

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 6260/Mum/2017 (A.Y. 2007-08)**

Late Shri Haresh A Dhakan through his  
Legal heir Mr. Krunal H. Dhakan,  
A-304, Classique Centre,  
Plot No. 26, Mahal Industrial Estate,  
Andheri (West), Mumbai-400093

**PAN: AADPD5584B**

..... Appellant

Vs.

DCIT-1(3)(1),  
Aayakar Bhavan,  
M.K. Marg, Mumbai-400020.

..... Respondent

**ITA No. 6262/Mum/2017 (A.Y. 2009-10)**

**ITA No. 6263/Mum/2017 (A.Y. 2010-11)**

**ITA No. 6264/Mum/2017 (A.Y. 2011-12)**

**ITA No. 6265/Mum/2017 (A.Y. 2012-13)**

**ITA No. 6266/Mum/2017 (A.Y. 2014-15)**

M/s SSS Sai Shipping Services Pvt. Ltd.  
A-304, Classique Centre,  
Plot No. 26, Mahal Industrial Estate,  
Andheri (West), Mumbai-400093

**PAN: AALCS4908D**

..... Appellant

Vs.

DCIT-1(3)(1),  
Aayakar Bhavan,  
M.K. Marg, Mumbai-400020.

..... Respondent

Appellant by : Sh. Vinod Bindal with Sh. Gaurav Bansal  
Respondent by : Sh. Anil S. Sant, Sr.DR  
Date of hearing : 12/05/2022  
Date of pronouncement : 29/06/2022

### **ORDER**

#### **PER GAGAN GOYAL, A.M:**

These six appeals by the assessee filed for Assessment Years (AY) 2007-08 & 2009-10 to 2014-15. Appeal for AY 2007-08 filed by Late Shri Haresh A Dhakan through his Legal heir Mr. Krunal H. Dhakan. Rest of the appeals were filed by M/s SSS Sai Shipping Services Pvt. Ltd. Assessee raised following grounds in his individual capacity through his legal heir as under:

#### **Grounds of appeal in ITA No. 6260/Mum/2017**

1. The Ld. CIT (A) erred in law and on facts in stating in the appellate order that not supplying the reasons recorded for reopening of assessment do not make the assessment illegal and is only a procedural requirement .
2. The Ld. CIT (A) erred in law and on facts in not appreciating that the reasons recorded by the AO for reopening of assessment were never supplied to the appellant.
3. The Ld. CIT (A) erred in law and on facts in not appreciating that: -
  - (i) Notice has been issued at the instance of the Investigation Wing and without independent application of mind.
  - (ii) Notice has been issued without application of mind and without any tangible material in possession of the assessing officer as the report from DDIT has been received subsequent to the issuance of notice u/s 148 of the IT Act.
- 4, The Ld. CIT (A) erred in law and on facts in making an ad-hoc disallowance of Rs. 15, 84,368/- being 10% of business expenditure claimed-by the appellant as per

the working submitted without appreciating that the expenses were incurred for business purpose and was part of the pen drive found in survey proceedings and has to be accepted in totality.

5. The appellant craves the leave to add, substitute, modify, alter, delete or amend all or any ground of appeal either before or at the time of hearing.

2. Following grounds was raised by the assessee-company as under:

**ITA No. 6262 to 6266/Mum/2017 common grounds except variation of figures which are as follows**

1) The Ld. CIT (A) erred in law and on facts in not appreciating that: -

(i) — Notice has been issued at the instance of the Investigation Wing and without independent application of mind.

(ii) The reassessment is bad in law as it is totally based on the statement recorded during survey under duress which is clear by the fact that statement was stretched for two days and survey team stayed at the premises overnight without any authority of law.

2) The Ld. CIT (A) erred in law and on facts in making an ad-hoc disallowance of Rs. 18, 03,941/ - being 10% of business expenditure claimed by the appellant as per the working submitted without appreciating that the expenses were incurred for business purposes and was part of the pen drive found in survey proceedings and has to be accepted in totality.

3) The appellant craves the leave to add, substitute, modify, alter, delete or amend all or any ground of appeal either before or at the time of hearing.

3. Till AY 2007-08 business operations were being carried out in the name of Shri Haresh A Dhakan, thereafter, the same business operation were being succeeded by the Limited Company in the name of M/s SSS Sai Shipping Services Pvt. Ltd. This company is a closely held by Late Shri Haresh A Dhakan and his family members.

4. There was a survey on the assessee under section 133A of the Income Tax Act, 1961 (for short 'the Act') at the business premises of the assessee and it is found that assessee was running business in individual capacity till AY 2007-08 and thereafter in the name of company being promoter shareholder director of the same. During survey proceedings, a Pen-drive was found, this Pen-drive contained a voluminous data relating to cash transactions. Statement of Mr. Hareesh A Dhakan was recorded under section 131 of the Act on 17.10.2013 which was concluded on 18.10.2013.

5. Pen-drive found during survey proceedings which contained a voluminous data pertaining to the period from 01.04.2000 to 17.10.2013 i.e. till the date of survey, since as per the prevailing provisions of the Act assessment could not be made for the period from 01.04.2000 to 31.03.2006 being barred by limitation. The Assessing Officer (AO) took cognizance for AY 2007-08 onwards.

6. Appellant agreed that the substantial addition should have been made in the hands of the company M/s SSS Sai Shipping Services Pvt. Ltd. as the business have been substantially carried out in the name of the company from the Financial Year (FY) 2008-09 onwards i.e. AY 2009-10.

**7. Ground Nos.1 to 3 (i) & (ii) not pressed by the Authorized Representative (AR) of the assessee, hence not adjudicated. Ground No.5 is general in nature, hence, requires no adjudication.**

8. Ground No.4 pertains to disallowance of Rs. 15,83,368/- being 10% of business expenditure claimed by the appellant. In this regard, we would like to take reference of Appeal Nos. 6334/Mum/2017 (A.Y. 2007-08) &

6337/Mum/2017 for A.Y. 2011-12 order dated 08.06.2022 . These two appeals were filed by the Revenue and outcome of appeals as mentioned in para-10, 11 & 12 is as under:

*“10. Therefore, in the light of our aforesaid discussion, we are setting-aside the impugned order of the CIT(A) and remanding the matter back to the file of AO for de-novo assessment with the following directions.*

*(i) After providing proper opportunity to the assessee may be with the help of special auditor under section 142(2A), examine the working prepared and submitted by the assessee before the Id. CIT (A) and*

*(ii) AO must give specific reason before treating any entry as income and before disallowing any expense. And the AO to give telescoping benefits as per law.*

*11. In the light of the aforesaid discussion, on the facts and circumstances of the appeals before us (AY 2007-08 & 2011-12) we are inclined to set-aside the impugned order of Id. CIT(A) and remand both the matter before the AO.*

*12. In the result, appeals filed by the revenue is Allowed for statistical purpose.”*

9. So, the issue raised through Ground No. 4 by the assessee will also be taken care. As an appropriate direction to the AO as mentioned (supra) has already been given in the appeals of the Revenue mentioned (supra).

10. No separate adjudication is required on the ground raised by the assessee, as his concerns will be taken care of during *de-novo* assessment proceedings.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

**ITA No. 6262/Mum/2017 (A.Y. 2009-10)**

**12. Ground Nos.1 (i) & (ii) not pressed by the Authorized Representative (AR) of the assessee, hence not adjudicated. Ground No.3 is general in nature, hence, requires no adjudication.**

13. Ground No.2 pertains to disallowance of Rs. 18,03,941/- being 10% of business expenditure claimed by the appellant. In this regard, our finding as discussed (supra) in the case of Late Shri Haresh A. Dhakan through his legal heir Shri Krunal H. Dhakan, Appeal No. 6260/Mum/2017 is applicable mutatis mutandis.

14. In the result, appeal of the assessee-company is allowed for statistical purposes.

**ITA No. 6263/Mum/2017 (A.Y. 2010-11)**

15. **Ground Nos.1 (i) & (ii) not pressed by the Authorized Representative (AR) of the assessee, hence not adjudicated. Ground No.3 is general in nature, hence, requires no adjudication.**

16. Ground No.2 pertains to disallowance of Rs. 12,44,866/- being 10% of business expenditure claimed by the appellant. In this regard, our finding as discussed (supra) in the case of Late Shri Haresh A. Dhakan through his legal heir Shri Krunal H. Dhakan, Appeal No. 6260/Mum/2017 is applicable mutatis mutandis.

17. In the result, appeal of the assessee-company is allowed for statistical purposes.

**ITA No. 6264/Mum/2017 (A.Y. 2011-12)**

18. **Ground Nos.1 (i) & (ii) not pressed by the Authorized Representative (AR) of the assessee, hence not adjudicated. Ground No.3 is general in nature, hence, requires no adjudication.**

19. Ground No.2 pertains to disallowance of Rs. 18,61,663/- being 10% of business expenditure claimed by the appellant. In this regard, our finding as discussed (supra) in the case of Late Shri Haresh A. Dhakan through his legal heir Shri Krunal H. Dhakan, Appeal No. 6260/Mum/2017 is applicable mutatis mutandis.

20. In the result, appeal of the assessee-company is allowed for statistical purposes.

**ITA No. 6265/Mum/2017 (A.Y. 2012-13)**

21. **Ground Nos.1 (i) & (ii) not pressed by the Authorized Representative (AR) of the assessee, hence not adjudicated. Ground No.3 is general in nature, hence, requires no adjudication.**

22. Ground No.2 pertains to disallowance of Rs. 12,08,794/- being 10% of business expenditure claimed by the appellant. In this regard, our finding as discussed (supra) in the case of Late Shri Haresh A. Dhakan through his legal heir Shri Krunal H. Dhakan, Appeal No. 6260/Mum/2017 is applicable mutatis mutandis.

23. In the result, appeal of the assessee-company is allowed for statistical purposes.

**ITA No. 6266/Mum/2017 (A.Y. 2014-15)**

24. Ground No.1 & 2 pertains to disallowance of Rs. 8,24,720/- being 10% of business expenditure claimed by the appellant and Rs. 2,31,266/- pertains to Business Promotion expenses. In this regard, our finding as discussed (supra) in

the case of Late Shri Haresh A. Dhakan through his legal heir Shri Krunal H. Dhakan, Appeal No. 6260/Mum/2017 is applicable mutatis mutandis.

25. In the result, appeal of the assessee-company is allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> day of June, 2022.

Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 29/06/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai