



आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.257/Mum/2018
 (निर्धारण वर्ष / Assessment Year: 2009-10)

Apar Chemateck Lubricants Ltd. (now merged with Apar Industries Ltd) Apar House, Corporate Park, Building No.5, Sion Trombay Road, Chembur, Mumbai-400071	बनाम/ Vs.	DCIT-Circle 14(1) Room No.460, Aaykar Bhavan, M.K. Road Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAFCA-9468-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Malav P. Sheth-Ld. AR
Revenue by	:	Shri Satish Chandra Rajore - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	02/05/2019
घोषणा की तारीख / Date of Pronouncement	:	16/05/2019

आदश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-22, Mumbai [CIT(A)], *Appeal No. CIT(A)22/IT/518/2015-16* dated 17/10/2017 on following grounds of appeal: -



1.0 on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming initiation of reopening proceedings under section 148 after the expiry of four years from the end of the assessment year without appreciating that reopening of an assessment already completed u/s 143(3) cannot be made without any additional evidence leading to "reason to believe" that the income has escaped the assessment. Thus reopening being bad in law, the assessment done u/s 147 needs to be cancelled and original assessment u/s 143(3) needs to be restored.

2.0 Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that purchase of gold expense of Rs 72,43,375/- needs to be accrued as expense in FY 2008-09 since the related sales on which the dealers are eligible to gold under Loyalty schemes took place in FY 2008-09. Accordingly, the learned CIT(A) erred in not allowing the said expense in AY 2009-10. Thus, the disallowance of the said expense in AY 2009-10 being bad-in-law must be deleted.

3.0 Without prejudice to the above and without admitting, on facts and circumstance of the case and in law, the learned CIT(A) erred in not appreciating that even if the expense of Rs 72,43,375/- is considered as pertaining to FY 2009-10 instead of FY 2008-09, then also there will be no income escapement to tax in FY 2008-09 ie AY 2009-10 as it will only result into reduction of business loss carried forward from AY 2009-10 to AY 2010- 11 and corresponding contra increase in expenses in AY 2010-11. Thus, the learned CIT(A) erred in not appreciating that in the absence of any income escapement to tax, reopening proceedings-initiated u/s 147 is bad-in-law.

4.0 Without prejudice to the above and without admitting, on facts and circumstance of the case and in law, the learned CIT(A) erred in not directing the learned AO to allow the said expense of Rs 72,43,375/- in AY 2010-11 if not allowable in AY 2009-10.

The name of erstwhile assessee *Apar Chematek Lubricants Limited* has been changed to *Apar Lubricants Limited* vide certificate of incorporation pursuant to change of name issued by Registrar of Companies, Mumbai on 05/09/2014. The aforesaid change has already been reflected in Form 36. Finding the same in order, we proceed to adjudicate the appeal as argued before us.

2.1 Facts in brief are that the assessee being *resident corporate entity* stated to be engaged in *marketing of Lubricants / Oils* was assessed u/s 143(3) r.w.s 147 on 30/11/2015, wherein the loss of the assessee was determined at Rs.555.62 Lacs after sole disallowance



of expense for Rs.72.43 Lacs as against returned loss of Rs.626.36 Lacs filed by the assessee on 30/09/2009. The returned loss was later on revised to Rs.628.05 Lacs which was accepted in scrutiny assessment u/s 143(3) on 16/12/2011.

2.2 The reassessment proceedings were initiated in view of the fact that, upon perusal of details of expenditure, it transpired that the assessee had purchased gold coins from *Tribhuvandas Zaveri* worth Rs.116.07 Lacs but some of the purchases amounting to Rs.72.43 Lacs were not relevant to AY 2009-10 and therefore the expenditure was to be disallowed and added back to the income of the assessee. Accordingly, notice u/s 148 dated 16/03/2015 was issued to the assessee. In response, the assessee offered the revised return of income as filed and demanded reasons for reopening, which were duly supplied. The same was followed by statutory notices u/s 143(2) & 142(1).

2.3 The assessee, in support of expenditure, submitted that during the year the assessee had given *Gold coin scheme* on sale to its dealers/ customers. The dealers / customers who would achieve the target would be eligible for the Scheme after verification of sales made by them. Since the expenditure pertained to accounting year ending 31/03/2009, the provision of the same was made in the books of accounts and claimed as deduction notwithstanding the fact that actual purchase of gold coins was made in subsequent year.

2.4 However, the same could not find favor with Ld. AO who noted that the actual purchase of gold coins amounting to Rs.72.43 Lacs was made in subsequent year and therefore, the same was not an



allowable expenditure in the impugned AY. Accordingly, the same was disallowed and loss was reduced to that extent.

3. Aggrieved, the assessee agitated the same, although without any success, before Ld. CIT(A) vide impugned order dated 17/10/2017 on legal grounds as well as on merits. The Ld. first appellate authority while justifying the reopening, confirmed the stand of Ld. AO in disallowing the expenditure in view of the fact that the assessee did not discharge onus of proving that the purchase of gold coins in subsequent years related to FY 2008-09. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], *Shri Malav P.Sheth*, on the strength of documents placed in the *paper-book*, contested the reassessment proceedings on legal grounds and quantum additions on merits. Per Contra, Ld. DR submitted that the deduction of purchases made in subsequent years could not be allowed in the impugned AY.

5.1 we have carefully heard the rival submissions and perused relevant material on record including documents placed in the *paper-book*.

5.2 So far as the legal grounds are concerned, we find that the assessee was originally assessed u/s 143(3) and the reopening has been sought by the revenue beyond a period of 4 years from the end of relevant AY i.e. AY 2009-10. Therefore, besides fulfilment of primary condition viz. Ld. AO had reasons to believe that certain incomes escaped assessment in the hands of the assessee, the onus was on revenue to establish that such escapement was owing to



failure on the part of the assessee to disclose material facts necessary for assessment before initiating reassessment proceedings for the impugned AY.

5.3 Upon perusal of reply filed by the assessee vide reply dated 05/12/2011 during the course of assessment proceedings u/s 143(3), it transpires that the details of amount paid under *Loyalty Scheme* along with copies of purchase bills of gold coins were submitted by the assessee. The complete details of bill wise purchase of gold coins, date of purchase, amount etc. was placed on record which is evident from *page nos. 11 & 20* of the paper-book. It was specifically submitted that the gold coins were distributed to the dealers and customers. The Ld. AO, after considering all these details, framed assessment u/s 143(3) accepting the assessee's claim. Nothing on record suggest that the assessee failed to submit any details / documents as called for by Ld. AO, in this regard.

5.4 Proceeding further, we find that no new tangible material / information has come unto the possession of Ld. AO subsequent to completion of quantum assessment which suggest possible escapement of income in the hands of the assessee. The only material to trigger the reassessment proceedings is the information / details as already available on record while framing assessment u/s 143(3). It is settled legal proposition that Ld. AO has the power to reassess but no power to review and review in the garb of reassessment is not permissible in law. The Ld. AO could not be granted second chance to have a relook at the matter without there being any cogent material on record which comes to his possession



subsequently so as to justify reopening. Our view gets supports from the following binding judicial precedents as relied upon by Ld. AR: -

- (i) Parashuram Pottery Works Co. Ltd. Vs. ITO [Hon'ble Supreme Court 106 ITR 1]
- (ii) ACIT Vs. ICICI Securities Ltd. [24 Taxmann.com 310 Hon'ble Supreme Court 22/08/2012]
- (iii) CIT Vs. Corporation Bank Ltd. [122 Taxman 826 Hon'ble Supreme Court 03/02/1999]
- (iv) Rajbhushan Omprakash Dixit Vs. DCIT [WP No. 3546 of 2018 Hon'ble Bombay High Court 05/04/2019]
- (v) IPCA Laboratories Ltd. Vs. DCIT [124 Taxman 556 Hon'ble Bombay High Court 02/07/2001]
- (vi) Bhor Industries Ltd. Vs. ACIT [267 ITR 161 Hon'ble Bombay High Court 26/02/2003]

5.5 On the strength of above facts, we are of the considered opinion that reassessment proceedings stood vitiated for want of fulfillment of primary conditions to initiate reassessment proceedings as envisaged by Section 147. We order so.

6. So far as the merits of the case are concerned, the uncontroverted fact that emerges is that the assessee is following mercantile system of accounting as evident from the notes to the financial statements. The assessee was to distribute these gold coins under a scheme to dealers / customers on sales target achieved by them during the period August, 2008 to December, 2008 as evident from brochure of the scheme placed on record. Therefore, the liability would have accrued to the assessee during impugned AY only. This is further strengthened by the fact that the full payment of the gold coins was made by the assessee during impugned AY itself. In view of the stated fact there could be no occasion to disallow the same during impugned AY. We order so.

7. Resultantly, the appeal stands allowed in terms of our above order.



Order pronounced in the open court on 16/05/2019.

Sd/- **(C.N. Prasad)** **Sd/-** **(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/05/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.