

IN THE INCOME TAX APPELLATE TRIBUNAL A BENCH, PUNE

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

ITA No. 26/PUN/2016
(Assessment Year: 2008-09)

Shri Narendra M. Agrawal ACIT, Circle - 1
532, Aarti Steel Nashik
60 Feet Road, Sarda Circle Vs.
Nashik 422001

PAN – ABGPA9107R

Appellant

Respondent

Appellant by: Shri Sanket Milind Joshi
Respondent by: Shri S.P. Walimbe

Date of Hearing: 22.04.2022
Date of Pronouncement: 04.05.2022

ORDER

Per S.S. Godara, JM

This assessee's appeal for AY 2008-09 is against the order of the CIT(A) 1, Nashik dated 06.10.2015 passed in case No. Nsk/CIT(A)-1/38/2014-15 involving proceedings under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 in short the Act.

2. Heard both the parties. Case file perused.

3. We note at the outset that the assessee has raised its additional ground seeking to challenge validity of the impugned reopening. The Revenue's stand before us is that the same ought not to be allowed at this belated stage. We do not find any merit in Revenue's instant technical defence as the instant issue goes to the route of the case. Hon'ble apex court's landmark decision of NTPC vs. CIT (1998) 229 ITR 383 (SC) as considered the tribunal's Special Bench decision in the case of All Cargo Global Logistic Ltd. vs. DCIT (2012) 137 ITD 287 (Mum) (SB), holds that we can very well entertain an additional ground to determine the correct tax liability of an assessee provided all the relevant facts form part of the record before us. We thus accept the assessee's prayer to raise the instant additional ground.

4. Now comes the most crucial issue of validity of the impugned reopening. We make it clear that we are in AY 2008-09. A perusal of the case record and more particularly the Assessing Officer's reopening reasons recorded suggest that he had only taken cognisance of assessee's investments made in FY 2005-06 relevant to AY 2006-07 from the corresponding search action dated 25.11.2009.

5. Mr. Walimbe failed to rebut the clinching aspect that the Assessing Officer's reopening reasons do not deal with the assessee's investments or profit derived therefrom in FY 2007-08 relevant to the impugned assessment year. We thus rely on *Biswanath Samanta vs. ITO (1973) ITR 331 (Kol)*, *Hindustan Lever Ltd. vs. R.B. Wadkar (2004) 268 ITR 332 (Bom)* and *Pransukhlal Bros vs. ITO (2015) 229 TAXMAN 444 (Bom)* that such a reopening based on vague reasons and not dealing with taxable income having escaped assessment in the relevant previous year, is not sustainable in law. We accordingly quash the same for this precise reason. His other pleadings are rendered academic.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 4th May, 2022.

Sd/-
(Dipak P. Ripote)
Accountant Member

Sd/-
(S.S. Godara)
Judicial Member

Pune, Dated: 4th May, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -1, Nashik*
4. *The Pr.CIT - 1, Nashik*
5. *The DR, "A" Bench, ITAT, Pune*

By Order

//True Copy//

Assistant Registrar
ITAT, Pune Benches, Pune

n.p.