



ITA No.3320 & 3321/Mum/2018  
Mahan Industries Ltd.  
Assessment Year :2008-09 & 2009-10

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

माननीय श्री शमीम याहया, लेखा सदस्य एवं  
माननीय श्री अमरजीत सिंह, न्यायिक सदस्य के समक्ष।

**BEFORE HON’BLE SHRI SHAMIM YAHYA, AM AND**  
**HON’BLE SHRI AMARJIT SINGH, JM**

आयकरअपील सं./ I.T.A. No.3320 & 3321/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2008-09 and 2009-10)

<b>Mahan Industries Ltd.</b> 3 <sup>rd</sup> Floor, D.K. House Mithalkhali Under Bridge Ahmedabad Gujarat-380 006.	<b>बनाम/ Vs.</b>	<b>Dy. Commissioner of Income Tax</b> Central Circle-2(2) Pratishtha Bhavan, MK Marg Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AABCM 0370 P</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Poojan Mehta-Ld. AR
<b>Revenue by</b>	:	Shri Vijaykumar G. Subramanyan – Sr. AR-CIT

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03/11/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/11/2020

**आदेश / O R D E R**

**Per Shamim Yahya (Accountant Member)**

1. These are appeals by the assessee directed against common order of learned CIT appeal dated 12/03/2018 and pertains to assessment years 2008-09 and 2009-10. The Grounds read as under :-



### **ITA No.3320/Mum/2018 (A.Y.2008-09) :-**

*“The following grounds of appeal are independent of, and without prejudice to, one. another:*

*1. The Commissioner of Income-tax (Appeals) - 48, Mumbai (hereinafter referred to as the CIT(A)) erred in not disposing of the grounds of appeal raised by the appellants before her.*

*The appellants contend that the CIT(A) ought to have specifically disposed of the grounds of appeal raised by them.*

*2. The CIT(A) erred in upholding the action of the Deputy Commissioner of Income-tax, Central Circle - 2(2), Mumbai (hereinafter referred to as the Assessing Officer) in issuing notice under section 153C of the Act.*

*The appellants contend that the notice issued under section 153C is void ab initio inasmuch as the jurisdictional conditions for the issue of the said notice have not been complied with and consequently, the assessment framed is bad in law and needs to be quashed.*

*The appellants further, contend that no incriminating document relatable to the appellants is found during the course of search on a person referred to in section 153A and that satisfaction required by the provisions of section 153C is not recorded by the Assessing Officer of such person referred to in section 153 A and hence, the impugned notice issued under section 153C is ab initio void; consequently, the assessment framed is bad in law and needs to be quashed.*

*3. The CIT(A) erred in upholding the action of the Assessing Officer in treating business loss Rs 79,93,300 comprising of share trading loss Rs 50,46,005 and other administrative expenses Rs 29,47,295 as speculation loss by invoking the provisions of Explanation to section 73 of the Act.*

*The appellants contend that the impugned addition is not arising out of any incriminating document relatable to the appellants that is found during the course of search on a person referred to in section 153A and that satisfaction required by the provisions of section 153C is not recorded by the Assessing Officer of such person referred to in section 153 A and hence, the impugned addition is vitiated in law.*

*Without prejudice, the appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) has fallen in error in upholding the action of the Assessing Officer in treating the business loss as speculation loss by invoking the provisions of Explanation to section 73 of the Act inasmuch as the provisions of the Explanation are not applicable to the facts of the appellants.*

### **ITA No.3321/Mum/2018 (A.Y.2009-10) :-**



ITA No.3320 & 3321/Mum/2018  
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Assessment Year :2008-09 & 2009-10

*"The following grounds of appeal are independent of, and without prejudice to, one. another:*

*1. The Commissioner of Income-tax (Appeals) - 48, Mumbai (hereinafter referred to as the CIT(A)) erred in not disposing of the grounds of appeal raised by the appellants before her.*

*The appellants contend that the CIT(A) ought to have specifically disposed of the grounds of appeal raised by them.*

*2. The CIT(A) erred in upholding the action of the Deputy Commissioner of Income-tax, Central Circle - 2(2), Mumbai (hereinafter referred to as the Assessing Officer) in issuing notice under section 153C of the Act.*

*The appellants contend that the notice issued under section 153C is void ab initio inasmuch as the jurisdictional conditions for the issue of the said notice have not been complied with and consequently, the assessment framed is bad in law and needs to be quashed.*

*The appellants further, contend that no incriminating document relatable to the appellants is found during the course of search on a person referred to in section 153A and that satisfaction required by the provisions of section 153C is not recorded by the Assessing Officer of such person referred to in section 153 A and hence, the impugned notice issued under section 153C is ab initio void; consequently, the assessment framed is bad in law and needs to be quashed.*

*3. The CIT(A) erred in upholding the action of the Assessing Officer in treating business loss Rs 83,41,160 comprising of share trading loss Rs 66,86,486 and other administrative expenses Rs 16,54,674 as speculation loss by invoking the provisions of Explanation to section 73 of the Act.*

*The appellants contend that the impugned addition is not arising out of any incriminating document relatable to the appellants that is found during the course of search on a person referred to in section 153A and that satisfaction required by the provisions of section 153C is not recorded by the Assessing Officer of such person referred to in section 153 A and hence, the impugned addition is vitiated in law.*

*The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) has fallen in error in upholding the action of the Assessing Officer in treating the business loss as speculation loss by invoking the provisions of Explanation to section 73 of the Act inasmuch as the provisions of the Explanation are not applicable to the facts of the appellants.*

2. Grounds are common except for change in figures as applicable.



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3. At the outset, the Id. Counsel of the assessee stated that he is requesting that, assessee may be permitted to withdraw the appeal. He submitted that assessee has opted for resolution of disputed tax under *Direct Tax Vivad se Vishwas Act 2020* (Act 3 of 2020).He submitted that assessee has accordingly filed the necessary declaration and competent authority has issued Form No.3 in this regard also. In the view of the matter he sought to withdraw the appeal. The Ld. DR did not have any objection.

4. Accordingly in the light of the above decision, we permit the withdrawal of above appeal accordingly. Hence these appeals are disposed off by treating them as withdrawn.

*Order pronounced under Rule 34(4) of ITAT Rules on 05/11/2020*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Shamim Yahya)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/11/2020  
Sr.PS, Jaisy Varghese



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Mahan Industries Ltd.  
Assessment Year :2008-09 & 2009-10

**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.**