

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI A BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Rahul Chaudhary (Judicial Member)]**

ITA No. 1943/Mum/2020
Assessment year: 2007-08

Avance Technologies Limited., **Appellant**
*Office No. 7, 5th Floor, Block-A, Aidun Building,
1st Dhobi Talao Lane, Mumbai 400 002[PAN: AAECA5763B]*

Vs.

Deputy Commissioner of Income Tax **Respondent**
Central Circle-2(2) Mumbai

Appearances by:

Neeraj Mangla *for the appellant*
Mehul Jain *for the respondent*

Date of concluding the hearing : 01/03/2022
Date of pronouncing the order : 27/05/2022

O R D E R

Per Pramod Kumar VP

1. By way of this appeal, the assessee-appellant has challenged correctness of the learned CIT(A)'s order dated 28th October 2020, in the matter of assessment under section 143(3) r.w.s 147 of the Income Tax Act 1961, on the following grounds:-

1. *Under the facts and circumstances of the case the assessment order passed by Ld. AO and the appellate order passed by Ld. CIT(A) are illegal and bad in law.*
2. *That the reassessment order passed by Ld. AO and upheld by the Ld. CIT(A) is illegal and not tenable under the law because of not getting and granting valid approval under Section 151 of the Act.*
3. *That the Ld. CIT(A) grossly erred in law in upholding the assessment order and not quashing the same despite the established fact that the complete assessment order was not served upon the assessee within the time limit prescribed under Section 153 of the Act.*
4. *That the reassessment order passed by Ld. AO is further illegal and not tenable under*

the law because of being passed without disposing of the objections to the reasons recorded.

5. That the reassessment order passed by Ld. AO is also illegal because of initiating of reassessment proceedings only on borrowed information.

6. That the Ld. AO grossly erred in law in making addition of Rs. 84,22,139/- to the income of the assessee company.

2. It is a case of re-opened assessment. The assessment under section 143(3) of the Act on 24.12.2009 but on 24.03.2014, based on the specific inputs received from the investigation wing about issuance of bogus bills for an amount of Rs. 5,13,96,050/- the assessment was re-opened. The stand of the assessee was that unless the person, based on whose statement, the case is being sought to be re-opened, is not allowed to be cross examined by the assessee, the reopening of assessment cannot be lawfully done by the Assessing Officer. It was also claimed that non-furnishing of reasons for reopening of assessment within a reasonable time and non-disposal of objections to reopening the assessment within a reasonable time was fatal to the reassessment proceedings. It was also claimed that the reassessment was being done on the basis of borrowed satisfaction-something which is legally impermissible. The assessee also raises several procedural issues. None of these submissions, however, impressed any of the authorities below. The assessee is not satisfied with the stand so taken by the authorities below and is in further appeal before us-mainly, as evident from the grounds of appeal reproduced earlier, on these technicality.

3. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

4. We find that the learned Departmental Representative has produced records to show that the valid approval under section 151 was duly taken by the Assessing Officer, and copies of the relevant documents have also been handed over to the learned counsel for the assessee. Learned counsel for the assessee, when confronted with this material, did not have much to say beyond reiterating his submissions nevertheless. As for the grievance about borrowed satisfaction of the Assessing Officer, it is only elementary that at the stage of reopening the assessment, all that is required is the material for *prima facie* holding the belief that income has escaped assessment, and, to that extent, material inputs received from the investigation wing satisfy this requirement. The cross examination of the person giving statement, based on which assessment is reopened, is not, by any stretch of logic, contemplated at stage. Learned counsel's submission that the service of assessment order does not constitute a valid service, in the light of Hon'ble Gujarat High Court's judgment in CIT Vs Purshottamdas T. Patel [(1995) 209 ITR 52 (Guj)], does not merit acceptance either. That was a case in which tax computation was not served on the assessee within permitted time frame, but then in the present case, the tax computation is duly served within the time, and all that is furnished subsequently is the computation of peak income in an annexure. In our considered view, this lapse about non-furnishing of peak credit, alongwith the assessment order does not vitiate service of assessment order itself. None of the arguments raised before us thus merit acceptance. We, therefore, see no infirmity in the well reasoned order of the learned CIT(A). We approve the same and decline to interfere in the matter.

5. In the result, the appeal is dismissed. Pronounced in the open court today on the 27th day of May, 2022

Sd/-
Rahul Chaudhary
(Judicial Member)
Mumbai, dated the 27th day of May, 2022

Sd/-
Pramod Kumar
(Vice President)

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order etc

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai