

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

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

ITA No. 1448/Ahd/2016
Assessment Year: 2009-10

Alembic Limited**Appellant**
5th Floor, Admin Building,
Alembic Road, Baroda-390006
[PAN : AABCA 7950 P]

Vs.

Dy. Commissioner of Income-tax**Respondent**
Circle (1)(1), Baroda

Appearances by:

SN Soparkar & Parin Shah, 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 8th March 2016, in the matter of assessment under section 143(3) r.w.s. 147 of the Income-tax Act, 1961, for the assessment year 2009-10.

2. Grievances raised by the appellant are as follows:-

"1. Reassessment is bad in law and void ab initio:

1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the learned CIT (A)] erred in upholding the reassessment order passed by the Assessing Officer without appreciating that the reassessment is bad in law and void ab initio as it is based on conjectures and surmises without there being concrete reason that the income has escaped the assessment.

1.2 Without prejudice to the above, the learned CIT (A) erred in confirming the action of the Assessing Officer in considering the Appellants plea that the reassessment should be dropped u/s. 152(2) as even after considering disallowance of purchases the Appellant would not have been assessed

to an amount or sum not lower than the amount which he was assessed u/s 143(3).

2. Disallowance of purchases amounting to Rs. 30,93,170/-:

2.1 The learned CIT (A) upheld the disallowance made by the Assessing Officer in respect of purchases of promotional materials made from M/s Shah Trading Company as bogus purchases based on the information received from Sales Tax department, without considering evidences and explanation given by the Appellant

2.2 The learned CIT(A) grossly erred in not considering and admitting the VAT assessment order passed by the VAT authorities in the case of Appellant wherein the VAT authorities have given credit of VAT paid by the dealer, purchases from whom have treated as bogus on the ground that same was not submitted before the Assessing Officer.

2.3 The learned CIT(A) upheld the disallowance made by the Assessing Officer without appreciating that the Sales / VAT assessment of seller should not form the basis of addition / disallowance in case of the buyer of goods.”

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 14th March, 2019.

Sd/-

Ms. Madhumita Roy
(Judicial Member)

Ahmedabad, the 14th day of March, 2019

**bc*

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*