

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH  
(Conducted Through Virtual Court)  
Before: Shri Rajpal Yadav, Vice President  
And Shri Amarjit Singh, Accountant Member

ITA No. 866/Ahd/2016  
Assessment Year 2009-10

Shri Rajnibhai Shivilal Modi, Prop. Of CASA Construction, Nr. Snehal Society, Mahavirnagar, Himatnagar-383001 PAN: ABLPM3892N (Appellant)	Vs	The ITO, S.K. Ward-3, Aayakar Bhavan, Near Town Hall, Himatnagar (Respondent)
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Revenue by: Shri L.P. Jain, Sr. D.R.  
Assessee by: Shri Tushar Hemani, A.R.

Date of hearing : 10-05-2021  
Date of pronouncement : 04-06-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee’s appeal for A.Y. 2009-10, arises from order of the CIT(A)-2, Ahmedabad dated 22-01-2016, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

“1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in reopening the assessment u/s 147 of the Act. In the facts and circumstances of the case, learned CIT(A) ought to have held that the

*action of reopening is without jurisdiction and not permissible either in law or on facts.*

*2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition on account of RA Bill receipts amounting to Rs.54,66,560/- after holding that the appellant has failed to offer it for tax. In facts and circumstances of the case, the appellant has already offered income portion out of the said receipts.*

*3. Alternatively and without prejudice to the above, the addition may kindly be restricted to the income portion out of the said receipts.*

*4. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

*5. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C of the Act.*

*6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s 271(1)(c) of the Act.”*

3. The fact in brief is that return of income declaring total income of Rs. 9,14,742/- was filed on 29<sup>th</sup> Sep, 2009. In this case assessment order u/s. 143(3) for the year under consideration was finalized on 22<sup>nd</sup> Dec, 2011 and total income was determined at Rs. 14,92,400/-. Thereafter, the case was reopened by issuing of notice u/s. 148 of the Act on 31<sup>st</sup> January, 2014. The case was reopened on the reasoning that assessee has not shown R.A. Bill amount to Rs. 57,57,910/- in total turnover. During course of re-assessment proceedings, the assessee has brought to the notice of the Assessing Officer vide letter dated 24<sup>th</sup> Nov, 2014 that the issue pertaining to R.A. Bill of Rs. 57,57,910/- was already discussed in original assessment u/s. 143(3) of the Act. Therefore, reopening of assessment was merely a change of opinion and assessee had placed reliance on the various judicial pronouncements.

However, the Assessing Officer has not accepted the submission of the assessee stating that assessee has not submitted any fact of the cases referred by him. Therefore, the Assessing Officer has added the full amount Rs. 57,57,910/- of the R.A. Bill to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee after granting relief to the extent of Rs. 2,91,350/- which was already shown by the assessee in the revised return as additional income earned on the R.A. Bill.

5. During the course of appellate proceedings before us, the counsel contended that assessee has already filed revised return of income vide which net profit of Rs. 2,91,350/- on R.A. Bill of Rs. 57,57,910/- was disclosed and during the course of original assessment proceedings, the Assessing Officer has accepted the submission of the assessee and not made any addition in the original assessment order passed u/s. 143(3) of the Act. The Id. counsel has further submitted that the reopening of the assessment was merely on the basis of change of opinion as the same material and facts were already considered by the Assessing Officer while finalizing original assessment u/s. 143(3) of the act. The Id. counsel has also placed reliance on the decision of CIT vs. Nirma Chemical Works Pvt. Ltd. 309 ITR 67 (Guj) & Gujarat Power Corporation Ltd. 350 ITR 266 (Guj). The Id. counsel has also submitted that assessee has also not made any payment to the sub-contractor in respect of such R.A. Bills amounting of Rs. 57,57,910/- and unpaid sub-contract bill of the same to the amount of Rs. 54,66,560/-. The revised return of income was filed voluntarily showing additional net

profit of Rs. 2,91,350/-. Citing the aforesaid facts and circumstances the ld. counsel submitted that reassessment on the same issue is merely a change of opinion which is legally not correct. On the other hand, ld. Departmental Representative has supported the order of ld. CIT(A).

6. Heard both the sides and perused the material on record. The assessee has filed return of income on 29<sup>th</sup> September, 2009 showing total income of Rs. 9,14,742/- pertaining to the year under consideration. However, in the total turnover of Rs. 2,77,56,554/-, R.A. Bill of Rs. 57,57,910 was not reflected and to rectify this mistake the assessee has voluntarily filed revised return of income on 24-02-2010 by offering additional profit of Rs. 2,91,350/- on the R.A. Bill of Rs. 57,57,910/- and declared revised total income of Rs. 12,06,090/-. Thereafter, assessment u/s. 143(3) of the act was finalized on 22<sup>nd</sup> December, 2011 and Assessing Officer has determined total income at Rs. 14,92,400/-. Subsequently, the case of the assessee was reopened by issuing of notice u/s. 148 of the Act on 31<sup>st</sup> Jan, 2014 on the reasoning that assessee has not shown R.A. Bill receipt amount of Rs. 57,57,910/- in his income. During the course of reassessment proceedings vide letter dated 3<sup>rd</sup> Nov, 2014 it was brought to the knowledge of the Assessing Officer that order u/s. 143(3) was passed on 27<sup>th</sup> July, 2011 and assessee had fully and truly disclosed all the material facts. Again vide letter dated 17<sup>th</sup> Nov, 2014 during the course of reassessment proceedings, the assessee has brought to the notice of the Assessing Officer that addition of Rs. 57,57,910/- was already discussed along with profit shown in the revised return of income while finalizing assessment u/s. 143(3) of the Act. Vide letter dated 24<sup>th</sup> Nov, 2014, the assessee has also brought to the notice of the

Assessing Officer that impugned re-assessment was reopened on the basis of audit objection raised by the audit parties and no tangible material was brought on the record for reopening the assessment. During the course of original assessment proceedings in response to notice u/s. 142(1) dated 7<sup>th</sup> May, 2011 issued by the Assessing Officer, the assessee has responded vide para 4 and 5 of his reply on the issue showing R.A. Bill of Rs. 57,57,910/- in total turnover. The relevant part of the reply of the assessee is discussed as under:-

*"4. Justify regarding revised return.*

*That assessee has filed original return of income on 29/09/2009 vide ackno. No. 00058 in DCIT Sabarkantha Circle, Himatnagar and declared total income of Rs.Rs.914742/-. As per return figure there is refund due of Rs.441264/-.*

*For the year under consideration assessee has issued R.A. Bills of Rs.27756554/- contractee has deducted the JDS an same amount.*

*In view of that the R.A. bills is not final Bills due to inspection by the contractee was pending, the assessee has not shown R.A. Bills amounts of Rs. 5757910/- in total turnover.*

*The said mistake found and the assessee has voluntary filed revised return of income within time period of the Act and declared net profit of Rs.291350/- on escaped turnover of Rs.5757910/- and paid tax thereon.*

*Respected sir, assessee extend his co-operation with the department and avoid legal procedures and peace of mind he has filed revised return of income and declared total income of Rs.1206090/-voluntary before issued notice u/s.143(2) of the Act.*

*5. Reconciliation of TDS.*

*For the year under consideration assessee has shown gross receipts of Rs.20493983/- in original return of income and claimed TDS of Rs.626069/- and in revised return of income declared Gross receipts of Rs.27756554/-. Reconciliation of TDS amount with total turnover as under.*

*Turnover Shown in Original Return of income Rs.21998644/-  
Receipts form Reliance Engineering Rs. 5757910/-  
Turnover shown in Revised Return Rs.27756554/-*

Sr. No.	Name of the Contractee	Gross Receipts	TDS Amounts
1	Reliance Engineering Asso, Pvt. Ltd.	458969.00	10419.00
2	Reliance Engineering Asso. Pvt. Ltd.	2214814.00	50277.00
3	Reliance Engineering Asso. Pvt. Ltd.	454126300	103087.00
4	Reliance Engineering Asso. Pvt. Ltd.	1256522.00	28523.00
5	Reliance Engineering Asso, Pvt. Ltd.	1733355.00	39347.00
6	Reliance Engineering Asso. Pvt. Ltd.	4511456.00	102411.00

7	Reliance Engineering Asso. Pvt. Ltd.	23856.00	542.00
8	Reliance Engineering Asso. Pvt. Ltd.	182948.00	4153.00
9	Reliance Engineering Asso. Pvt. Ltd.	1845243.00	41887.00
10	Spencer Retails Limited	239007.00	5413.00
11	Gandhinagar Co-Op. Milk Produce Ltd.	9589333.00	217294.00
12	Himatnagar Kelvani Mandal	488444.00	11070.00
13	Neesha Leisure Ltd.	356576.00	8080.00
14	Govindbhai Shivrambhai Patel	314768.00	3566.00
	Total.....	27756554.00	626069.00

After perusal of the aforesaid reply of the assessee, it is clear that assessee has duly explained that he has declared net profit of Rs. 2,91,350/- on turnover of Rs. 57,57,910/- which was disclosed in the revised return of income along with reconciliation of TDS. At page no. 26 of the paper book, the assessee has also filed a copy of letter filed before the Assessing Officer during the course of original assessment explaining justification for filing revised return of income. The assessee has explained that bill amount of Rs. 57,57,910/- was not inspected by the contractee therefore the same was not finalized and he has also not made payment of sub-contract expenses on this R.A. Bill amount to Rs. 54,66,560/-. It was also explained that this mistake was detected on verification of TDS, therefore, the net profit amount of receipt over expenditure in respect of the aforesaid sub-contract R.A. Bill to the amount of Rs. 2,91,350/- was offered as additional income. We observe that all these material facts were also submitted before the Id. CIT(A) however the Id. CIT(A) has not disproved these material facts and rejected the appeal of the assessee simply stating that the revised return of

income would not give any right to the assessee to take the plea change of opinion. In the light of the above facts and circumstances, we observe that Assessing Officer has reopened the assessment merely on the basis of material already available on the record at the time of passing assessment u/s. 143(3) of the Act. The issue on which the assessment was reopened was specifically explained by the assessee during the course of original assessment proceedings. We have also perused the observation of the Hon'ble High Court of Gujarat in the case of CIT vs. Nirma Corporation Ltd. 309 ITR 67 (Guj) held that wherein Assessing Officer adopted one view, merely because commissioner took a different view of matter, it would not be sufficient to permit commissioner to exercise power u/s. 263 unless the view taken by the Assessing Officer is unsustainable in law. It is demonstrated from the detailed submission made by the assessee in the form of revised return of income, reply in respect of notice u/s. 142(1) of the act and other correspondence made during the course of assessment proceedings as elaborated above in this order that no tangible material has come in possession of the Assessing Officer after framing the assessment u/s. 143(3) of the act. On the other hand, the reopening has been made merely on the basis of material available on record which has been considered by the Assessing Officer at the original assessment stage. After considering the judicial pronouncements referred by the ld. counsel and the material on record, we are of the view that reopening made in the case of the assessee in the absence of tangible material after framing assessment u/s. 143(3) of the Act is not justified as per law therefore we quash the assessment holding that the action of the Assessing Officer of reopening was without jurisdiction. Since we have quashed the assessment not valid as per law, therefore, it is

not required to adjudicate the other grounds of the appeal of the assessee on merit. Accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04-06-2021

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE PRESIDENT**  
**Ahmedabad : Dated 04/06/2021**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / 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 अपीलीय अधिकरण,  
अहमदाबाद