

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

**ITA NOs. 336 & 337/MUM/2021
(A.Ys: 2010-11 & 2009-10)**

Janak J. Mehta 502, Amrapali, Telly Gally Andheri (E), Mumbai – 400069 PAN: AAGPM4205M	v.	Commissioner of Income-tax (A) -36 Income Tax Office Kautilya Bhavan, Bandra Kurla Complex Bandra (E), Mumbai -400051
(Appellant)		(Respondent)

Assessee by	:	Shri Shailesh Bandi
Department by	:	Ms. Kranti Yadav
Date of Hearing	:	09.11.2021
Date of Pronouncement	:	16.11.2021

ORDER

PER C.N. PRASAD (JM)

1. These two appeal are filled by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)–36, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.06.2018 for the A.Y. 2009-10 and A.Y. 2010-11.

ITA.NO. 337/MUM/2021 (A.Y: 2009-10)

2. Assessee has raised the following grounds in his appeal: -

"1) *The Appellate Order of Commissioner of Income Tax Appeals -36, Mumbai has not Considered the facts and circumstances of the case and disallowed 5% of Rs.20,65,232/- as alleged Bogus Purchase.*

2) *Direct the Learned Assessing Officer not to initiate levy of interest u/s 234B of the Income Tax Act*

3) *Direct the Learned Assessing Officer not to initiate levy of interest u/s 234 C of the Income Tax Act"*

3. Assessee also filed following additional ground in his appeal: -

"1. *The Appellant became aware of the issue that the Ground for Re-opening of the Assessment has not been raised in the Appeal petition. The Ground raises an issue, which is a pure question of law and does not need any investigation into facts not already on record.*

2. *The Appellant therefore, prays;*

a) *to please admit the Additional Ground, take it on record and decide the same on merits.*

b) *for such further and other relief as a nature and circumstances of the case requires."*

4. Ld. Counsel for the assessee referring to the additional ground filed, submits that assessee is challenging the very validity of reopening of assessment u/s. 147 of the Act. It is submitted that the ground is purely a legal ground and therefore requested for admission of the additional ground. Ld. DR opposed for admission of additional ground.

5. On hearing both the sides, I am of the view that the additional ground raised by the assessee is purely a legal ground and following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. *v.* CIT [229 ITR 383], I admit this additional ground for adjudication.

6. Ld. Counsel for the assessee submits that in spite of several requests made by the assessee the Assessing Officer failed to supply the reasons for reopening of assessment by the Assessing Officer. Ld. Counsel for the assessee referring to Page No. 68 of the Paper Book which is the letter dated 22.05.2015 filed on 06.07.2015 before the Assessing Officer in response to notice u/s. 148 of the Act, submits that the assessee stated that in the absence of reasons supplied to the assessee it is difficult for the assessee to reply on the subject. Ld. Counsel for the assessee submits that even in the absence of reasons assessee furnished certain details and further through this letter requested to issue reasons recorded for reopening of assessment. Referring to Page No. 70 of the Paper Book which is the letter dated 09.09.2015 filed on 09.09.2015 before the Assessing Officer furnishing certain details assessee again requested to issue reasons recorded for reopening of assessment so that reply can be

furnished. Ld. Counsel for the assessee further submitted that even in the re-assessment orders passed u/s. 143(3) r.w.s. 147 of the Act the Assessing Officer never extracted any reasons for reopening of assessment. Ld. Counsel for the assessee submits that in spite of several requests made the Assessing Officer failed to supply the reasons for reopening of assessment and therefore made the re-assessment orders bad in law. Ld. Counsel for the assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of Agarwal Metals and Alloys *v.* ACIT [(2012) 27 taxmann.com 139] in support of his above contentions.

7. Ld. DR did not controvert the submissions made by the Ld. Counsel for the assessee. Nothing is placed on record to suggest that the Assessing Officer supplied reasons for reopening of assessments of the assessee.

8. Heard both sides, perused the orders of the authorities below. It is observed from the letters filed by the assessee before the Assessing Officer that assessee has requested for supply of reasons for reopening the assessment. It is stated in the letter that in the absence of supply of

reasons it is difficult to submit any reply. In spite of the request made by the assessee it appears that the Assessing Officer did not supply any reasons to the assessee for reopening of assessment. It is also observed from the Assessment Order that the Assessing Officer did not record any reasons whatsoever for reopening of the assessment.

9. The Hon'ble Bombay High Court in the case of Agarwal Metals and Alloys v. ACIT (supra) held that reopening of assessment without communication of reasons for reopening and without furnishing to assessee an opportunity of filing its objections is not valid. The Hon'ble High Court held that there had been a complete violation of the applicable principles of law by the Assessing Officer. The Assessing Officer was required to communicate the reasons for reopening the assessment and he failed to do so. It has been held that the Assessing Officer failed to provide an opportunity to the assessee to submit its objections to the reopening of the assessment and therefore the impugned order of assessment had been passed in a brazen violation of the governing principles of law and therefore it was held that the re-assessment order was liable to be quashed. The ratio of this judgement squarely applies to the facts of the assessee's case. I also find that similar view has been

taken by the Hon'ble Bombay High Court in the case of CIT v. IDBI Ltd., in ITA.No. 494 of 2014 dated 19.09.2016 and in the case of CIT v. Videsh Sanchar Nigam Limited [21 taxman 53]. Thus, in the present appeal the Assessing Officer failed to supply the reasons for reopening of assessment, though assessee made request for supply of reasons which made the assessment bad in law. Thus, respectfully following the above said decisions I quash the re-assessment order passed u/s. 143 r.w.s. 147 of the Act. Since the additional ground filed by the assessee is allowed I am not adjudicating the regular grounds raised by the assessee as it would be of only an academic exercise.

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10. Assessee has raised following grounds in his appeal: -

"1) The Appellate Order of Commissioner of Appeals -36, Mumbai has not Considered the facts and circumstances of the case and is against the Principals of equity and natural justice by disallowing 1/5th of the Indirect Expenses claimed in Profit & Loss account inspite of the fact that expenses are supported by proper vouchers & payment proof and exclusively for purpose of business.

2) The Appellate Order of Commissioner of Income Tax Appeals -36, Mumbai has not Considered the facts 14,29,156/- as alleged Bogus Purchase.

3) Direct the Learned Assessing Officer not to initiate levy of interest u/s 234B of the Income Tax Act

4) *Direct the Learned Assessing Officer not to initiate levy of interest u/s 234 C of the Income Tax Act"*

11. Assessee also filed following additional ground in his appeal: -

"1. The Appellant became aware of the issue that the Ground for Re-opening of the Assessment has not been raised in the Appeal petition. The Ground raises an issue, which is a pure question of law and does not need any investigation into facts not already on record.

2. The Appellant therefore, prays;

a) to please admit the Additional Ground, take it on record and decide the same on merits.

b) for such further and other relief as a nature and circumstances of the case requires."

12. Ld. Counsel for the assessee referring to the additional ground filed, submits that assessee is challenging the very validity of reopening of assessment u/s. 147 of the Act. It is submitted that the ground is purely a legal ground and therefore requested for admission of the additional ground. Ld. DR opposed for admission of additional ground.

13. On hearing both the sides, I am of the view that the additional ground raised by the assessee is purely a legal ground and following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. *v.* CIT [229 ITR 383], I admit this additional ground for adjudication.

14. Facts being identical to the A.Y: 2009-10, the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2010-11 also. Thus, the re-assessment orders passed u/s. 143 r.w.s. 147 of the Act is quashed. Since the additional ground filed by the assessee is allowed I am not adjudicating the regular grounds raised by the assessee as it would be of only an academic exercise.

15. In the result, both the appeals of the assessee are partly allowed as indicated above.

Order pronounced on 16.11.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 16/11/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum