

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No.209/Ahd/2016  
Assessment Year: 2012-13**

Income Tax Officer,  
Ward-2(4), Bhavnagar.

vs. Kailash Ginning Factory,  
Tajala-Bhavnagar-NH 8E,  
Velavadar,  
Taluka: Talaja,  
Distt. Bhavnagar - 364 140.  
[PAN – AAJFK 0996 Q]

**ITA No.210/Ahd/2016  
Assessment Year: 2012-13**

Income Tax Officer,  
Ward-2(4), Bhavnagar.

vs. Jay Mahakali Ginning,  
Survey No.91/2 Paiki-1,  
Shobhavad,  
Talaja,  
Distt. Bhavnagar - 364 140.  
[PAN – AAGFJ 0023 L]

**ITA No.211/Ahd/2016  
Assessment Year: 2012-13**

Income Tax Officer,  
Ward-2(4), Bhavnagar.

vs. Raghuvir Ginning Factory,  
Palitana Road,  
Talaja,  
Distt. Bhavnagar - 364 140.  
[PAN – AAJFR 9099 K]  
(Respondents)

(Appellant)

Appellant by : Albinus Tirkey, Sr. D.R.  
Respondents by : Sakar Sharma

Date of hearing : 21.02.2018  
Date of pronouncement : 23.02.2018

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER**

1. These are appeals by the Revenue preferred against the orders of CIT(A)-6, Ahmedabad dated 30.11.2015 pertaining to Assessment Year 2012-13. The impugned appeals relate to three different assessees but since the first appellate

authority dismissed all these appeals by a common order, all these appeals were heard together and are being disposed of by this common order for the sake of convenience and brevity.

2. The common grievance in all these appeals relate to the allowance of set off of business loss and the depreciation from the undisclosed income.

3. The common facts in the impugned appeals relate to the disclosure made during the course of survey proceedings in the business premises of the assessee and the disclosure relate to the excess stock found on account of physical inventory taken by the official of the survey team by comparing inventory as on date of survey as per books.

4. In its return of income, the assessee included the amount disclosed on account of unaccounted stock but claimed set off of losses in other heads of income from the income so disclosed. The Assessing Officer was of the firm belief that the amount disclosed by the assessee is not eligible for the set off of losses from any other source of income. Drawing support from the decision of Hon'ble Gujarat High Court in the case of Fakir Mohmed Haji Hasan vs. CIT, 247 ITR 290 (Guj), the Assessing Officer denied the set off of losses and taxed the entire income disclosed during the survey proceedings.

5. The assessee strongly agitated the matter before the CIT(A). After considering the facts and the submissions, the CIT(A) was convinced that the disclosed amount is assessable under one of the head of income, loss and depreciation can be set off against income disclosed during the survey. The CIT(A) accordingly directed the Assessing Officer to assess the disclosed income under one of the head and allowed the set off of business loss and depreciation.

6. Aggrieved by this, the Revenue is in appeal before us. Learned Departmental Representative strongly supported the findings of the Assessing Officer and once again relied upon the decision of Hon'ble High Court of Gujarat in the case of Fakir Mohmed Haji Hasan (supra). Per contra, learned counsel for the assessee reiterated what has been stated before the lower authorities.

7. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute in so far as the disclosure made at the time of survey.

The assessee admitted the excess stock as its undisclosed income. Since the excess stock related to the business of the assessee, there remains no doubt that undisclosed income offered for taxation related to the business of the assessee. The Assessing Officer has wrongly construed the same as not eligible for set off. In our considered opinion, if there were losses from other source of income, the same had to be set off against this income and the depreciation was also allowable to be deducted from this undisclosed income. The decision relied upon by the Assessing Officer and the Departmental Representative is on a different set of facts and, therefore, not applicable in the case in hand.

8. Considering the facts in totality, we do not find any error or infirmity in the findings of the CIT(A).

9. All the impugned appeals are accordingly dismissed.

(Order pronounced in the open Court on this 23<sup>rd</sup> day of February, 2018)

Sd/-  
**Rajpal Yadav**  
(Judicial Member)

Sd/-  
**N.K. Billaiya**  
(Accountant Member)

**Ahmedabad, the 23<sup>rd</sup> day of February, 2018**

**PBN/\***

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*