

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ SMC ” BENCH, AHMEDABAD**

सर्वश्री महावीर प्रसाद, न्यायिक सदस्य एवं अमरजीत सिंह, लेखा सदस्य के समक्ष ।  
**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER &**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

आयकर अपील सं./I.T.A. No. 3548/Ahd/2015  
(निर्धारण वर्ष / Assessment Year : 2007-08)

Samrat D. Chauhan, 90/91, Jay Bhawani Row Housing, B/h Railway Station, Kalol – 382721	<b>बनाम/</b> Vs.	Income Tax Officer Ward – 4 Mehsana.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGUPC 9408 N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Ms. Jaimini Shah
प्रत्यर्थी की ओर से/Respondent by :	Shri Prajnu Paramita, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	21/09/2017
घोषणा की तारीख /Date of Pronouncement	27/09/2017

**आदेश / O R D E R**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-Gandhinagar, Ahmedabad, dated 23/10/2015 for the Assessment Year (AY) 2007-08, on the following Grounds:

*The Comm. of Income-tax(A), Gandhinagar (hereinafter referred to as the CIT(A) has erred both in Law and on facts in passing order on the following amongst the other Grounds:*

- i. *The CIT(A) has erred in holding that the assessment is validly reopened u/s.147 even though the notices and reopening proceedings suffer from inherent technical defects, the proceedings are barred by limitation of time, the AO has not recorded/furnished reasons for reopening and the AO has not*

- 2 -

*passed a speaking order in view of decision of Hon. Supreme Court in the case of GKN Drive Shaft.*

- ii. *The CIT(A) has erred in holding that the assessment is correctly reopened u/s.147 even though the income and TDS were reconciled by the AO while passing original order u/s.143 (3) dtd.23-12-2009 and even though reopening is on account of change of opinion which is not covered u/s.147.*
- iii. *The CIT(A) has erred in confirming addition of Rs.29,36,085/- as unreconciled difference between income reflected in the books and the same reflected in form 16A even though there is no such difference on merits and even though the same is reconciled by the Certificate issued by the prayer which is verified by the AO while passing original assessment order u/s.143(3) dated 23-12-2009.*
- iv. *The CIT(A) has erred in confirming addition of Rs.2,95,000/- being cash deposited as income of the Appellant even though cash deposited can be explained with entries and evidences by way of the withdrawals from Appellants own bank account and amounts received by the Appellant in the course of business Proceedings.*
- v. *The CIT(A) has erred in confirming charging of interest u/s.234B/C/D and initiating proceedings u/s.271(1)(c) even though the provisions of these sections are not applicable to the facts and circumstances of the case.*

2. The relevant facts as culled out from the materials on record are as under:-

In this case, Return of income was filed on 29/10/2007 for Asst. Year 2007-08 declaring total income at Rs.7,21,250/-. Return of income was processed u/s.143(1) on 19/06/2008 and granted refund to the assessee. The case was selected for scrutiny and notice u/s.143(2) was issued and served upon the assessee.

**- 3 -**

2.2 Subsequently, notice u/s.142(1) was issued on 23/09/2009 and served upon the assessee. The assessee has produced the books of accounts, cash books, bills vouchers etc. During the assessment proceedings, the details were called for from the assessee in support of the return of income filed were verified. The assessee is engaged in the business of labour contractor by providing labour. The assessee has shown gross labour income of Rs.1,73,50,423/- and claimed expenses of Rs.1,66,30,869/- and declared net profit of Rs.7,19,554/-.

2.3 During the assessment proceedings, on verification of profit and loss account, it is noticed that the assessee has debited an amount of Rs.11,250/- under the head office expenses. During the scrutiny proceedings, the complete details in respect of the expenses claimed under the head office expenses were called for verification. The assessee has not produced the complete details in respect of the expenses claimed. Hence, an amount of Rs.5,000/- is disallowed out of the expenses claimed and the same is added to the total income of the assessee.

2.4 During the assessment proceedings, on verification of profit and loss account, it is noticed that the assessee has debited an amount of Rs.78,500/- under the head staff salary expenses. During the scrutiny proceedings, the complete details in respect of the expenses claimed under the head staff salary expenses were called for verification. The assessee has not produced the complete details in respect of the expenses claimed.

- 4 -

2.5 The assessee has also paid wages of Rs.1,53,07,047/-. Hence, an amount of Rs.10,000/- is disallowed out of the staff salary expenses claimed and the same is added to the total income of the assessee.

2.6 After verification of the details filed, the total income assessee is computed as under:

Total income as per return of income	Rs.7,21,250/-
Add: Disallowance as discussed above	
(1) Disallowance out office expenses	Rs. 5,000/-
(2) Disallowance out of staff salary	Rs. 10,000/-
	<u>Rs. 15,000/-</u>
<b>Total income</b>	<b><u>Rs.7,36,250/-</u></b>

3. Against the said order assessee preferred first statutory appeal before the learned CIT(A) who dismissed the appeal of the assessee.

4. Now appellant's appeal is before us.

5. We have gone through the relevant record and impugned order. So far Ground Nos.1 and 2 are concerned. Learned CIT(A) has rightly stated that appellant was provided the reasons recorded and notices issued on which appellant has furnished his rebuttal and also relied on various decisions including that of the Hon'ble Apex Court which is distinguishable from the facts of the case of the appellant as there was material available on record to have a valid reason to believe that income has escaped assessment. The learned CIT(A) has rightly observed that reopening which is valid even on one of the many ground of reason to believe would be valid reopening.

- 5 -

5.2 So far Ground Nos.3 and 4 are concerned. Assessee's main grievance was that the reconciliation statement and the confirmation letter of Claris Life Science Ltd. were not accepted by the authorities below. Assessee also filed various documents, which were not considered by the Authorities below. Assessee's grievance was that assessee deposited cash in the bank account against which appellant contended bank statements which showed cash withdrawal which was re-deposited in the bank account. Same was not considered by the authorities below.

6. In view of the above observation, we set aside the matter and send it back to the learned AO to decide the matter afresh after considering the all documents to be filed by the assessee before the AO and will decide the matter as per law.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

<b>This Order pronounced in Open Court on</b>	<b>27/09/2017</b>
---	-------------------

Sd/-  
अमरजीत सिंह  
(लेखा सदस्य)  
( AMARJIT SINGH )  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 27/09/2017

Sd/-  
महावीर प्रसाद  
(न्यायिक सदस्य)  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad