

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]**

ITA No. 3301/Ahd/2016  
Assessment Year: 2007-08

**Marck Biosciences Limited** .....**Appellant**

*(Now known as Amanta Healthcare Ltd)  
5<sup>th</sup> Floor, Heritage, Near Gujarat Vidyapith,  
Off. Ashram Road, Ahmedabad  
[PAN No. AABCM 0366 P]*

**Vs.**

**Dy. Commissioner of Income-tax** .....**Respondent**

*(OSD)-1, Circle-4, Ahmedabad*

**Appearances by:**

***SN Soparkar, for the Appellant***

***Mudit Nagpal, for the Respondent***

Date of concluding the hearing : 13.03.2019

Date of pronouncing the order : 14.03.2019

**O R D E R**

**Per Pramod Kumar, Vice President :**

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 20<sup>th</sup> October 2016, 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. Grievances raised by the appellant are as follows:-

*“(1) The Learned Assessing Officer has erred in law and on facts in initiating reopening assessment proceedings by issuing notice u/s 147/148 and finalising the assessment us 143(3)/r.w.s. 147.*

*(2) The learned Assessing Officer has erred in law and on facts in passing the order dt. 28/08/2014 :*

*(i) By rejecting the objects raised by the assessee against reasons recorded for reopening u/s 148 and*

*(ii) In not considering the submissions that the reopening is on some other officer's information and not that of the Assessing Officer issuing notice and Hon.CIT in rejecting the above submissions of the assessee.*

- (3) *The Learned Assessing Officer has erred in law and on facts in not considering the evidences produced and on record in respect of additions made :*
- (a) *In respect of all the person whose amount are added when identity was proved.*
  - (b) *Shri Naresh R. Thakore and Shri Jagdishbhai Sheth have personally attended and have confirmed the investment made by them.*
  - (c) *Modern Marine Pvt. Ltd. has shown the investment in its Balance Sheet.*
  - (d) *(i) Purvish Shah (ii) Dahyabhai Thakore and (iii) Dineshbhai Shah. have made investment by cheques and Hon. CIT has erred in law and on facts in confirming the additions.*
- (4) *The Learned Assessing Officer has erred in law and on facts in making additions on the plea that the source of source is not proved and Hon.CIT(A) has erred in confirming the same.*
- (5) *The learned Assessing Officer has erred in law and on facts in passing assessment order by making additions disregarding the fact that even after additions the tax payable on normal income is Nil, as the total income for charge of Income Tax is arrived at u/s 115JB and Hon CIT(A) has erred in confirming the same.”*

3. To adjudicate on this appeal, only a few material facts need to be taken note of. It is a case of reopened assessment. The original assessment was done on book profits under section 115JB. Even though as a result of reassessment proceedings, there was an addition to the returned income but it had no impact on the actual taxability inasmuch as, even after the impugned addition, the actual assessment was on the same book profits under section 115JB. These material facts are not in dispute, and, in response to our specific question, learned Departmental Representative specifically confirmed this position.

4. The short question that we need to address ourselves to is whether, on these undisputed facts, reopening proceedings, to assessee income escaping assessment, can be legally sustained. The authorities below have held that the impugned reassessment proceedings are valid and lawful.

5. Having heard the rival contentions and having perused the material on record, we find that the legal position is well settled, in this respect, by Hon'ble jurisdictional High Court's judgments in the cases of India Gelatine & Chemical Industries Ltd vs. ACIT (364 ITR 649), MottoTiles Pvt Ltd vs. ACIT (386 ITR 280) and PKM Advisory

Services Pvt Ltd vs. ITO (339 ITR 585). We may, in this regard, refer to the following observations made by the Hon'ble jurisdictional High Court in the case of Motto Tiles Pvt Ltd (supra):-

*“.....the controversy stands squarely concluded by the decision of this court in the case of India Gelatine and Chemicals Ltd. (supra) wherein, the court in a case where the assessee had declared a loss of Rs.1.44 crores under the normal computation and the assessment was framed on book profit of Rs.2.89, had held that even if the expenditure of Rs.116.86 lakhs is disallowed, there would be no resultant change in the petitioner's tax liability since the petitioner had already paid much higher tax and had allowed the petition. It appears that the revenue has accepted the said decision and has not challenged the same before the higher forum. The learned counsel for the respondent has urged that the decision requires reconsideration. Having regard to the facts and circumstances of the case, as well as the fact that the revenue has accepted the said decision, the court does not find any reason to refer the matter for consideration to a Larger Bench.*

*12. In the light of the decision of this court in the case of India Gelatine and Chemicals Ltd. (supra), having regard to the fact that even if the entire amount which is proposed to be added by the Assessing Officer is sustained, there would be no addition to the tax liability of the petitioner and the petitioner would still be governed by the provisions of section 115JB of the Act and assessed on the same book profit, it cannot be said that there was sufficient material before the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. The impugned notice issued under section 148 of the Act, therefore, cannot be sustained.”*

6. Respectfully following the esteemed views of Hon'ble jurisdictional High Court, we hold that the reassessment proceedings were vitiated in law, and we quash the reassessment itself. All other issues, in the light of this conclusion and for this short reason, are rendered academic and not requiring any specific adjudication at this stage.

7. In the result, the appeal is allowed in the terms indicated above.  
Pronounced in the open court today on the 14<sup>th</sup> March, 2019.

Sd/-

**Ms. Madhumita Roy**  
(Judicial Member)

**Ahmedabad, the 14<sup>th</sup> day of March, 2019**

*%t*

Sd/-

**Pramod Kumar**  
(Vice President)

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

*By order*

*TRUE COPY*

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