

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2424/M/2017
Assessment Year: 2009-10**

ACIT 24(3), Office of the ACIT-24(3), R.No.413, 4 TH Floor, Piramal Chambers, Lalbaug, Parel, Mumbai – 400 012	Vs.	M/s. Nanavati Constructions, 52, Sarvodya Indl. Estate, Mahakali Caves Road, Andheri (East), Mumbai- 400 093 PAN: AAFFN9695M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri B.V. Jhaveri, A.R.
Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 12.09.2019
Date of Pronouncement : 19.12.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 09.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The Revenue has raised the following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the appeal filed by the assessee merely on the ground that the re-opening of assessment was invalid without going into the facts of the case.

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in ignoring the fact that no interest was charged on debit balance of the partner's (Shri Apurva Jagdish Nanavati) capital account.

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(a) erred in ignoring the fact during the course of survey, assessee had admitted Rs. 15,16,44,927/- as income at the time of statement on oath recorded u/s. 131 of the I.T. Act, whereas the assessee has filed return of income on 23.09.2009 for A.Y.-2009-10 offering the net profit at Rs.6,56,45,003/-.

4. Whether on the facts and in the circumstances of the case and in law, the Ld.CU(a) erred in allowing additional ground of appeal without providing opportunity to the Assessing Officer to rebut the same.

5. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the A.O. be restored.

6. The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary.”

3. The issue raised in ground No.1 is against the order of Ld. CIT(A) allowing the appeal of the assessee on the jurisdictional issue.

4. The facts in brief are that the assessee filed the return of income on 23.09.2009 declaring an income of Rs.6,69,31,103/- which was processed under section 143(1) of the Act. The assessee is engaged in the business of property development. The assessment proceedings were completed under section 143(3) of the Act on 28.12.2011 accepting the return of income. Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act dated 27.03.2014 after recording the reasons to believe under section 148(2) of the Act. The assessment was reopened primarily for two reasons – one that the assessee has not charged interest on the debit balance of the partner whereas the deed of partnership provides for charging of interest @12% per annum on the debit balances and thus Rs.82,01,370/- has escaped assessment. Secondly, the assessment was reopened on the ground that as per development agreement with the land

owner, the assessee developed a plot at Juhu and as per serial No.3 of the development agreement, the developer was to pay to the land owner for development rights a sum of Rs.18 crore towards cost of the said land and in addition 50% of the profit accruing to the developer after meeting all the expenses. The assessee has received Rs.9,52,87,548/- in two years as 50% profit from the project which was not offered to tax by the assessee. Accordingly, an income of Rs.10,34,88,990/- has escaped assessment. The AO finally added to the income of the assessee Rs.82,01,320/- as discussed in para 6 of the assessment order and Rs.8,59,99,924/- as per para 7.2 by framing assessment under section 143(3) read with section 147 dated 20.03.2013.

5. In the appellate proceedings, the Ld. CIT(A) quashed the assessment proceedings. It was submitted before the Ld. CIT(A) that the assessee filed the return of income of Rs.6,69,31,103/- on 29.03.2009 whereas the survey was conducted on 08.09.2009 on the appellant premises. During the course of survey, statement of Shri Apurva Jagdish Nanavati, one of the partners of the assessee was recorded which was subsequently retracted on 18.09.2009 and finally the assessment was framed under section 143(3) on Rs.6,69,31,103/- accepting the return of income. The Ld. A.R. submitted before the appellate authority that during the course of assessment proceedings all these statements recorded during the course of survey action and other related issues were taken into consideration. Thereafter, internal audit party raised several objections which were explained vide letter dated 16.08.2013 and 21.10.2013. The AO wrote letter to the senior audit officer on 12.06.2014 disposing

of/settling the audit objections as the AO did not agree to any of the objections raised by the audit party. The Ld. A.R. submitted that the AO who disposed of the audit objections vide his letter dated 12.06.2014 issued notice under section 148 on 13.08.2014 on the basis of same audit objections which is a clear cut change of opinion. However, the objection raised by the assessee firm against the reopening of assessment was rejected by the AO on 20.01.2015 and went with the reassessment proceedings. The Ld. CIT(A) thus considering all these contentions of the assessee allowed the appeal of the assessee by observing and holding as under:

“5.7. HELD: I have carefully considered the assessment order, re-assessment order, written submission of the appellant and assessment record called for during appellate proceedings. **In my opinion there is substance in the above argument of the Appellant.** It seems that reason to believe were recorded u/s 148 of the Act on 27.03.2014 and notice u/s 148 was issued on the same day. On perusal of assessment record, it is found that the case was reopened on the basis of audit objection. In the assessment record, it is further found that there is a letter addressed to the Sr. Audit Officer, LAP-XVI, Mumbai dated 12X36,r2_OM by the AO forwarded through proper channel, which is reproduced for ready reference as under:

"In this case following two objections has been raised by the audit party.

i) Assessee firm is builder and developer and constructed a project at west wing Juhu Tara Road. Mumbai-42. The assessment of a firm for the assessment year 2009-10 was completed after scrutiny in December 2011 by accepting the returned income of Rs. 6961103/-. Audit scrutiny revealed from the schedule 8 of the partners' capital account appended to the balance sheet that out of two partners, one partner Shri. ApurvaJagdishNanavati having 50% sharing ratio in the profit had a debit balance of Rs.63844750/- to his capital account as on 01.04.2008. However, no interest is charged on debit balance of the partner. The debit balances indicate the withdrawal of funds by the partners for personal purposes without assigning any cost. As per audit report in form 3CD there is no change in partners. As per clause 10 of the deed of partnership (Dtd. 05.12.2005 submitted alongwith return of income for A.Y. 2006-07) if there is a debit balance in the capital or loan account of any partner, simple interest @12% shall be recoverable from the partner. Non-charging of interest @72% on these debit balances 35 per the clause of deed of partnership resulted in under assessment of income of Rs. 8201370/- (Rs. 68344750 " 12%) a previous year relevant to A.Y. 2009-10 leading to short

levy of tax of Rs.2787646/-including surcharge, Education cess. An interest u/s. 234B is also leviable.

During audit, it was observed that Nanavati Construction is a partnership firm with two partners. The firm had entered into a Development agreement with the land owner where the plot has been developed at Juhu Tara Road. As per sr. no. 3 of the development agreement the developer shall pay to the land owner for the grant of development rights to the said land a sum of Rs.18,00,00,000/- towards the cost of the said land (Land Cost) and in addition thereto, a sum amounting to 50% of the net profit accruing to the developer. Net profit shall mean the sums accruing to the developer from the sale of the premises constructed on the said land, less the entire cost of the development of the said land. The firm has paid Rs.95287549/- (Rs.65645003/- for A.Y. 2009-10 and Rs.29642546/- for A.Y. 2010-11) as 50% profit from the project (the details of 50% of share of profit of Rs.29642546/- in A.Y. 201-12 was collected from the land owners return) passed on the land owner Mr. R.P. Vaviana. This 50% of the profit paid to the land owner has arisen from the project and the said share of profit has been paid to the land owner has arisen from the net profit passed on to the land owner therefore it was duty of the firm to pay the tax on it. As per the agreement also land cost and net profit explained separately. Hence this profit escapes the tax liability in the firm's hand.

Without prejudiced to above it was also observed that during the survey, assessee firm has disclosed the profit from this project at Rs.15.16 crores, whereas the income offered only Rs.6.56 crores during the A. Y. 2009-10.

In this regard, it is bring to your kind notice that a survey u/s. 133A of the Act was conducted at the premises of the assessee on 9/9/2009. In the year in reference the assessee has executed only one project at Juhu Tara Road. In the course of the survey, the survey party had prepared a profit and loss account for the year in reference based on details and material available. The Survey Party had taken the project expenditure at Rs.31,19,30,731/-. During the course of survey, the assessee had stated that some bills received after 31.03.2009 but pertaining to the year in reference and to the project had remained to be accounted for. The survey team was taken as received/ accrued as sale proceeds of the flats till 31.03.2009 at Rs.42.32,55,002/-. The closing stock as at 31.03.2009 was valued at Rs.5,49,06,489/- party and net profit was computed at Rs.15,16,44,927/~.

The reasons for difference between the profit computed by the survey party and actual profit returned by the assessee may be briefly explained and reconciled as under:

PARTICULAR	AMOUNT(RS)	AMOUNT(RS)	REMARKS
1. Profit computed by the Survey Party.		15,16,44,927	

<p>2.Less: difference in closing stock valued by the assessee as per Architect's certificate and as per detailed computation sheet filed in assessment and the closing stock valued by survey party on estimated basis, (i.e. 5,49,06,489-3,02,57,208)</p>	2,46,49,281		<p>The closing stock was valued by the Survey party within the time constrain and hence there would be some element of estimation and errors. As against this, the assessee has valued the closing stock on a proper scientific basis considering all the relevant factors and taking into account the Architect's valuation certificate. The detailed valuation statement filed in the course of assessment was duly verified and accepted. In any event the stock valuation would be tax neutral as in the subsequent year the charge for opening stock would be lower.</p>
<p>3.Less: Purchase/cost bills received alter 31'03'2009 but pertaining to the period in reference and to the project accounted for after the survey.</p>	1,21,75,640		<p>The aspects were already known to the Survey Party.</p>
<p>4.Less: Consideration being 50% of the project profit payable to the land owner Mr. Vevaina in terms of roistered agreement accounted for.</p>	6,56,45,003		<p>As per the Registered Development Agreement dated 3rd day of August, 2006 executed with the land owner Mr. Veviana, the total consideration payable to him was Rs.18.0 crores and also 50% of net profit from the project. Clause 3 of the said development agreement makes this very clear. It</p>

			also makes it clear
			<p>that the said additional consideration will accrue in the year the OC is received.</p> <p>Since the OC was received this year and the project profit are assessable this year, the amount payable to Mr. Veviana is cost or a charge on the profits of assessee and in any event this amount will be diverted by an overriding title and hence the same would be deductible from the profits, arrived at in the course of survey.</p>
			<p>Mr. Veviana has also declared this amount as his income.</p> <p>In any event the same amount cannot be taxed in the hands of the assessee and this amount was rightly taxed in the hands of Mr. Vevaina and hence would be deductible in the hands of the assessee.</p>
5. Add: Renovation charged recovered from Mr. Veviana not accounted by Survey party accounted by assessee.	1,64,70,000		

accounted by Survey party accounted by assessee.			
6. Net Profit Declared by Assessee		6,56,45,003	

At the time of the survey the audit of the accounts of the assessee had not been completed and the accounts had not been finalized. The return profit is based on audited accounts wherein all the aforesaid matters has been duly accounted for. During the course of assessment proceedings, the difference between the profit computed by the survey party and the returned profit had been fully and properly reconciled and explained.

II Re: **Debit Balance in partner's capital account**

1. There was a debit balance in the account of one of the partners Mr. ApurvaNanavati.
2. The closing debit balance was Rs.3,61,72,248/- and the same was Rs.6,38,44,750/- at the opening.
3. The credit balance of the other partner Mr. Sachin Nanavati was Rs.1,82,7.752/-.
4. There is no provision in the partnership deed to pay interest on credit balance of partners nor is there any provision to charge interest on debit balance of partners. The copy of the partnership deed is enclosed herewith for your kind perusal.
5. The assessee has not claimed any interest paid/payable to partners.
6. In the year in reference the assessee has paid interest of Rs. 5,05,3327- only on loans. Besides interest of Rs.47,920/- paid on car loan.
7. The assessee had more than ample interest free loans, net creditors (i.e. net of debtors) and credit balance in other partner's capital account to take care of the debit balance in one partner's capital account.

IN VIEW OF THE ABOVE THE OBJECTIONS MAY KINDLY BE TREATED AS SETTLED UNDER THE INTIMATION TO THIS OFFICE."

It is clear that AO has asked the Audit Officer that objections are not cceptable meaning thereby that objections be treated as settled. Again, a reminder was forwarded by the same AO who has passed the re-assessment order on 23.03.2015 vide letter dated 19.01.2015 and asked the Sr. Audit Officer to treat the objections settled by repeating the above reply in toto meaning thereby he has not accepted the audit objections. All these facts clearly establish that reason to believe were recorded u/s 148 of the Act on 2" 03.2014 and notice u/s 148 was issued on the same day. Subsequently, AO .,3e letter addressed to the Sr. Audit Officer, LAP-XVI, Mumbai dated 12.06.2014 has asked the Audit Officer that objections are not acceptable meaning thereby that objections be treated as settled. A reminder was forwarded by the same AO who has passed the re-assessment order on

23.03.2015 vide letter dated 19.01.2015 and asked the Sr. Audit Officer to treat the objections settled. I am of considered opinion that there is change of opinion by the AO on the issue of re-opening the already completed assessment. The position of law is well-settled in respect of reopening of case u/s 147/148 of the Act. Under two situations the AO has the right to reopen a completed assessment. In the first situation, a completed assessment can be reopened either, if there was omission or failure on the part of the assessee to disclose fully and truly all material and relevant facts and the AO must have in his possession, before he issues notice, some material from which he can reasonably form a belief that there has been escapement of income due to some failure or omission on the part of the assessee to disclose fully all relevant or material facts. In the second situation, the AO has the right under Explanation 2, sub-clause(c) of section 147 of the Act, which empowers the AO to reopen a completed assessment. The AO can resort to reopening under clause (c) of section 147 of the Act notwithstanding the fact that there was no omission or failure on the part of the assessee, either to make a return or to disclose fully and truly all material facts, but the AO in consequence of information in his possession subsequent to the first assessment, has reason to believe that income chargeable to tax has been under assessed and consequently has escaped assessment. In the instant case the issue of short offer of income disclosed during survey has been categorically threadbare considered by the AO in the original assessment order. Regarding issue of negative debit balance, the AO has already accepted appellant's reply filed vide letter dated 21.10.2013 and asked the Audit Officer twice to treat the audit objections as settled. The AO must have reason to believe that the income chargeable to tax escaped assessment; that the AO in the regular assessment proceedings had not formed an opinion in regard to the issue on which the reopening notice is issued; and that there has been a failure on the part of the Appellant to truly and fully disclose all necessary facts for the assessment. It is found that all the above conditions are to be satisfied before reopening any assessment by assessing officer. In the present case, none of the conditions are satisfied and hence reopening of assessment u/s 147 is itself invalid ab-intio. Appellant has rightly relied on various case laws as detailed at para 5,6 supra to support this point of view. The jurisdictional ITAT "G" Bench in the case of Sunil Gavaskar vs. ITO Ward (3), Mumbai in ITA no.3970/Mum./2010, (Assessment Year : 2001-02) & ITA no.3971/Mum./2010, (Assessment Year : 2002-03) dated 16.03.2016 has held as under:

"10. The second issue raised by the learned Counsel for the assessee is that there was some audit objection raised by the audit team in its draft review report on eligibility of the assessee to claim deduction under section 80RR. With the assistance of both the parties, it is noted that there is a letter dated 29th September 2006, returned by the Assessing Officer to the CIT, City-5, Mumbai, on the subject of "Review on assessment of selected companies in selected sectors in the case of Shri Sunil Gavaskar - A. Y. 2000-01 to 2002-03 -comments reg". One relevant para from the said letter is reproduced hereunder-

"At the outset, it is submitted that when the returns for A.Y. 2000-01 & 2002-03 are processed under section 143(1) of I.T. Act, 1961 and the adjustment pointed by the audit are not permissible while

processing the return u/s 143(1), hence, in principle the objections raised by the audit are not acceptable for these two years. However, since the issue involved in all the three assessment years is of debatable in nature, further necessary action in this case will be taken after carrying out necessary verification. A final reply will be sent to the audit in due course."

10.1. The perusal of the aforesaid paragraph would show that the AO himself found that the issue was debatable in nature. The requirement of law for reopening of the case is that the AQO should be in a position to form a belief about escapement of income. Although, it is true that at the stage of reopening, the belief need not be conclusive, but it is equally expected that the position of law should be clear in the mind of the AO, at least prima-facie. The belief need not be conclusive but it should be firm and clear. No belief can be formed out of confusion and doubtful thoughts. If this kind of situation is allowed to be sustainable in law, then it is quite possible that there will be experiments by the revenue officials by reopening the case of any assessee at their whims and fancies and that too on the basis of doubts and suspicions and without complying with jurisdictional and other procedural requirements of law. The re-assessment proceedings are not meant to make fishing enquiries and to experiment with the legal issues. In this regard, the position of law is well settled by many judgments coming from various High Courts. We find support of our view from the judgment of Hon'ble Jurisdictional High Court in !LA and FS Investments Managers Ltd. v/s ITO, 298 ITR 32 (Bom.) wherein it was held by the Hon'ble Jurisdictional High Court that where the AO himself disagreed with the audit objection, under such circumstances, there could not have been valid basis to reopen the already concluded assessment. This judgment has been recently followed again by Hon'ble Bombay High Court to reiterate this point in the case of M/s Reliance Industries Ltd. (Dt. 1st FEBRUARY, 2016 in ITA 2000 of 2013). Some of the useful observations of Hon'ble Jurisdictional High court are reproduced below:

"The Jurisdictional requirements to reopen an assessment are:

- (i) the AO must have reason to believe that the income chargeable to tax escaped assessment:
- (ii) the AO in the regular assessment proceedings had not formed an opinion in regard to the issue on which the reopening notice is issued; and
- (iii) there has been a failure on the part of the Assessee to truly and fully disclose all necessary facts for the assessment.

5. in this case, the CIT (A) as well as the Tribunal have, on consideration of the facts arising before them, have concluded that none of the three conditions precedent have been satisfied. The reason to believe that income chargeable to tax has escaped assessment on the part of the AO is a sine qua non for issue of a reopening assessment under section 148 of the Act as non

satisfaction of reason to believe would by itself make the notice fatal. In such a case, the satisfaction of other conditions would not even require examination.

6. Both the CIT(A) as well as the Tribunal, on the aforesaid basis came to the conclusion that in view of the fact that the AO himself has not accepted the audit objection, there could be no reason for him to believe that income chargeable to tax has escaped assessment. It is clear from Section 147 of the Act that the jurisdictional requirement to issue a notice for reopening the assessment is the satisfaction of the "AO." This satisfaction of the AO cannot be outsourced or arrived at on the basis of directions of his superiors. The Act requires his reason to believe that income chargeable to tax has escaped assessment. Thus, the impugned notice is not sustainable. In that view, the first condition precedent of reason to believe is that income chargeable to tax is escaped assessment being the primary requirement is not satisfied, the notice for reopening is without jurisdiction.

7. Mr. Malhotra, learned counsel for the Revenue, supports the appeal by stating that once an audit objection had been raised, then the AO is obliged to take remedial action as in this case, by issuing a reopening notice. This for the reason he states that otherwise the revenue due to the State would be lost even in case the audit objection is upheld.

8. We are unable to understand how the mandate of the Act requiring the AO to have reason to believe that income chargeable to tax has escaped assessment can be ignored on the altar of revenue collection. If such a submission is to be accepted, it would, be the beginning of the end of the Rule of Law."

The aforesaid judgment is squarely applicable upon the facts of this case before us. Thus, we find that the "reasons" recorded by the AO were not in accordance with law."

5.9. Strength is also drawn from the case of Elecon Engineering Co Ltd vs. AC1T (Gujarat High Court) where the Hon'ble High Court in its order dated December 8, 2016 has held that '...the law on the point laid down by the Supreme Court in judgement in case of Commissioner of Income-tax v. P.V.S. Beedies Pvt. Ltd. reported in (1999) 237 ITR 13 and in case of Indian and Eastern Newspaper Society v. Commissioner of Income-tax reported in (1979) 119 ITR 996 is well settled. We also have the decision of this Court in case of Adani Exports v. Deputy Commissioner of Income Tax reported in (1999) 240 ITR 224(Guj) on this issue. In case of Indian and Eastern Newspaper Society (supra), the Supreme observed that the opinion of the audit party on a point of law could not be regarded as information enabling the Assessing Officer to initiate reassessment proceedings. This aspect was elaborated by Division Bench judgement of this Court in case of Adani Exports (supra) observing that it is the satisfaction of the Assessing Officer

for the purpose of reopening which is subjective in nature but when the reasons recorded show a nexus between the formation of belief and the escapement of income, a further enquiry about the adequacy or sufficiency of the material to such a belief is not open to be scrutinised. However, the decision of the Supreme Court would indicate that though audit objection may serve as an information, the basis on which the ITO can act, ultimate action must depend directly and solely on the formation of belief by ITO on his own, where such information passed on to him by the audit party that income has escaped assessment. In the said case, it was held that Assessing Officer had acted at the behest of audit party and that notice for reopening was therefore, bad in law. This clearly establishes that if the AO reopens the assessment on information supplied by the audit party without application of mind, the reopening is invalid. Likewise, if the AO disputes the findings of the audit party, he is not entitled to reopen the assessment. The reasons must show independent application of mind of the AO.'

5.10. In view of facts of the case discussed above and various judicial pronouncements, I am of considered opinion that when the AO himself has not accepted the audit objection, there could be no reason for him to believe that income chargeable to tax has escaped assessment. The Assessing Officer had acted at the behest of audit party and that notice for reopening issued u/s 148 of the Act was therefore, bad in law. Thus, the notice is not sustainable. The Grounds of appeal are allowed.

6. The Grounds of Appeal No.3 to 9 are not adjudicated as the reopening of assessment u/s 147 is itself held as invalid ab-initio. Hence, these grounds are dismissed for statistical purposes."

6. After hearing both the parties and perusing the material on record, we observe that in this case the AO has reopened the assessment on the basis of audit objections raised by the Department audit officer which were duly explained vide letter dated 16.08.2013 and 21.10.2013. Thereafter, the AO wrote a letter to senior audit officer on 12.06.2014 disposing/settling these objections. However, the AO again reopened the case of the assessee on the basis of same audit objection. The Ld. CIT(A) has passed a very reasoned and detailed order wherein it has been stated that AO himself has not accepted the audit objection and thus on the basis of same reason the AO could not have reason to believe that income has escaped assessment. The Ld. CIT(A) has held that AO has acted at the behest of the

audit party without applying his own mind and thus quashed the assessment on the technical and legal issue. The case of the assessee is squarely covered by a series of decisions namely;

1. Cholamandalam Investment & Finance Co. Ltd. vs. ACIT (2018) 89 taxmann.com 337 (Madras)
2. ICICI Home Finance Co. Ltd. vs. ACIT [(2012) 25 taxmann.com 241, Bom.]
3. FIS Global Business Solutions India (P.) Ltd. vs. ACIT [(2019) 102 taxmann.com 471 (Delhi)]
4. Pr.CIT v. S. Chand & Co. Ltd. [(2018) 100 taxmann.com 353 (SC)]
5. Dr. Firuza Rajesh Parikh v. ITO [(2017) 83 taxmann.com 37 (Mumbai-Trib.)]
6. Raajratna Metal Industries Ltd. v. ACIT [(2014) 49 taxmann.com 15 (Gujarat)]
7. ACIT vs. Suma Shilp Limited in ITA No.2065/PN/2013 for A.Y. 2007-08 dated 12th August, 2015.

In the case of Cholamandalam Investment & Finance Co. Ltd. (supra) the Hon'ble Madras High Court has held that since the reopening is verbatim repetition of audit objection filed by the audit party and therefore the AO did not have any independent material to reopen the assessment but merely proceeded to reopen the assessment on the ground that there was an audit objection. In the case of ICICI Home Finance Co. Ltd. vs. ACIT (supra) the Hon'ble Bombay High Court has held that there was no application of mind by the AO as the reasons recorded by the AO were identical to objections of the audit party and existing material was already on record and accordingly notice under section 148 was held to be without jurisdiction. The Hon'ble Supreme Court in the case of Pr. CIT vs. S. Chand & Co. Ltd. (supra) has held that reassessment proceedings based on the audit objection can not be sustained and the Hon'ble Supreme Court has dismissed the SLP filed

against the order of High Court. Considering the facts of the case of the assessee in the light of ratio laid down by the various High Courts and Hon'ble Supreme Court, we are inclined to uphold the order of Ld. CIT(A) and dismiss the ground No.1 raised by the Revenue.

7. Since we have quashed the assessment order on the ground of jurisdiction, the other grounds raised by the Revenue need not be adjudicated.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.12.2019.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.12.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.