

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**Before Shri Sanjay Garg, Judicial Member &
Shri Om Prakash Kant, Accountant Member**

I.T.A. Nos.258,259,260,261& 262/Mum/2022
Assessment Years: 2012-13, 2014-15 to 2017-18

DCIT, CC-7(4), Mumbai.....Appellant

vs.

Shree Ambica Gems.....Respondent

Flat No.6&&, Ganesh Krupa,

Manohar Menor,

Benam X Lane,

Mumbai-400004.

[PAN:AAAFS5690Q]

CO Nos.48,49,50,51&52/Mum/2022

Assessment Years: 2014-15, 2016-17, 2015-16,2012-13& 2017-18

Shree Ambica Gems, Mumbai.....Cross-Objector

Flat No.6&&, Ganesh Krupa,

Manohar Menor,

Benam X Lane,

Mumbai-400004.

[PAN:AAAFS5690Q]

DCIT, CC-7(4), Mumbai.....Respondent

vs.

Appearances by:

None appeared on behalf of the appellant.

Shri S N Kabra appeared on behalf of the Respondent.

Date of concluding the hearing : May 19, 2022

Date of pronouncing the order : May 19, 2022

ORDER

Per Bench:

The captioned are the bunch of five appeals for different assessment years by the Revenue and Cross-Objections by the assessee against the separate orders of the Commissioner of Income Tax-49, Mumbai all dated 10.12.2021. Since the common facts and issues involved in all the appeals/cross-objections, therefore, they have been taken together for adjudication.

2. No one has put in appearance on behalf of the assessee despite notice. An application has been moved on behalf of the assessee that the corresponding cross-objections of the assessee have not been fixed, whereas, as noted above the cross-

objections of the assessee already have been fixed for today along with the appeals of the Revenue. Since, no one has put on appearance on behalf of the assessee, therefore we proceed to decide the matter after hearing the Id. DR and after going through the records.

3. The Revenue's appeal for Assessment Year 2012-13 bearing ITA No.258/Mum/2022 is taken as lead case for narration of facts.

ITA No.258/Mum/2022- The Revenue in this appeal has taken the following grounds of appeal:

"1. On the facts and the circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition of Rs. 2,50,00,000/- made by the AO u/s 69A of the Act on account of out-of-books cash sales of the assessee, whereas the same was established during the survey proceedings.

2. On the facts and the circumstances of the case and in law, Ld. CIT(A) erred in not appreciating the fact that in his statement Shri Ghanshyam Kalsariya, S/o Chaturbhai Kalsariya accepted that he used to make cash sales of Rs.2,50,00,000/- approximately every year in the answer to Q. No.69 of the statement recorded on oath on 22.01.2019 during the course of survey proceedings.

3. On the facts and the circumstances of the case and in law, Ld. CIT(A) erred in restricting the addition to the extent of 2% in the case of assessee whereas the amount of 2.5cr was unaccounted sales of the assessee every year which was not offered for tax by the assessee and the same was found as a result of survey operation otherwise the same would have not been found."

4. The brief facts of the case are that a survey action was carried out at the premises of the assessee and during the said survey action, partner of the assessee firm made a statement that there was unaccounted sale of Rs.2.5 crores each year. On the basis of the said statement, the case of the assessee for the Assessment Year under consideration was reopened. In the reopened assessment, the Assessing Officer made the addition of the entire amount of Rs.2.5 crore which was solely based on the admission of the assessee in the statement made during the survey action.

5. In the appellate proceedings before the Id. CIT(A), the assessee explained that the purchases in respect of the unaccounted sales were made out of the accounted income of the assessee. More specifically, it was out of the cash withdrawn from partners' account.

It was, therefore, explained that the purchases were explained. It was also explained that there was no doubt about the sales made. The ld. CIT(A), considering the above submissions, held that the entire sale consideration cannot be added. He, therefore, held that only the profit embedded in the unaccounted purchases/sales was to be added which he estimated @ 2% and accordingly restricted the addition of Rs.5 lakh for the Assessment Year under consideration.

6. Aggrieved by the action of the CIT(A), the Revenue has come in appeal before us pleading that the ld. CIT(A) has erred in restricting the addition to the extent of profit element involved. On the other hand, the assessee has filed cross-objection pleading that the reopening of the assessment was bad in law as the reopening was made solely based on the erroneous interpretation of the statement recorded of the partner during the survey proceedings.

7. We have heard the ld. DR and gone through the records. The ld. DR could not rebut the fact on the file that in this case since the purchases were explained, the ld. CIT(A), therefore, added only the profit element involved in the sales. After considering the submissions of the ld. DR, we are not inclined to interfere with the order of the ld. CIT(A) and the same is upheld on this issue.

Cross Objection No.48/Mum/2022 in relation to ITA No.258/Mum/2022

8. So far as the cross-objection agitating the reopening of the assessment is concerned, we find from the record that the partner of the assessee namely Shri Chaturbhai Kalsariya had categorically admitted in his statement that there was annual unaccounted sales about Rs.2.5 crores carried out from Surat office and he categorically agreed to offer profit @2% on the above unaccounted sale for tax. The relevant part of the statement is reproduced as under:

“Q.14. So you agree that there is an unaccounted sale of around 2.5 crores annually and should be added to your income and taxed accordingly.

Ans. Yes, I agree that around Rs.2.5 crores is my annual unaccounted sales carried out from Surat office and thus agree to offer profit at the rate of 2% on above unaccounted sale for tax.”

9. Since during the survey action the partner of the assessee firm had categorically admitted the unaccounted sales and offered for taxation the profit elements @ 2% of sales, therefore, in our view, there was reasonable information available to the Assessing Officer to form belief that the income of the assessee had escaped assessment for the year under consideration. Therefore, in our view, the Assessing Officer rightly exercised his power u/s 147 r.w. section 148 of the Act for reopening of the assessment. There is no merit in the cross-objection of the assessee and the same is accordingly dismissed.

10. I.T.A. Nos.259,260,261&262/Mum/2022 & Cross-Objection No.49,50,51,52/Mum/2022–

Since the facts and issues involved in all the appeals and cross-objections are identical, hence our findings given above mutatis mutandis apply to all the captioned appeals and cross-objections. In view of, our observations made above, all the appeals of the Revenue as well as cross-objections of the assessee are hereby dismissed.

11. In the result, all the appeals of the Revenue and cross-objections of the assessee stand dismissed.

Mumbai, the 19th May, 2022.

Sd/-
[Om Prakash Kant]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 19.05.2022.

RS

Copy of the order forwarded to:

1. DCIT, CC-7(4), Mumbai
2. Shree Ambica Gems
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

Shree Ambica Gems
I.T.A. Nos.258 to 262/Mum/2022
Assessment Years: 2012-13, 2014-15 to 2017-18
CO Nos.48,49,50,51&52/Mum/2022
Assessment Years: 2014-15, 2016-17, 2015-16,2012-13& 2017-18

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By order

Assistant Registrar,
Mumbai Benches