

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1506/AHD/2014
(Assessment Year: 2005-06)**

The DCIT Circle-4, Ahmedabad	V/S	Marck Biosciences Ltd. 5th Floor, Heritage, Near Gujarat Vidhya Pith, Usmanpura, Ahmedabad
(Appellant)		(Respondent)

PAN: AABCM0366P

**Appellant by : Shri Rajesh Meena, Sr. D.R.
Respondent by : Shri S. N. Divatia, A.R.**

(आदेश)/ORDER

Date of hearing : 09 -02-2018

Date of Pronouncement : 14 -02-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-VIII, Ahmedabad dated 03.02.2014 pertaining to A.Y. 2005-06.

2. The sum and substance of the grievance of the revenue is that the Id. CIT(A) erred in quashing the assessment proceedings for want of a valid notice issued u/s. 143(2) without appreciating the fact that the A.O. has validly reopened the assessment proceedings u/s. 147 of the Act.
3. Briefly stated the facts of the case are that the original assessment was framed u/s. 143(3) of the Act vide order dated 31.12.2007.
4. Thereafter the completed assessment was reopened and the reasons for reopening the assessment read as under:-

In this case, return of income was filed on 30.10.2005 declaring total income at Rs.Nil which was processed u/s.143(1) of the IT Act. Subsequently, order u/s.143(3) passed on 31.12.2007 computing total income at Rs.Nil. The assessee was required to pay tax under the provision of section 115-JB of the act as computed in Annexure-1. However, the same was not done at the time of assessment for A.Y.2004-05 and 2005-06. This resulted in short levy of tax of Rs.2544527/- including interest of Rs.449898/- u/s.234-B for the 2004-05 and 2005-06.

Thus, I have a reason to believe that the said income chargeable to tax has escaped from assessment within the meaning of section 147 of the IT Act, 1961.

5. The aforementioned reasons were recorded on 20.07.2010. Prior to this on 21.01.2010, the A.O. had already recorded the reasons identical to what has been mentioned hereinabove. These two exhibits are at pages 11 & 18 of the paper book. Three notices u/s. 148 were issued on the following dates:
 - (i) 12.03.2009
 - (ii) 26.03.2009
 - (iii) 04.10.2010

6. The last notice u/s.148 was issued on 04.10.2010. The return was filed on 19.07.2010. The notices issued u/s. 148 dated 12.03.2009 and 26.03.2009 are much earlier to the date of the reasons recorded for the re-opening which are 20.07.2010 and 21.01.2010. Moreover, notice u/s. 143(2) is dated 12.03.2010. Whatever may be date of the issue of notice u/s. 148 of the Act, the notice issued u/s. 143(2) dated 12.03.2010 is prior to the date of filing of the return which is 19.07.2010. This means that the notice u/s. 143(2) has been issued by the A.O. prior to the date of the filing of the return. In our understanding of the fact and the law, notice issued before filing of the return of income has no meaning and deserves to be treated as invalid. This also means that the assessment has been completed without issuing valid notice u/s. 143(2) of the Act and therefore the assessment has to be treated as invalid and deserves to be annulled. We do not find any reason to interfere with the findings of the Id. CIT(A). Appeal filed by the Revenue is accordingly dismissed.

Order pronounced in Open Court on 14- 02- 2018

Sd/-

Sd/-

(MAHAVIR PRASAD)

JUDICIAL MEMBER True Copy

Ahmedabad: Dated 14 /02/2018

(N. K. BILLAIYA)

ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad