

THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, ACCOUNTANT MEMBER
आ.अ.सं./I.T.A No.1703/Ahd/2017,
निर्धारणवर्ष/Assessment Year: 2010-11
(Hearing in Virtual Court)

ITO Ward -2(1)(3), Room No.220, Aayakar Bhawan, Majura Gate, Surat -395001	Vs	M/s Surat Textile, Regd Office Tulsi Krupa, Arcade, Nr Aai Mata Chowk, Surat-395010 [PAN: AABCP 4028 R]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Manish Shah Advocate
राजस्व की ओर से /Revenue by	Sh. Riteesh Mishra CIT-DR
सुनवाई की तारीख/ Date of hearing:	15.04.2021
उद्घोषणा की तारीख/Pronouncement on:	15.04.2021

आदेश /ORDER

PER PAWAN SINGH, JUDICAL MEMEBR:

1. This appeal by revenue is directed against the order of Commissioner of Income-tax (Appeals)-2, hereinafter referred as "ld. CIT-(A), Surat, dated 06.04.2017 for assessment year (AY) 2010-11. The revenue has raised ground following grounds of appeal;

- (1) On the facts and circumstances of the case and the law, the learned Commissioner (Appeals) Surat erred in deleting the disallowance abduction of ₹ 8.58 crore made under section 115 JB of the Act.
- (2) On the facts and circumstances of the case and in law, learned Commissioner (Appeals) erred in relying on the decision of ITAT Ahmedabad which set aside the order of CIT-II, Surat, under section 263 of IT Act in pursuance of which present order under section 143(3) read with section 263 was passed. This order of ITAT has not become final because it is processed for filing a Special Leave Petition before the Hon'ble Supreme Court on the same issue .

- (3) On the facts and in the circumstances of the case and in love, the learned Commissioner (Appeals) Surat ought to have upheld the order of assessing officer. It is, therefore prayed that the order of Id CIT(A), Surat, may be set-aside and that of assessing officer order under section 143(3) read with section 263 may be restored.
2. At the outset of hearing the Sh. Manish J. Shah learned Senior Counsel appearing for the assessee submits that the ground of appeal raised by the revenue is covered in favour of the assessee by the decision of Tribunal, wherein the order under section 263 dated 23.03.2015 passed by Id. Commissioner of Income-tax (CIT) was set-aside/ quashed in ITA No. 1469/Ahd/2015 for AY 2010-11. The Id Counsel for the assessee further submits that similar additions/ adjustments were made by assessing officer in subsequent years, however, on appeal before Tribunal the additions were deleted. The learned Counsel for assessee further submitted that similar treatment was made by assessing officer in assessment year in 2012-13 however, on appeal before Commissioner (Appeals) the action of assessing officer was reversed, on further appeal by revenue before Tribunal, the order of Commissioner (Appeals) was upheld. On further appeal by revenue before Hon'ble Jurisdictional High Court, the order of Tribunal was maintained in Tax Appeal No. 37 and 118 of 2017 dated 17th February 2017, copy of which is also placed on record. On the basis of aforesaid

- submissions the learned Counsel for the assessee submits that the issue is covered in favour of the assessee.
3. On the contrary Sh. Riteesh Mishra learned Commissioner of Income-tax / departmental representative (CIT-DR) appearing for the revenue, after going through the grounds of appeal raised by revenue and the orders of the Tribunal for various assessment year and decision of Hon'ble Jurisdictional High Court against the order of Tribunal for AY 2010-11 (supra) submits that he rely on the order of the assessing officer.
 4. We have considered the rival submissions of the parties and have seen the orders of the lower authorities. The assessee filed its return of income for AY 2010-11 declaring income at Rs. Nil. The case was selected for scrutiny and the assessment was completed under section 143(3) on 20.03.2013. The assessment order was set-aside by CIT-II Surat by invoking his jurisdiction under section 263 dated 23.03.2015, directing the assessing officer to pass fresh assessment order. The assessing officer while passing assessment order dated 30.11.2016 under section 143(3) read with section 263 made adjustment of Rs.8.58 Crore on account of depreciation under section 115JB. In the mean time the order passed by Id CIT-II, was assailed by assessee before Tribunal. The Tribunal vide its order dated 29th February 2016 in ITA No 1469/AHd/2015 has set-aside

the order of ld. CIT-II passed under section 263. As the assessing officer while passing fresh assessment order in order giving effect to the order of ld. CIT-II, made adjustment in Book Profit of Rs. 8.58 Crore under section 115JB. The as ld. CIT(A) deleted the adjustment by following the order of Tribunal dated 29th February 2016, wherein the order of ld CIT-II passed under section 263 was set-aside. sConsidering the fact the order passed under section 263 has already been set-aside by Tribunal, vide order dated - 29.02.2016 in ITA No. 1469/Ahd/2015. The ld CIT(A) while granting relief to the assessee, followed the order of Tribunal. Thus, we affirm the order of ld. CIT(A). Resultantly, the appeal of the revenue is dismissed.

Order was pronounced at the time of hearing on 15th April 2021, while hearing the appeal in virtual mode.

Sd/-

(Dr. ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 15th April 2021

Self by author / Dragon

Copy of order sent to:-

Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

By order

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Assistant Registrar, Surat