcan Inc. Vs. DDIT, 100 ITD 15 (Mum) upheld the manner of computation as done by the assessee and also held that the rate of tax on capital gain would only be 10% and not 20% as claimed by the Reevnue. Thus, the tax deducted at source by Hindalco was more than sufficient to discharge the tax liability of Alcan on sale of shares by it to Hindalco. It was stated before us that the revenue is in appeal before the Hon'ble High court against the order of the Tribunal in the case of Alcan.

11. The order of learned CIT(A) in the appeal by Hindalco against the order of assessment u/s. 163 read with section 147 was decided on 31.3.2005 much later in point of time to his order confirming order of the Assessing Officer dated 16.3.2004 making assessment of capital gain in

the hands of the Alcan, which was dated 16.4.2004. It is in the above background of facts that those appeals have to be decided.

12. First, we shall take up for consideration ITA No. 3665/Mum/2005 appeal by Hindalco challenging the order u/s. 163 of the Act treating it as Agent and representative assessee of Alcan. In this appeal the contention of the learned counsel for the Hindalco was :-

a) Hindalco could not be treated as Agent and Representative assessee of Alcan u/s. 163 of the Act as the conditions contemplated u/s. 163 are not satisfied.

b) Hindalco has duly deducted tax at source as contemplated u/s. 195 of the Act and in such cases, Hindalco could not be again treated as Agent and representative assessee of Alcan.

c) The order treating Hindalco as Agent of Alcan had been passed on 20.2.2004 i.e. after a period of two years and ten months from the end of the previous year in which Hindalco made payment to Alcan. According to him liability of Hindalco in respect of tax dues of Alcan is a vicarious liability. Section 162(1) gives the representative assessee a right to retain any sums of the principal in his possession to the extent to which he pays as tax liability of the principal under the Act. Since the assessee paid the consideration after deducting tax at source to the principal on 31.5.2000, the delay on the part of the Revenue in initiating proceedings u/s. 163 will cause prejudice to the agent in as much as he will not be in a position to exercise his rights u/s 162(1). We may clarify that the learned counsel for the assessee Hindalco made a reference to the provisions of section 162(2) and submitted that since Hindalco remitted all payments to Alcan there was no asset of Alcan with Hindalco and therefore the proceedings u/s. 163 were not legal. This argument is not acceptable because provision of section 163(3) of the Act will be attracted only when the Agent has obtained a certificate from the Assessing Officer or the principal u/s. 195(2) of the Act. Admittedly there was no such certificate obtained by the Agent u/s. 195(2) of the Act.

13. We are of the view that the objections raised by the Hindalco to the order u/s. 163 cannot be sustained. It is not in dispute that capital gain which Alcan derived on sale of shares of an Indian company is

income chargeable to tax in the hands of the Alcan. The income so chargeable to tax was received by Alcan from Hindalco and therefore section 163(1)(c) were clearly attracted. With regard to the contention that Hindalco having duly deducted tax at source u/s. 195 and therefore cannot be treated as Agent of Alcan, we are of the view that proceedings u/s. 163 are only intended to ensure that a person can be regarded as a representative assessee only an existence of certain conditions. Liability on the representative assessee does not fasten on an order u/s. 163 being passed. Therefore the fact that the Agent had deducted tax u/s. 195 of the Act will not be a bar to proceed and pass an order u/s. 163 of the Act.

14. The next objection of Hindalco that there has been a delay in initiating proceedings u/s. 163 of the Act which has resulted in prejudice to the Agent, we do not think that the law contemplates any time limit for initiating proceedings u/s. 163 of the Act. It is also not the case of Agent that proceedings for assessing income of the principal, is barred by time. We therefore reject this argument also. The purpose of section 163 is to secure payment of taxes by the non-resident. We therefore uphold the order u/s. 163 of the Act. ITA No. 3667/Mum/05 is therefore dismissed.

15. As far as the appeals by the Assessee and revenue arising out of the order of assessment u/s.147 r.w.s.163 of the Act i.e. ITA 4685/Mum/05 (by Assessee) and ITA No.4968/Mum/05 (by Revenue) are concerned, the submission of the learned counsel for the Assessee on the issue raised in the Assessee's appeal was that having commenced and concluded the assessment in the case of the principal the very same income cannot be assessed in the hands of the Agent. In this regard it was pointed out that in the appeal against the order of assessment of Alcan, the CIT(A) confirmed the order of the AO and such order was passed even prior to the order of CIT(A) in the case of Hindalco. According to him the provisions of Sec.161 was enacted to ensure assessment and recovery of tax on income that accrues and arises in

India and which is chargeable to tax in India through the medium of an agent within India. According to him in a case where the non resident subjects himself to proceedings before the AO and expresses his willingness to discharge tax liabilities and if the same is accepted and assessment made on the non resident, there was no necessity to make an assessment on the Agent in India. In this regard our attention was drawn to the decision of the Hon'ble Bombay High Court in the case of Maharaja of Patiala Vs. CIT 11 ITR 202 (Bom), Chaturbhuj Raghvji Trust (Trustees of) v. CIT [1963] 50 ITR 693 (Bom), Saipem UK Ltd. Vs. DDIT 298 ITR (AT) 113 (Mum). The learned D.R. relied on the order of the CIT(A) and submitted that it was the choice of the AO and that he can proceed against either the principal or the agent or both. According to him, the Assessment in the hands of the Principal (Alcan) is relevant only to the extent of tax liability or computation of capital gain. Therefore the fact that assessment was made on the principal will not render the proceedings against the Agent improper or invalid.

16. On the above issue, the findings of the CIT(A) is as follows:

> "I have carefully considered the various submissions of the appellant, but not in agreement with the same, for the reasons discussed hereunder :-
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> - The main contention of the appellant is that once Alcan has filed its return of income and the Department has proceeded against Alcan for making assessment, simultaneous action cannot be taken against the appellant as an agent. In this regard firstly it will not be out of place to mention here that the appellant separately filed an appeal against the order under section 163 passed by the Assessing Officer treating the appellant as an agent of Alcan. The appeal has been decided by the learned CIT(A)-XXXIII, Mumbai vide her order No. CIT(A)XXXIII/DDIT(IT)1(1)/IT/9-H/03-04 dated 21.2.2005 and the same has been dismissed. This means that at least at the first appellate stage it has been found that the appellant has rightly been treated as agent of Alcan.
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> - Now coming to the main argument of the appellant regarding simultaneous assessment proceedings against Alcan and the appellant I do not subscribe to the contention of the appellant that since the non-resident has independently filed the return

of income, therefore the appellant cannot be treated as representative assessee. In fact, the scheme of the Act provides for taking action against the non-resident as well as its agent as representative assessee. Section 163 no where provides for a bar on taking action against a person where the conditions prescribed in the section are satisfied, merely for the reason that the non-resident has filed the return of income independently. In fact, the courts have held that there is no bar on the simultaneous assessment of the principal and agent. In the case of Barium Chemicals Ltd. Vs. ITO, 100 ITR 637 (A), the assessee entered into an agreement with a non-resident from the rectify certain defects in the plant and machinery supplied to it and also to supply designs, drawings and other technical know-how. Pursuant to the above said agreement, the non-resident firm supplied necessary designs and drawings, etc, and also sent one of its partners, Mr. Davis for supervising the erection of the plant. The ITO passed an order treating the assessee as an agent of the non-resident firm and directed both the assessee and the firm to file returns. The Andhra Pradesh High Court held that there is no question of exercising of option by the ITO to assess and recover tax either from the non-resident or the agent. The initiation of assessment proceedings against the non-resident principal cannot be a bar for either continuing those proceedings or initiating fresh proceedings against the resident agent of the non-resident. Similarly, the Hon'ble Kerala High court in the case of CIT Vs. Fertilizers & Chemicals (Travancore) Ltd., 166 ITR 823 has held that the direct assessment on the non-resident would not affect the jurisdiction of the ITO to assess the agent of the non-resident under section 163.

- The reliance placed by the appellant on certain court cases and Board Circular to contend that the Department has to choose one person and then after having made the choice, no action can be taken against the other person, is misplaced. In this regard, it may be stated that these decisions etc. have been rendered only in the context of assessment of trustee or the beneficiary and not in the context of assessment of non-resident assessee and its agent. Needless to say that the circumstances and need leading to simultaneous assessment in the hands of a non-resident and its Indian agent are different.

- It is true that the appellant had obtained a certificate for deduction of tax at source under section 197, but his does not make the taking of action under section 163 as bad in law. In fact, proceedings under section 195/197 for deduction of tax at source and proceedings under section 163 are two separate proceedings. It will not be out of place to mention here that a

> proceedings may be taken against the agent as representative assessee both for assessment as well as recovery. Even otherwise as Hon'ble Supreme Court in the case of Transmission Corporation of A.P. and others Vs. CIT, 239 ITR 587 has held that the purpose of sub-section (1) of section 195 is to see that on the sum which is chargeable under section 4 of the Act, for levy and collection of Income Tax the payer should deduct income tax thereon at the rates in force, if the amount is to be paid to a non-resident. The said provision is for tentative deduction of income tax thereon subject to regular assessment and by deduction of income tax the rights of the parties are not in nay manner adversely affected.

17. We have considered the rival submissions before us. In the case of Saipem UK Ltd. (Supra) identical issue arose for consideration before the Tribunal. The facts were as follows. The assessee company was incorporated under the laws of United Kingdom. Its operations in India pertained to execution of certain contract works awarded by certain Indian companies. In order to execute these contracts, the assessee-company entered into various sub-contracts, which include the sub-contracts with M/s. Valentine Maritime (Gulf) LLC, UAE (for short "Valentine"). It appears that the assessee-company as well as the aforesaid Valentine was being separately assessed to income-tax regularly. The Assessing Officer passed an order under section 163 of the Income-tax Act on 5.3.2002 treating the assessee-company as representative assessee of Valentine. Simultaneously on 5-3-2002 itself the Assessing Officer issued a notice under section 148 in the name of the assessee-company and on 28-3-2002, the Assessing Officer passed assessing income of the principal in the hands of the Agent under section 144 read with sections 147 and 163. The relevant income of the Principal was independently brought to a charge of tax in the case of Principal by an order dated 28-3-2002 passed under section 143(3) of the Income-tax Act by the same Assessing Officer. The principal's appeal against this order was also dismissed by the learned CIT(A). It was the contention of the Assessee that since the substantive assessment made by the Assessing Officer in the hands of the principal has been upheld by the learned CIT(A), he was wholly unjustified in confirming the protective

assessment in the case of the Agent also. It was the claim of the Agent that doing so would amount to double taxation of the same income, which is not permissible under law. The tribunal distinguished the case of Barium Chemicals Ltd.(Supra) as follows:

> "Another important issue is as to whether the Assessing Officer having already assessed the income in the hands of the real assessee, can make a protective assessment in the case of the assessee holding it to be agent of Valentine. It would be appropriate to deal with the cases referred to by the learned CIT(A) and also relied upon by the learned Departmental Representative. In the case of Barium Chemicals Ltd. (supra), while disposing the writ petitions filed by the assessee, the Andhra Pradesh High Court held that merely because the agent of the non-resident can be assessed under sections 160 and 163 of the Income-tax Act, assessment and recovery of tax in the hands of the non-resident principal is not barred. In that case, the assessments were still pending and only notices were issued. We find that at pages 641 and 642 of the report, the Andhra Pradesh High Court has considered and distinguished the Bombay High Court judgment in the case of Trustees of Chaturbhuj Raghavji Trust v. CIT [1963] 50 ITR 693 on similar issue. It would be appropriate to reproduce below the relevant part of the Andhra Pradesh High Court decision from pages 641 and 642 of the report:
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> > "Reliance, however, was placed upon a decision of the Bombay High Court in Chaturbhuj Raghavji Trust v. CIT. That case can be distinguished easily on the facts. In that case, an amount of Rs. 25,000 was paid by the trustees to Bai Champavahoo. The amount was treated as an income and was brought to tax from the hands of Bai Champavahoo directly. The argument was that the same amount could not be brought again to tax in the hands of the trustees.
> >
> > The above case could have been disposed of on one short ground that the beneficiary having already been assessed and tax recovered from the beneficiary, a fresh assessment and recovery of tax on the same transaction was neither possible nor permissible. The learned judges of the Bombay High Court, however, considered the argument that, since the said income had already been brought to tax in the hands of Champavahoo, it could not be brought to tax again in the hands of the trustees. While considering this argument, their Lordships of the Bombay High Court considered section 41(2) of the Indian Income-tax Act,

1922, which is in pari materia with section 166 of the Income-tax Act, 1961. Their Lordships observed that:

> 'Section 41 having provided for two alternative methods, namely, either to tax the income in the hands of the trustees or directly in the hands of the person on whose behalf the income was receivable under the trust, and one of them having been availed of by the income-tax department in directly assessing Champavahoo in respect of the income, the other was no longer available to the department.'

Their Lordships further observed:

> 'Section 41 was a special enabling provision which permitted the assessment in the hands of the trustees but did not preclude the direct assessment in the hands of the beneficiaries.'

Their Lordships concluded:

> 'There is nothing in section 41 which would indicate that the choice between the alternative methods provided therein has to be made only at the time of the assessment of the trustees or that the choice only belongs to the Income-tax Officer who is assessing the trust.'

If these observations are read in the context in which they are made, it would not be difficult to understand that what all their Lordships said was that Champavahoo having already been assessed and tax recovered from her, the Income-tax Officer could not have proceeded against the trustees for recovery of tax on the same transaction. It is true that their Lordships have read section 41(2) to suggest that there are two alternative methods, namely, either to tax the income in the hands of the trustees, or directly in the hands of the person on whose behalf the income was receivable. But their Lordships immediately said that the income-tax department having availed of one of the methods, viz., having proceeded against Champavahoo and recovered the tax from her, the trustees could not have been proceeded against."

From the above discussion, it may be seen that in the case of Trustees of Chaturbhuj Raghavji Trust (supra), the relevant amount was assessed in the hands of Bai Champavahoo directly and the Bombay High Court held that such income could not be brought to the charge of tax

> again in the hands of the trustees under section 41(2) of the Indian Income-tax Act, 1922 which is in pari materia with section 166 of the Income-tax Act, 1961. In our view, the judgment in the case of Barium Chemicals Ltd. (supra) will not be applicable to the facts of the assessee's case and on the other hand, the Bombay High Court decision in the case of Trustees of Chaturbhuj Raghavji Trust (supra) supports the view that the income having been brought to a charge of tax in the hands of the real person, the same income cannot be once again assessed in the case of a representative assessee."

18. The Tribunal dealt with the decision of the Kerala High Court decision in the case of Fertilizers & Chemicals (Travancore) Ltd. (supra) as a case where the non-resident was having several representative assessees in respect of several heads of income and in this context, the High Court observed that there can be more than one assessment in respect of the income accrued or arisen to a non-resident provided there are more than one representative assessee. The High Court held that direct assessment on the non-resident in respect of other income would not affect the jurisdiction of the ITO to assess the agent of the non-resident on income arisen to the non-resident through him (Emphasis supplied). What the High Court meant was if some other income has been assessed in the case of the non-resident, the Assessing Officer has jurisdiction to frame assessment on the agent of the non-resident in respect of some income flowing to the non-resident through the agent. This decision of the Kerala High Court, was held not to be interpreted to mean that the same income can be assessed simultaneously in the hands of the non-resident and in the hands of the agent. The Tribunal held that such double taxation militates against the cardinal principles for levying tax on income. The tribunal further held that when once assessment in the case of principal becomes final the assessment of the same income in the hands cannot be made. The above decision of the Tribunal in our view is squarely applicable to the facts of the present case.

19. Respectfully following the same, we hold that income having been brought to a charge of tax in the hands of the principal, the same income cannot be once again assessed in the case of a representative assessee. We therefore hold the assessment of the capital gain of Alcan in the hands of the Hindalco as agent of Alcan cannot be sustained. The assessment order is therefore annulled. In view of our above conclusion, we deem it unnecessary to deal with the other issues raised by the Assessee in its appeal.

20. The only issue raised in this departmental appeal pertains to deletion by the learned CIT(A) the interest charged under section 234B. Since the relevant orders have already been quashed by us while deciding the assessee's appeal, the departmental appeal is rendered infructuous and is liable to be dismissed on that ground.

21. ITA No. 6923/Mum/06: This is an appeal by Hindalco arising out of proceedings by the AO u/s.250 of the Act, pursuant to the order of the CIT(A) dismissing appeal against order passed u/s.147 read with Sec.163 of the Act and while doing so giving certain directions to the AO in the matter of computation of capital gain. Since the assessment on Hindalco as agent of Alcan is held to be not valid, this appeal also becomes infructuous and is therefore dismissed.

22. In the result, ITA No. 3667/Mum/05 is dismissed. ITA No.4685/Mum/05 is allowed. ITA No.4968/Mum/05 is dismissed. ITA No.6923/Mum/06 is dismissed.

Order has been pronounced on 14th Day of May, 2010.

Sd/-	Sd/-
(B. RAMAKOTAIAH)	(N.V. VASUDEVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 14th May, 2010

Copy to : 1. The Assessee

2. The Respondent
3. The CIT(A)-concerned.
4. The CIT, concerned.
5. The DR concerned, Mumbai
6. Guard File

BY ORDER

True copy

ASSTT. REGISTRAR, ITAT, MUMBAI

PS