

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD ðAö BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2637/Ahd/2014  
Assessment Year 2006-07**

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| Gujarat State Financial Corporation,<br>Block No. 10,<br>Sector 11,<br>Udhyog Bhavan,<br>Gandhinagar-382017<br>PAN: AABCG2924M<br>(Appellant) | Vs | The ACIT,<br>Circle-4,<br>Ahmedabad<br>(Respondent) |
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**Revenue by: Shri Anshu Prakash, CIT-D.R.  
Assessee by: Shri P.F. Jain, A.R.**

Date of hearing : 04-06-2019  
Date of pronouncement : 04-06-2019

**आदेश/ORDER**

**PER : RAJPAL YADAV, JUDICIAL MEMBER:-**

The present appeal is directed at the instance of assessee against the order of Id. CIT(A) dated 1<sup>st</sup> July, 2014 passed for assessment year 2006-07. Though the assessee has taken five grounds of appeal but its grievance revolves around two issues namely; (a) Id. CIT(A) has erred in upholding

reopening of assessment and (b) Id. CIT(A) has erred in upholding the addition of Rs. 159,46,05,271/-.

2. The brief facts of the case are that assessee has filed its return of income on 27<sup>th</sup> Dec, 2006 declaring loss of Rs. 137,02,37,406/-. This return was processed u/s. 143(1) and an intimation was issued on 9<sup>th</sup> April, 2007 without any changes in returned income. An assessment order was passed u/s. 143(3) on 16-12-2008 at Rs. (-)12,00,85,426/-. The Id. assessing officer thereafter recorded reasons and reopened the assessment. The assessee objected to reopening of the assessment but the Id. assessing officer rejected its contention.

3. Appeal to Id. CIT(A) did not bring any relief to the assessee.

4. The Id. counsel for the assessee while impugning the order of the CIT(A) contended that notice u/s. 148 was issued after expiry of 4 years from the end of the relevant assessment year. The original assessment order in the case of the assessee was passed u/s. 143(3) on 16-12-2008. The proviso attached to section 147 contemplates that an assessment order cannot be reopened in a case where scrutiny assessment order u/s. 143(3) was passed and four year have expired from the end of the relevant assessment year. In such cases, the assessing officer cannot reopen the assessment unless it is established that taxable income has escaped assessment on account of failure of the assessee to disclose all material facts fully and truly. He pointed out that assessee has disclosed all material facts fully and truly and an inquiry was conducted on the issue for which

assessment is being reopened. He drew our attention towards page no. 4 to 6 of paper book where questionnaire issued u/s. 142(1) is placed on record. He drew our attention towards question nos. 4 and 11 raised by the assessing officer in the notice u/s. 142(1). On the strength of these details, he contemplated that reopening of the assessment is bad in the eyes of law and same be quashed.

5. Ld. CIT-D.R. on the other hand contended that basically loan liability of the assessee has been ceased and this remission in the loan liability ought not to be treated a capital receipt rather it is taxable u/s. 41(1). The assessing officer has rightly reopened the assessment for escapement of income. He further relied upon the orders of revenue authorities.

6. We have heard the rival contentions and gone through the records carefully. In order to appreciate the controversy, we deem it pertinent to note the reasons for reopening which read as under:-

*"In this case, income tax. e-return was filed on 27.12.2006 declaring total loss Rs. 1,37,02,37,406/- for A.Y.2006-07. The assessee is doing the business of providing financial assistance, to industrial units. The assessment for A.Y.2006-07 was finalized u/s. 143(3) on 16.12.2008 determining total income at. Rs. 12,00,85,426/-.*

*2. During the course of assessment proceedings, for A.Y.2009-10, it was noticed that the assessee is having capital reserve of Rs. 182,87,27,18 4/-. On verification it was noticed that the assessee had entered one time, settlement agreement with following banks*

- 1. Bank of India*
- 2. Dena Bank*
- 3. SIDBIREFI*
- 4. SIDBI RTDM*
- 5. SIDBI LOC*
- 6. PSB (NG)-III*
- 7. PSB (NG)-IV*
- 8. PSB (NG)-V*
- 9. Indian Bank*
- 10. IDBI LOC*

*Because of the settlement, the amount of Rs.159,46,05,271/- payable by the assessee is ceased to be payable to those, institutions in F.Y.2005-06 relevant to A.Y.2006-07. The amount of Rs. 159,46,05,271/- was credited to capital reserve by the assessee in F.Y. 2005-06 relevant to A.Y.2006-07. The amount is written off by these institutions in their books of accounts.*



assessment. There is no allegation against the assessee for withholding of any information. In such situation, the reopening of assessment is not justifiable. Therefore, we allow the appeal and quashed the re-assessment order.

Order pronounced in the open court on 04-06-2019

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 04/06/2019**

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**

**आदेश क० त० प्रतः / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील आधिकरण,  
अहमदाबाद