



ITA Nos.947,1268,1092 &1093/Mum/2015
Aatur Holdings Private Limited
Assessment Years- 1991-92, 1992-93,1993-94

आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

श्री सी. नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI C.N. PRASAD, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.947, 1092 &1093/Mum/2015
(निर्धारण वर्ष / Assessment Years: 1991-92, 1992-93 &1993-94)

Aatur Holdings Private Limited 32, Madhuli,3 rd Floor, Dr. A.B.Road Worli Mumbai-400 018	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle 4(3) 4 th Floor, Aaykar Bhavan M.K.Road Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AABCA-1472-C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No.1268/Mum/2015
(निर्धारण वर्ष / Assessment Year: 1991-92)

Deputy Commissioner of Income Tax Central Circle 4(3) 4 th Floor, Aaykar Bhavan M.K.Road Mumbai- 400 020	बनाम/ Vs.	Aatur Holding Private Limited 32, Madhuli,3 rd Floor, Dr. A.B.Road Worli Mumbai-400 018
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AABCA-1472-C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Dr.P.Daniel, Ld. DR
Assessee by	:	Dharmesh Shah, Ld. AR
सुनवाई की तारीख / Date of Hearing	:	19/09/2017
घोषणा की तारीख / Date of Pronouncement	:	04/10/2017



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आदेश / ORDER

Per Bench

1. The captioned appeals by assessee as well as revenue for different Assessment Years [AY] assail separate orders of first appellate authority. Since common issues are involved, we dispose-off the same by way of this common order for the sake of convenience & brevity. As per order sheet entry, all these appeals have been consolidated by the order of Hon'ble Vice President dated 12/07/2017.

2.1 First we take up Assessee's appeal ITA No. 1092/Mum/2015 for AY 1991-92 which contest the order of Ld. Commissioner of Income Tax (Appeals)-52, Mumbai [CIT(A)] *Appeal No. CIT(A)-52/DC/AC-CC4(3)/119/2009-10 dated 22/12/2014*. The assessment was framed by *Ld. Deputy Commissioner of Income Tax, Circle-31, Mumbai [AO] u/s 144 on 26/12/2006*. The assessee is in second round of appeal before us. The matter, in the first round of appeal before this Tribunal vide ITA No. 4147/M/1995 dated 25/10/1995, was restored back to the file of Ld. AO for *de-novo* adjudication.

2.2 The assessee has raised the following effective grounds of appeal:-

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the disallowance of depreciation amounting to Rs.1,71,339/- in respect of premises at Worli and Bandra held by the appellant.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the disallowance of repairs and maintenance expenses amounting to Rs.2,67,473/- in respect of premises at Bandra, Mumbai held by the appellant.*



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3. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the levy of interest u/s 234A, 234B and 234C of the Act.*
4. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in not adjudicating that the income assessed in the hand of the appellant were subjected to the provisions of TDS and hence on the said amount of tax no interest can be computed u/s. 234A, 234B and 234C of the Act.*

2.3 Facts *qua* the dispute are that the assessee being *resident corporate assessee* was assessed u/s 144 for impugned AY on 26/12/2006 at Rs.46,06,202/-. No return was filed by the assessee for impugned AY. As noted by Ld. AO, the assessee belonged to *Harshad Mehta Group* and is a *notified person* under *Special Court [TORTS] Act, 1992*. The special court had directed the audit of the accounts of the assessee for certain specified period. The books of accounts were not written in regular course of business by the assessee. During assessment proceedings, the computer print-out of books of account was produced along with audited Balance Sheet, Profit & Loss Account and Audit Report. The net profit shown as per audited Profit & Loss account was Rs.88,054/-.

2.4 The issues which are the subject matter of this appeal are *depreciation allowance and repair expenses* with respect to certain property situated at *Madhuli, Worli, Mumbai*. It was noted that the assessee claimed *depreciation & repair/maintenance expenses* of Rs.1.71 Lacs & Rs.2.67 Lacs respectively against *Flat No. 34A, Madhuli, Worli, Mumbai* which was purchased during the year. It was noted that the flat could only be used for residential purposes whereas the assessee claimed depreciation against the same on the premises that the same was being used for business



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purposes. No evidence could be produced by the assessee to support this contention which led to impugned disallowances. Finally, the income of the assessee was computed at Rs.46.06 Lacs.

3. Aggrieved, the assessee contested the same without any success before Ld.CIT(A) vide impugned order dated 22/12/2004. *Qua* depreciation claim, the assessee placed reliance on Tribunal's decision for AY 1995-96, 1996-97 & 1997-98 in ITA No. 4065-66-67/Mum/2002 dated 31/10/2005. However, Ld. CIT(A) found the same factually different since in those years, it was noted by the Tribunal that the said premises was being used for preparation of various representations to Government authorities and compiling details required by the legal consultants and government agencies. Since, these findings were missing in the impugned AY and the assessee could not prove the *factum* of carrying of any business activity at the said premises with documentary evidences, Ld. CIT(A) confirmed the stand of Ld. AO. The assessee also contested imposition of interest u/s 234A/B/C on the premises that it was notified entity and therefore, the same could not be applied to the assessee. However, finding that interest provisions were mandatory in nature in view the judgment of Apex Court rendered in *CIT Vs. Anjum H.Ghaswala*, Ld. CIT(A) dismissed the same. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Counsel for Assessee [AR], reiterating the contentions drew our attention to the documents placed in the *paper book* and contended that the assessee company carried out *Board Meeting* at the said premises



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and therefore, depreciation and repair expenses against the same were admissible. Per *Contra*, Ld. DR contended that the assessee has failed to substantiate his claim in this regard in any manner and the premises in dispute was always being used for residential purposes only by the directors of the assessee company.

5. We have heard the rival contentions and perused relevant material on record. First of all, it is noted that the depreciation claimed by the assessee as per Income Tax Act against the said premises was Rs.2,15,156/- whereas Ld. AO has taken the same to be Rs.1,71,339/-. However, at the moment, we are not concerned with the same.

6. Proceeding further, after going through the documentary evidences on record, we find that the assessee has placed minutes of Board Meeting held at the impugned premises on 25/09/1992 and various dates thereafter. However, we hardly find the same to be of any significant evidentiary value firstly because they pertained to financial year 1992-93 whereas we are dealing with AY 1991-92. Secondly, there was no restriction on Board Meeting to be held only at the business premises of the assessee. The assessee purchased the property during impugned AY and this was the first year of claiming depreciation & other expenses against the same. The assessee, although claimed depreciation and repair charges against the same but could not prove the *factum* of usage thereof for business purposes in any manner and therefore, failed to discharge the onus of substantiating the same. No cogent evidences could be furnished by



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assessee to prove the fact that the said premise was used for the business purposes of the assessee and therefore failed to fulfill the primary conditions of Section 32 & Section 37. The Ld. CIT(A) has rightly distinguished the facts of AY 1995-96 to 1997-98 since in those years, it was found that the said premises was being used for the purpose of compiling various representations to be filed before various government agencies. Therefore, finding no substance in assessee's Ground Numbers 1 & 2, we dismiss the same.

7. *Qua* charging of interest u/s 234A/B/C, the Ld. AR fairly conceded that the issue stood covered squarely against the assessee by the order of this Tribunal for AY 2007-08 to 2009-10. However, in terms of the said order, the credit of *tax deductible at source* was available to the assessee before computing the interest component u/s 234. We have perused Tribunal's order in assessee's own case in ITA Nos. 846 & others/Mum/2010 dated 23/09/2015 and find that issue has already been decided by the Tribunal in assessee's own case in the following manner:-

6.Last ground of appeal for all the three assessment years pertains to levy of interest u/s.234A, 234B and 234C of the Act. Before us, the representatives of both the sides agreed that identical issue was decided in the cases of Topaz Holdings Pvt.Ltd.(ITA/2146/Mum/2013,AY.2001-02 dtd.18.06.2014) and Eminent Holdings Pvt.Ltd.(ITA/2139/Mum/2013,AY.2002-03,dated 18.06.2014), that the Tribunal had upheld the levy of interest in principal, that it had set aside the issue for calculating the interest to the file of the AO with direction that the tax deducted as source should be reduced while calculating the interest. We find that the issue was discussed in the case of Eminent Holdings Pvt.Ltd (supra) as under:

"3.Next ground of appeal is about levy of interest u/s. 234 of the Act. Before us, AR stated that the assessee was a notified entity, that the provisions of s.234A, 234B and 234C of the Act were deemed to have complied with, that the assets were already in attachment of the Custodian appointed under the provisions of



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the Special Courts Act, that the Tribunal in the case of the appellant and several other entities had held the view in favour of the appellant, that the Hon'ble Bombay High Court in the case of Divine Holdings Pvt. Ltd. and Cascade Holdings Pvt. Ltd. had held that the provisions of sections 234A,234B and 234C of the Act were mandatory and were applicable to the notified entities also, that the assessee was in the process of filing an appeal against the said order before the Hon'ble Supreme Court, that the income earned in the year under consideration was subjected to provisions of TDS, that the chargeability of the section 234A, 234B and 234C of the Act should be after considering the amount of tax deductible at source on the income assessed. The appellant relies in this regard on the following decisions. He relied upon the cases of Motorola inc. v. DCIT [95 ITD 269 (Del.(SB)], Sedco Fores Drilling Co. Ltd. [264 ITR 320],NGC Network Asia LLC [313 ITR 187] Summit Bhattacharya [300 ITR (AT) 347 (Bom)(SB)], Vijal Gopal Jindal [ITA No. 4333/Del/2009] & Emillo Ruiz Berdejo [320 ITR 190 (Bom)].DR relied upon the cases of Devine Holdings Pvt. Ltd. 3.1.We have heard the rival submissions and perused the material before us. We find that in the case of Devine Holdings Pvt. Ltd. Hon'ble Bombay High Court has held that provisions of section 234A, 234B and 234C were applicable to the notified person also. Therefore, upholding the order of the FAA to that extent, we hold that provisions of section 234 of the Act are applicable. As far as calculation part is concerned, we find merits in the submission made by the assessee. Therefore, we are restoring back the issue to the file of the AO for fresh adjudication who would decide the issue after considering the amount taxed deductible at source on the income assessed and after affording a reasonable opportunity of hearing to the assessee. Ground no.5 is allowed in part in favour of the assessee.

Respectfully, following the above order we restore back the issue to the file of the AO who would levy the interest as per the provisions of section 234 of the Act and give credit for the TDS amounts. Ground no.6 for all the three AYs.stands partly allowed, in favour of the assessee.

Respectfully following the decision of coordinate bench in assessee's own case, we uphold charging of interest u/s 234 and restore the issue on similar line to the file of Ld. AO for re-computation of interest u/s 234. Resultantly, Ground No. 3 stands dismissed whereas Ground No. 4 stands allowed for statistical purposes. In nutshell, this appeal stands partly allowed for statistical purposes.



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8. Now, we take up assessee's appeal ITA No. 947/Mum/2015 for AY 1992-93 which contest the order of Ld. Commissioner of Income Tax(Appeals)-40, Mumbai [CIT(A)] *Appeal No. CIT(A)-40/DCIT-CC-31/121 & 114/2009-10 dated 05/11/2014* which is a common order against *quantum assessment order* dated 20/03/2003 passed u/s 144 *read with Section 147* and *quantum assessment order* dated 26/12/2006 passed u/s 143(3) *read with Section 147* . The registry has noted that the appeal is time barred by *one day* and the assessee, vide affidavit dated 26/02/2015, explaining the reasons has requested for the condonation of the same. We find that the delay has occurred mainly due to obtaining appeal fees from the custodian. No serious objections against the same are raised by the revenue. Therefore, while condoning the delay, we proceed to dispose-off the same on merits.

9. Ground Nos. 1, 2 & 3 are related with disallowance of *depreciation and repair expenses* against premises situated at *Worli & Bandra*. The assessee, on similar lines as in AY 1991-92, has suffered disallowance of *depreciation* for Rs.2,78,309/- & Rs.13,821/- respectively against premises situated at *Madhuli, Worli and Bandra*. Here also, we find that no cogent documentary evidences could be produced by the assessee to substantiate the depreciation claim against any of the property and therefore, taking the same stand, we dismiss assessee's appeal *qua* disallowance of depreciation and repair expenses against both the premises.



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10.1 In Ground No.4, the assessee is aggrieved by charging of interest u/s 220(2) of the Income Tax Act, 1961. To understand the issue, we need to appreciate the chronology of events relating to assessment & appeals etc. for the impugned AY. The assessee did not file any return for the impugned AY. The original assessment was completed u/s 144 on 31/01/1995 determining total income at Rs.174.76 Lacs. The appeal against the same was dismissed by Ld. CIT(A) on 15/11/1995. The assessee contested the same before this Tribunal vide ITA No.638/B/96 order dated 17/10/2005 where the assessment order was quashed and the matter was restored back to the file of Ld. AO for *de novo assessment*.

10.2 In the while, the case of the assessee was reopened u/s 147 vide notice dated 31/05/2001 against which the assessee filed return of income at Rs.26.40 Lacs. The reassessment was completed on 20/03/2003 and the same resulted into further enhancement of the income *qua* assessment made on 31/01/1995 and finally, the income was re-determined at Rs.317.86 Lacs. The appeal against the same was dismissed by Ld.CIT(A) on 31/07/2003 in *limine* and accordingly, the same was further contested before this Tribunal vide ITA No. 5042/Mum/2005 dated 31/03/2006 where the order of Ld.CIT(A) was set aside and restored back to the file of Ld. CIT(A) for re-adjudication.

10.3 The Ld. AO, pursuant to the directions of the Tribunal *qua* original assessment order, passed fresh order of assessment on 26/12/2006 where the income was re-determined at Rs.272.70 Lacs. The assessee filed



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appeal against the same before Ld. CIT(A) which is impugned order dated 05/11/2014. Hence, the impugned order addresses the issues arising out of assessment order passed u/s 143(3) read with Section 147 on 26/12/2006 as well as reassessment order passed on 20/03/2003. The assessee is aggrieved by action of Ld. CIT(A) in confirming the applicability of Section 220(2). The Ld. AR contended that the interest u/s 220(2) should be computed only from the date of *de-novo* assessment i.e. 26/12/2006 whereas Ld. DR supported the stand of Ld. CIT(A).

10.4 We have carefully perused the same. At the outset, we would like to reproduce the stand of Ld. CIT(A) as contained in para-86 of the impugned order which reads as follows:-

86. Thus, there is a uniformity of opinion on this issue in the decision of Hon'ble Bombay High Court as well as the decision of Hon'ble Mumbai Tribunal, as also in CBDT's circular No. 334 dated 3/4/1982. Accordingly, it is held that no interest u/s 220(2) can be charged based on the original demand notice, if a fresh assessment is made pursuant to the directions of the appellate authority. Even in the present case, pursuant to the order of the Hon'ble Tribunal, the assessment made on 31/1/1995 was set aside and a fresh assessment order was made on 26/12/2006. Further, my learned predecessor has also allowed appeal in case of Hitesh Mehta for A.Y.1992-93, vide order dated 30/12/2011, and other persons of the same group, through separate orders. Since the issue is now squarely covered by the decision of Hon'ble Bombay High Court in case of **CIT V. M/s Chika Overseas P.Ltd.** (supra), the AO is directed not to charge interest u/s. 220(2) from the date of original assessment. However, as mentioned above, in this case, the assessment was reopened and the reassessment was completed vide order u/s.143(3) read with Section 147 dated 20/03/2003, which has not been set aside by any appellate authority. Therefore, in the eyes of law, the assessment order dated 20/3/2003 stands. Therefore, in the peculiar facts and circumstances of the case, I hold that interest u/s.220(2) should be charged from the date of reassessment (20/3/2003), in respect of demand relating to the said order and which has been confirmed by this appellate order. In respect of the balance demand, interest u/s.220(2) may be charged from the date of *de novo* assessment (26/12/2006). Of course, while charging the interest, the demand notice period (30/35 days, as applicable) should be excluded.



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10.5 Upon perusal of the same, we find that Ld. CIT(A) has clinched the issue in right perspective on the facts of the case and the same is quite logical and fair one. From the chronology of event, we find that only the original assessment order was set aside by the Tribunal whereas the reassessment order remained intact. Therefore, the peculiar situation gave rise to separate periods for the purpose of computation u/s 220(2). The Ld. CIT(A) understood the same in the context of judicial pronouncements as well as statutory provisions including CBDT circular and the same being, quite fair and logical, require no interference on our part. Hence, while confirming the same, we dismiss, this ground of assessee's appeal.

11. The assessee has also filed additional grounds of appeal vide letter dated 17/07/2017 which do not require appreciation of new set of facts and no serious objections against the same are raised by the revenue and therefore the same are taken on record. The additional grounds are related with disallowance of Rs.99,225/- u/s 14A and charging of interest u/s 234A/B/C. The grounds pertaining to charging of interest u/s 234A/B/C are identical as raised in AY 1991-92. Therefore, taking the same stand, we dismiss assessee's grounds so far as it relates to charging of interest u/s 234. However, the assessee stands benefitted to the extent of tax deductible at source for the purpose of computation as already concluded by us in AY 1991-92. Therefore, the computation of the same is restored back to the file of Ld. AO on similar lines.



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12. The only issue remaining to be decided is disallowance of Rs.92,225/- u/s 14A. The same has been discussed at Para Number-4 in the quantum order. It was noted that the assessee earned tax free interest income of Rs.45 Lacs and the same constituted approx. 51% of total receipts of the assessee and hence called for disallowance u/s 14A. As against this, the assessee claimed expenditure of Rs.15.36 Lacs. After making various adjustments in the expenditure, Ld. AO computed the said disallowance at Rs.6,07,261/- being approx. 51% of balance expenditure of Rs.11,90,708/-. The Ld. CIT(A), after considering the factual matrix, restricted the same to 1/12th of total expenditure of Rs. 11,90,708/- which came to Rs.90,225/-. The Ld. AR pleaded that the tax free income was earned only during short span of time and the impugned disallowance against the same was on the higher side whereas Ld. DR contended that the factual matrix has duly been considered by the Ld. CIT(A) and therefore, the same was fair and reasonable.

13. After due consideration of the same, we find that Ld. AO has already adjusted the total expenses claimed by the assessee for various disallowances already made and arrived at the impugned disallowance. The Ld. CIT(A) after considering the span during which the related transactions were carried out, computed the same at 1/12th, which was quite fair and reasonable and do not require our interference at all. Therefore, finding no reason to interfere with the same, we dismiss this



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ground of assessee's appeal. Resultantly, the appeal of the assessee stands partly allowed for statistical purposes.

14. Now, we take up assessee's appeal ITA No. 1093/Mum/2015 for AY 1993-94 which contest the order of Ld. Commissioner of Income Tax(Appeals)-52, Mumbai [CIT(A)] *Appeal No. CIT(A)-52/DC/AC-CC-4(3)/120/2009-10 dated 29/12/2014* which arises out of quantum assessment order passed by *Ld. Deputy Commissioner of Income Tax on 22/02/2002 passed u/s 144 read with Section 250.*

15. The assessee has raised identical worded grounds as raised in AY 1991-92. Ground Numbers 1 & 2 is related with *depreciation & repair & maintenance expenses* against two properties situated at *Madhuli, Worli* and *Bandra*. We have already dismissed assessee's appeal on these grounds for earlier AYs and the factual matrix is same in this year also. Therefore, taking same stand, we dismiss the same.

16. Ground No. 3 is related with allowance of estimated expenditure against the income earned by the assessee. The assessee earned profit on sale of Shares as Rs.6,41,459/-, against which Ld. AO has allowed estimated expenditure of 10% i.e. 64,145/- in the absence of proper books of accounts. The Ld. CIT(A) has confirmed the same, against which the assessee has raised this ground. On factual matrix, we find the same to be fair and logical estimation since no books were maintained by the assessee and therefore, see no reason to interfere with the same. This grounds stands dismissed.



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17. Ground Numbers 4 & 5 are related with chargeability of interest u/s 234A/B/C. These grounds are identical worded grounds as raised in earlier years. Therefore, taking the same stand, while upholding the chargeability of interest, the matter is restored back to the file of Ld. AO for *re-computation*, on similar lines. Resultantly, Ground No. 4 stands dismissed whereas Ground number 5 stands allowed for statistical purposes. Resultantly, the appeal of the assessee stands partly allowed for statistical purposes.

18.1 Now, we take up revenue's appeal ITA No. 1268/Mum/2015 for AY 1991-92 which contest the order of Ld. Commissioner of Income Tax (Appeals)-52, Mumbai [CIT(A)] *Appeal No. CIT(A)-52/DC/AC-CC4(3)/119/2009-10 dated 22/12/2014*. The assessment was framed by *Ld. Deputy Commissioner of Income Tax, Circle-31, Mumbai [AO] u/s 144 on 26/12/2006*. The only grievance of the revenue pertains to deletion of addition of Rs. 30 Lacs on account of suppression of Sale price of 7500 Shares of *ACC Limited*.

18.2 The relevant facts *qua* the same are discussed in *Para-4* of the quantum assessment order. During assessment proceedings, it was noted that the assessee earned *Share Trading Income* of Rs.10,75,114/- on certain delivery based Share transactions which were routed through the broking concern namely *Ashwin S.Mehta*, a proprietary concern of one of the director of the assessee company. There was no actual movement of fund and the transactions were entered through journal entries by way of



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debit and credit, the net result of which was profit of Rs.10,75,114/- to the assessee and the same was reflected in the Profit & Loss Account.

18.3 After reviewing the audit report of three *Chartered Accountant Firms* appointed by the special court, certain discrepancies were noted in sale / purchase rates of a stock namely *ACC Limited* reflected by the assessee vis-à-vis rates quoted by the stock exchange on trading days. Resultantly, the Ld. AO, by taking the average rates of a particular day and applying the same to respective sale / purchases, worked out suppression of profit aggregating to Rs.36.87 Lacs which comprised of inflated purchase price for Rs.6.87 Lacs and suppressed sale value for Rs.30 Lacs. The assessee while contesting the same, furnished certain evidences in the shape of confirmation etc. from the broking firm and also pointed out certain discrepancies in the dates taken by Ld. AO. However, not convinced, Ld. AO added the same to the income of the assessee on account of suppressed profits.

18.4 Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 22/12/2014. The Ld.CIT(A), after considering the factual matrix accepted the explanation furnished by assessee with respect to purchase prices reflected by the assessee. The balance difference of Rs.30 Lacs pertaining to variation in sale price was deleted by Ld. CIT(A) by making the following observations:-

11. *As regards sales of 7500 shares of ACC Ltd., it is submitted that contract for the same was drawn prior to 30/08/1990, on 14/09/1990 itself, and the broker vide his letter dated 11/12/2006, explained the circumstances in which the said transaction had taken place and the counter party was M/s Nagardas Lalji. As regards the contention of the*



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AO that there is no delivery of 7500 shares to M/s Nagardas Lalji and there was no possibility to get information from this party after so many years, it appears that the assessee had submitted evidence in the form of pay-in slip of clearing house of Bombay Stock Exchange from M/s Ashwin S.Mehta, evidencing delivery of shares by the said broker. Therefore, as far as this transaction is concerned, the contention of the learned AO does not appear to be correct. On the contrary, the contention of the learned AR appears to be justified.

12. In view of the above facts, the variation in purchases and sales of shares worked out by the AO becomes unsustainable. The same is, therefore, directed to be deleted. This ground of appeal is, accordingly, allowed.

18.5 The Ld. DR contested the stand taken by Ld. CIT(A) and contended that large variation was noticed in sale / purchase rates reflected by the assessee which could not be substantiated with proper documentary evidences and there were discrepancies in the transactions. The Ld. DR further contended that the confirmation from the respective parties after the gap of more than 15 years was not possible. Per *contra*, Ld. AR placed reliance on the stand of Ld. CIT(A) and contended that the transactions were duly confirmed by the broker firm and backed by supporting evidences and therefore, the additions were rightly been deleted by Ld. CIT(A).

18.6 We have carefully considered the rival contentions and peruse relevant material on record. The only dispute is with respect to sale price of 7500 shares of ACC sold by the assessee. The allegation of the Ld. AO is that the shares were sold on 14/09/2009 at prices much below than prevailing market prices whereas the contention of the assessee is that the sale transactions was carried out through broker firm and the same took place much before 30/08/1990 and the reflected prices are duly supported



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by the documents and the confirmation of the broker firm. The assessee has placed certain documents pertaining to the transactions at *page numbers 27 to 60* of the *paper book* which contain *clearing statement, assessee's transactions details carried through broker firm, ledger extracts and contract notes*. A perusal of *stock exchange clearing* document placed at page no.27, *prima facie*, reveals that the broker namely *Ashwin Mehta* has sold '*1500 ACC shares @Rs.1450/- A/c Nagardas Laljee*'. The assessee has placed on record confirmatory letter dated 11/12/2006 from the broker, the relevant part of which is reproduced below:-

b. *So far as the contract drawn for sale of 7500 shares of ACC on behalf of your company is concerned, the actual sale of the same was negotiated and concluded in settlement No. 10 though the contract note was drawn in Settlement No. 11. These shares have been sold by my brokerage firm on behalf of your company to M/s Nagardas Lalji, a member of the Bombay Stock Exchange at relevant time bearing clearing No.540. The sale consideration was in fact received by my brokerage firm on 30.08.1990 itself and as by way of credit kapli (a credit note) for which my firm has duly taken the credit for on 30.08.1990 itself. In support of my contention, I am pleased to enclose a copy of my pay-in statement at Annexure-A as was submitted to the clearing house of Bombay Stock Exchange on 31.08.1990. In this statement, my brokerage firm has received the credit of Rs.1,08,75,000/- as a consideration of sale of 7500 shares of ACC @Rs.1450/- per share which fact is also recorded on the pay-in statement. It is evident therefrom that the sale was concluded on behalf of your company prior to 30.08.1990 when the prevalent prices were in the vicinity of or even less than Rs.1400/- per share. The contract for sale was passed late on 14.09.1990. Thus the sale consideration has been received by my brokerage firm on behalf of your company at the contracted price and there is no price variation whatsoever. In support of my contention, I am pleased to enclose a statement of the brokerage firm of M/s Nagardas Lalji as is forming part of my books of accounts at Exhibit B.*

Upon perusal of the same, we find that the assessee, to some extent, could substantiate the reflected sale price whereas Ld. AO without controverting the same in any manner with any cogent material, took the average of



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prevailing price of 14/09/2009 and applied the same and added the differential amount to the income of the assessee, which was not fair and proper. Therefore, we are of the considered opinion that the addition has been made merely on the basis of doubts, conjectures and surmises without supporting the same with any cogent material. Hence, finding the stand of Ld. CIT(A) fair and reasonable, we see no reason to interfere with the same and inclined to dismiss revenue's appeal *qua* this ground.

19. Finally, the revenue's appeal stands dismissed whereas the assessee's appeal stands partly allowed for statistical purposes.

Order pronounced in the open court on 04th October, 2017.

Sd/-

(C. N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04.10.2017
Sr.PS:- Thirumalesh

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai