

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

स्वश्री वसीम अहमद, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के सम्मक्ष ।
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.3620/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2006-07)

DCIT, Circle – 1(1)(1), Ahmedabad.	बनाम/ Vs.	M/s. Asian Tiles Ltd., 202, Dev Arc, Opp. Iskon Temple, S.G. Highway, Ahmedabad – 380 015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCA 5213 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Ms. Aparna Agarwal, CIT-D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Aseem L. Thakkar, A.R.

सुनवाई की तारीख / Date of Hearing	07/05/2018
घोषणा की तारीख /Date of Pronouncement	24/05/2018

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the appellate order of the Commissioner of Income Tax(Appeals)-6, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-6/77/13-14 dated 30/10/2015 arising in the assessment order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 27/01/2014 relevant to Assessment Year (AY) 2006-07.

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2. The Revenue has raised following grounds of appeal:

- “i) The ld CIT(A) has erred in law and on facts in quashing the order reopening of the assessment u/s 147 of the Act.*
- ii) The ld. CIT(A) has further erred in not deciding the grounds on merits.”*

3. The interconnected issue raised by the Revenue is that Ld. CIT(A) erred in holding the proceedings initiated u/s 147 of the Act as invalid as well as without deciding the issue on merit.

4. Briefly stated facts are that the assessee in the present case is a Limited Company and engaged in the manufacturing business of ceramics tiles and commission income. The assessee filed its original return of income declaring total income at Rs. Nil and book profit of Rs.27,20,951/- u/s 115JB of the Act dated 29-06-2009. Subsequently, the assessment was completed u/s 153A/143(3) of the Act determining the total income at Rs. Nil and book profit of Rs. 3,24,98,120/- vide order dt. 28-08-2008.

5. Subsequently, the AO on verification of the assessment records observed that the assessee has suppressed its sales to the tune of Rs. 6,41,37,220/- only. Therefore, the AO initiated proceedings u/s 147 of the Act after taking necessary approval from the Commissioner of Income Tax vide letter dt. 20th March, 2013. Accordingly, the AO completed the assessment u/s 147 of the Act at total income of Rs. 8,63,21,654/- after including suppressed sales of Rs.6,41,37,220/- vide order dt. 27-01-2014.

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6. Aggrieved, assessee preferred an appeal to Ld. CIT(A), the assessee before the Id. CIT(A) submitted that in the identical facts & circumstances proceedings were also initiated u/s 147 of the Act for the assessment year 2007-08. The assessee challenged the same under Article 226 of the Constitution of India before the Hon'ble Gujarat High Court, which was quashed by the Hon'ble Court in special Civil Application No.13933 of 2014 vide order dt. 8th July, 2015. The relevant extract of the order is reproduced below:

"In view of this settled legal propositions, we are of the opinion that the respondent could not have issued impugned notice to the petitioner subject to suppressed sale transaction to income. In our opinion, impugned notice is inherently illegal and invalid and, therefore, it cannot be sustained for the aforesaid reasons. We are inclined to accept this petition and accordingly the petition succeeds and not hereby allowed. The impugned notice dated 20.03.2014 issued by the respondent is hereby quashed and set-aside. Rule is made absolute. No order as to costs."

7. The assessee further submitted that the facts of the case in hand are exactly identical as of the case pertaining to the assessment year 2007-08. Therefore, he prayed to the Id. CIT(A) to quash the assessment order framed u/s 147 of the Act.

8. The Ld. CIT(A) after considering the submission of the assessee quashed the assessment proceedings framed by the AO u/s 147 of the Act by observing as under:

"7. I have carefully considered the assessment order and the submission of the appellant. The appellant submitted that on similar facts A.Y. 2007-08 was reopened u/s 148 of the Act and against the reopening the appellant filed a writ petition before the Gujarat High

Court and in the case of the appellant the Hon'ble Gujarat High Court has quashed the reopening u/s 148 in A.Y. 2007-08 therefore reopening in A.Y. 2006-07 may be quashed. It is seen that the Hon'ble Gujarat High Court has held as undergo.

“10. Undisputed fact is that search operation was carried out by the respondent authority and during this search operation, undisclosed suppressed sale transaction to the tune of Rs.7,98,68,610/- was detected. It is also undisputed fact that gross profit at the rate of 26.10% on the aforesaid suppressed sale transaction was assessed and the tax was accordingly levied. Now the department by impugned notice wants to levy tax on the whole amount of suppressed sale transaction to the tune of Rs.7,98,68,610/- and not on gross profit earned by the assessee on the sale transaction. This Court had an occasion to examine the issue as to whether entire sale transaction can be added to the income or not. In the case of Commission of Income Tax Vs. President Industries (supra) relied upon by Mr. Soparkar, ld. advocate, wherein it is observed as under:

"Having perused the assessment order made by the AO, the order made by the Commissioner of Income-tax(Appeals) and the Income-tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under section 256(1). It cannot be matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost of incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed in the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there, is no finding nor any material has been referred about the

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suppression of investment in acquiring the goods which have been found subject of undisclosed sales.”

Thus, it is eminently clear from the above observation of this Court that entire sale transaction cannot be taken as income. By the impugned notice though the department has subjected GP at the rate of 26.10% on the suppressed sale transaction, now, the entire suppressed sale transaction is sought to be brought under the net of income tax which is not permissible.

11. In view of this settled legal propositions, we are of the opinion that the respondent could not have issued impugned notice to the petitioner subject to suppressed sale transaction to income. In our opinion, impugned notice is inherently illegal and invalid and therefore, it cannot be sustained for the aforesaid reasons. We are inclined to accept this petition and accordingly the petition succeeds and is hereby allowed. The impugned notice dated 20-3-2014 issued by the respondent is hereby quashed and set aside. Rule is made absolute. No order as to costs.”

8. I have carefully considered the reasons recorded for reopening by the A.O. in A.Y. 2006-07 and A.Y. 2007-08. It is found that the A.O. has recorded exactly same reasons and satisfaction based on the same facts as recorded in A.Y. 2007-08. Since the facts and circumstances are exactly identical and similar therefore respectfully following the decision of the Hon'ble Gujarat High Court in the case of the appellant in A.Y. 2007-08, the reopening in A.Y. 2006-07 is also quashed. The ground of appeal is allowed.

9. Since the appellant gets relief on the re-opening of the assessment, therefore, other grounds of appeals have not been adjudicated.

10. In the result the appeal is allowed”

Being aggrieved by the order of Ld. CIT(A) Revenue is in second appeal before us. Both the parties before us relied on the order of authorities below as favourable to them.

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9. We have heard the rival contentions and perused the material available on record. There is no dispute that the Hon'ble Gujarat High Court in the own case of the assessee has quashed assessment proceedings initiated u/s 147 of the Act pertaining to assessment year 2007-08 as discussed above. The facts for the year under consideration i.e. AY 2006-07 are exactly identical to the case pertaining to the assessment year 2007-08, therefore, the judgment of Hon'ble Gujarat High Court is squarely applicable to the case on hand. Therefore, respectfully following the judgment of Hon'ble Gujarat High Court as discussed above, we do not find any reason to interfere in the order of Ld. CIT(A). Thus, we hold that the proceedings initiated u/s 147 of the Act are not sustainable in the eyes of law.

10. As we have quashed the assessment order u/s 147 of the Act, we refrain ourselves from adjudicating the issue on merit. Hence, appeal of the Revenue is dismissed.

11. In the result, appeal of the Revenue is dismissed.

This Order pronounced in Open Court on	24/05/2018
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Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 24/05/2018

Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT 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)-6, 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