

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

BEFORE SHRI M BALAGANESH, AM AND SHRI PAVAN KUMAR GADALE, JM

**ITA No. 116/Mum/2022**  
(Assessment Year 2006-07)

Bombay Marine Engineering  
Works Pvt. Ltd.  
5B Bakhtawar, Nariman Point,  
Mumbai-400 021

Vs.

The ITO,  
Ward 3(1)(2)  
Aayakar Bhavan,  
M.K.Road,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No. AAACB0451F**

**Assessee by** : Shri Nimesh Chotani, AR  
**Revenue by** : Shri S.G. Mehta, DR

**Date of hearing:** 30.05.2022  
**Date of pronouncement :** 31.05.2022

**ORDER**

**PER M BALAGANESH, AM:**

01. This appeal in ITA No.116/Mum/2022 for A.Y. 2006-07 arise out of the order by National Faceless Appeal Centre (NFAC), Delhi, [the learned CIT (A)] dated 26<sup>th</sup> November, 2021 against the order of assessment passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'Act') dated 31<sup>st</sup> December, 2013, by learned Income Tax Officer, Ward - 3(1)(2), Mumbai (hereinafter referred to as learned AO).
02. The Ground No.1 raised by the assessee is challenging the validity of reassessment u/s 147 of the Act.

03. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of recruitment, landscaping and maintenance. The return of income for the Asst Year 2006-07 was filed by the assessee company on 29.11.2006 declaring total income of Rs 2,33,940/-. The assessment was completed originally u/s 143(3) of the Act on 26.12.2008. Determining total income at Rs.7,38,660/- after adjusting speculation loss of Rs.16,31,177 and business loss of 2,15,075 of assessment year 2005-06.
04. The assessment for AY 2006-06 was sought to be reopened by issuance of notice u/s 148 of the Act dated 20.03.2013 after duly recording the reasons for reopening the assessment which are reproduced as under:

*"In this case order u/s. 143(3) was completed on 26.12.2008 on total income of Rs 7.38,660/- after setting off brought forward loss of Rs 26,41,870/- which included brought forward speculation loss of Rs 16,31,177/ As per the Return of income filed by the assessee refer sch1 computation of income), it is seen that the assessee has shown net profit from business at Rs 33,74,318/- (col. 1) and speculation profit included in it at Nil (col 2). As per sec.73, the assessee can adjust brought forward speculative loss only against speculative income. There was no speculative income during the year and the assessee has wrongly claimed set off of brought forward*

*speculation loss of Rs 16,31,177/- of A Y 2005-06 in its computation of income leading the Assessing Officer to wrongly adjust the brought forward speculation loss against business income in order u/s 143(3) dated 26 12 2008 Therefore by reason of the failure on the part of the assessee to disclose fully & truly all material facts necessary for its assessment income amounting to Rs. 16,31,177/ has escaped assessment. Hence, notice u/s. 148 of the IT Act 1961 is issued for A Y 2006-07-)"*

05. From the aforesaid reasons, it is evident that the learned AO had assumed that the speculation profit was Rs. Nil and hence the assessee was not entitled to set off the brought forward speculation loss of Rs.16,31,177/- from Asst Year 2005-06 with the business income of Asst Year 2006-07. We have verified the profit and loss account and the computation of the total income of the assessee for the year ended 31.03.2006 relevant to Asst Year 2006-07. We find from the same that the assessee had duly disclosed the profit from share trading which is treated as speculation profit in the sum of the Rs. 54,55,932/-. In fact assessee itself had treated the profit from share trading as speculation profit and this fact is conspicuously mentioned in the face of the profit and loss account as well as in the computation of total income filed along with the return of income and also during the course of original scrutiny assessment proceedings. Hence assessee is having speculation profit which has been duly offered to

tax and is entitled for set off of brought forward speculation loss of Rs. 16,31,177 with the speculation profit of Rs 54,55,932/-. This categorically goes to prove that the learned AO had recorded the reasons for reopening the assessment based on incorrect assumption of facts. In any case, all the facts were duly disclosed by the assessee in the financial statements and computation of income. Hence there cannot be any failure on the part of the assessee to make full and true disclosure of particulars of income in the original assessment proceedings. Since, in the instant case, the reopening was admittedly made beyond 4 years from the end of the relevant Asst Year i.e., Asst Year 2006-07, the Ld AO is duty bound to bring out the failure on the part of the assessee in terms of proviso to 147 of the Act in the reasons recorded itself by proper assumption of facts. The aforesaid narration of events clearly proves that all the parameters for reopening the assessment are conspicuously absent. In other words, the reasons recorded by the Id. AO fails on various aspects and hence the reassessment framed in the hands of the assessee for the Asst Year 2006-07 is hereby quashed due to –

- i. Incorrect assumption of fact that assessee is not having speculation profit in the year under consideration; and



- ii. There is no failure on the part of assessee to make full and true disclosure of particulars of income in the original assessment proceedings.

06. Hence, we have no hesitation in quashing the reassessment proceedings as void abinitio. Accordingly, the Ground No.1 raised by the assessee is allowed.

07. Since reopening is quashed, the other grounds raised by the assessee on merits need not be gone into as they become academic in nature.

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

Order pronounced in the open court on 31.05.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(M BALAGANESH)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai

