

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD**

[Coram: Justice P P Bhatt, President and Pramod Kumar, Vice President]

ITA No. 986/Ahd/2016
Assessment Year: 2007-08

Sonata Ceramica Pvt LtdAppellant
*At & PO : Gadhoda,
Talod Road, Nr. Sabar Dairy,
Himmatnagar, Sabarkantha-383001
[PAN : AAGCS 4523 D]*

Vs.

Dy. Commissioner of Income-tax Respondent
Sabarkantha Circle, Himmatnagar

Appearances by:

***T P Hemani**, for the appellant
Vinod Talwani, for the respondent*

Date of concluding the hearing : 30.10.2018
Date of pronouncing the order : 16.11.2018

O R D E R

1. This is an appeal filed by the assessee and is directed against the order dated 4th January 2016 passed by the CIT(A)-7, Ahmedabad in the matter of assessment under section 143(3) r.w.s. 147 of the Income-tax Act, 1961, for the assessment year 2007-08.

2. The appeal is time barred by 22 days; but the assessee has moved a condonation petition duly supported by affidavit dated 31.05.2018. It is contended that the delay occurred due to lapse on the part of the assessee to pass on the impugned order of the CIT(A) to the Chartered Accountant for preparing appeal against the same.

3. Having perused the condonation petition and having heard the rival contentions on the same, we are inclined to condone the delay. The delay is condoned. Accordingly, we admit the appeal and proceed to take up the same on merits.

4. Grievances raised by the assessee are as follows:-

“1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in reopening the assessment u/s 147 of the Act, On the facts and circumstances of the case, learned CIT(A) ought to have held that the action of reopening is without jurisdiction and not permissible either in law or on facts.

2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in rejecting books of accounts u/s 145 of the Income-tax Act, 1961.

3. The learned CIT(A) has erred in law and on facts of the case in confirming the action of learned AO that the appellant has suppressed sales amounting to Rs.74,43,560/-.

4. The learned CIT(A) has erred both in law and on the facts of the case in confirming an addition of Rs.8,28,468/- after applying net profit rate of 11.13% on alleged suppressed sales.

5. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.”

5. When this appeal was taken up for hearing on merits, it was pointed out that the impugned additions were made on the basis of findings in the course of Excise Proceedings and that a Co-ordinate Bench of this Tribunal in assessee's own case for assessment years 2005-06 & 2006-07 has remitted the matter to the file of the CIT(A), in that assessment years, for fresh adjudication in the light of final outcome in the Excise Proceedings based on which the present additions were made. We are urged to follow the same approach and remit the matter to the file of the learned CIT(A) for fresh adjudication in the light of final outcome of the proceedings in the excise matter. Learned Departmental Representative did not seriously dispute the prayer of the learned Counsel for the assessee, but merely placed reliance on the stand of the authorities below.

6. Respectfully following the Co-ordinate Bench decision in assessee's own case for assessment years 2005-06 & 2006-07 (ITA Nos. 2076/Ahd/2012 & 2077/Ahd/2012, order dated 01.03.2016), we deem it fit and proper to remit the matter to the file of the

learned CIT(A) for re-adjudication in the light of final outcome in the excise proceedings in assessee's case. Ordered, accordingly.

7. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 16th November, 2018

Sd/-

Justice P P Bhatt
(President)

Ahmedabad, the 16th day of November, 2018

**/s/*

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

Sd/-

Pramod Kumar
(Vice President)

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad