

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 301/Rjt/2019
निर्धारण वर्ष/Asstt. Years: 2010-2011

Seastem Ltd., First Floor, Royal Corner, Dr. Yagnik Road, Rajkot. PAN: AAHCS9428G	Vs.	D.C.I.T., Circle-1, Jamnagar.
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Assessee by :	Shri Chetan Agarwal, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **07/07/2022**
घोषणा की तारीख / **Date of Pronouncement**: **07/09/2022**

आदेश/ORDER

PER BENCH:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income tax (Appeals), Jamnagar, dated 08/08/2019 arising in the matter of assessment order passed under s.143 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:

1. *Learned CIT(A), Jamnagar has erred in law as well as on facts in confirming disallowance of Rs.4,75,495/- debited in profit and loss account.*

2. *Learned CIT(A), Jamnagar has erred in law as well as on facts in confirming re-opening of the case the based on change of opinion.*

3. The first issue raised by the assessee in ground no. 2 is that the learned CIT (A) erred in upholding the validity of assessment framed under section 143(3) read with section 147 of the Act.

4. The facts in brief are that the assessee is a public company and engaged in the business of Marine Services, Transportation and Trading of Salt. The assessee for the year under consideration i.e. A.Y. 2010-11 vide return dated 21-05-2011 declared an income of Rs. 19,25,920/- only. Thereafter, the income of the assessee was determined at Rs. 20,25,920/- in the regular assessment under section 143(3) of the Act by the AO vide order dated 28-03-2013.

4.1 Subsequently, the assessment was reopened under section 147 of the Act by issuing notice under section 148 of the Act dated 21-03-2017 after recording the reason to believe for the escapement of income. The relevant portion of the same reads as under:

"Ongoing through the case records, it is noticed that you have debited an amount of Rs.4.75.495/- towards the profit on sale Barge. Moreover, it is further noticed that on scrutiny of ledger a/c. of M V Royal Aditi (Barge) revealed that there was debit balance of Rs.4,75,495/- on sale barge since the MV Aditi Barge is depreciable asset and the same should be deducted from the block of assets in Ships in depreciation statement. Hence, an amount of Rs.4, 75.495/- debited to the P&L Account was required to be added back while computing total income from business and profession but the same was not added back. In view of the above, you are hereby show cause as to why an amount of Rs. 4,75.495/- toward the profit on sale of Barge should not be disallowed and added to the total income.

5. However, the assessee filed an objection on the reopening of the case, which was disposed off by the AO vide separate order dated 16-06-2017 against the assessee.

6. Being aggrieved, the assessee preferred an appeal to the learned CIT(A).

7. The assessee before the learned CIT(A) submitted that there was no new information or material available before the AO which could lead to form the reasons to believe that the income has escaped assessment. The AO recorded reason to believe on the same set of documents which were available on record at the time of regular assessment under section 143(3) of the Act. This fact can be established from the reason recorded itself where the phrase used "On going through the case record". Therefore, the reopening is based on change of opinion and review of assessment records which is outside the jurisdiction of the AO and prohibited by the law. The assessee in support of its contention placed reliance on the judgment of Hon'ble Supreme Court in case of CIT vs. Kalvinton of India Ltd (2010) 320 ITR 561 (SC) and also on the judgment of jurisdictional High Court in case of Vodafone West Ltd vs. ACIT reported in 354 ITR 562.

7.1 The assessee without prejudice to above further submitted that the regular assessment under section 143(3) of the Act was completed on 28-03-2013. Therefore, as per the proviso to section 147(1) of the Act, the income escapement proceeding cannot be initiated after the expiry of 4 years from the end of the relevant assessment year unless there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment. The notice under section 148 dated 21-03-2017 was issue after the period of 4 years from the end of relevant assessment year. There is no finding of the AO in the reason recorded that there was failure on the part of the assessee to disclose all material facts necessary for assessment. Hence, the reassessment proceeding is not valid and needs to be quashed. The assessee in this regard also placed reliance on various judgments.

8. However, the learned CIT(A) after considering the submission of the assessee upheld the validity of reopening of the assessment by observing as under:

The order u/s.143(3) r.w.s. 147 of the Act as well as written submission of the AR of the appellant have been considered. The grounds of appeal of the appellant are reproduced in initial paragraph of this appeal order. The first ground of appeal of the appellant is that the AO has erred in law as well as on fact in reopening the assessment u/s. 147 of the Act. With regards to this ground of appeal, the submission of the AR of the

*appellant is that during the course of regular assessment all the relevant records and books of accounts were submitted to the AO and the AO had verified all the aspects and therefore the addition will amount to change of opinion and therefore on the same set of facts and information available in the assessment records, reopening amounts to change of opinion. The AR has relied upon the decision of some of the Hon'ble Courts in his written submission. But this submission of the AR of the appellant is not found to be acceptable. The case of the appellant has been reopened for the year under consideration on the valid ground that it had wrongly debited an amount of Rs. 4,75,495/- towards profit on sale of barge. Since the barge is depreciable asset and the same should have been deducted from the block of assets in the category of ships in the depreciation chart. Thus this amount of Rs. 4,75,495/- as debited by the appellant to the P & L Account was incorrect. Thus it was clearly failure on the part of the appellant to disclose its income fully and truly in the return of income which correctly led to the reopening of the **case** for the year under consideration. In view of this it is held that the AO has correctly and validly reopened the case of appellant. In view of this, the first ground of appeal of the appellant is dismissed.*

9. Being aggrieved by the order of the CIT(A), the assessee is appeal before us.
10. The learned AR before us submitted that the reopening of the assessment under section 147 of the Act has been made by the AO merely based on change of opinion which is not permitted under the provisions of law.
11. On the other hand, the learned DR before us vehemently supported the order of the AO.
12. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the regular assessment under section 143(3) of the Act was completed and thereafter the assessment was reopened for escapement of income. On perusal of the reason recorded, we find that the AO used the word "On going through the case record". Hence it is deduced that there was no new material before the AO which suggest that the income was escaped. As such the reason to believe of the AO is based on same set of document which amount to change of opinion which is not permissible under the provision of section 147 of the Act. In this regard, we draw support and guidance from the judgment of Hon'ble Supreme Court in case of CIT vs. Kalvinator of India Ltd (supra) wherein it was held as under:

one needs to give a schematic interpretation to the words 'reason to believe', failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on

the basis of 'mere change of opinion', which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment.

12.1 Moving forward, it is also pertinent to note that in case where the regular assessment under section 143(3) was completed then reopening of assessment after the expiry of four years from the end of relevant assessment year can only be made if there is failure on the part of the assessee to disclose all the material facts necessary for assessment. In the case on hand, the reopening was made after the expiry of 4 year, however the AO nowhere has brought on record that the assessee failed to disclose all the material facts necessary for assessment. In this regard we find support and guidance from the order of Hon'ble Gujarat High court in case Vodafone West Ltd vs. ACIT (supra) where it was held as under:

In the case of Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191, the Constitution Bench of Supreme Court held and observed that to confer jurisdiction on assessee to issue notice off reopening of assessment beyond a period of four years, two conditions are required to be simultaneously satisfied. Such conditions are that the Assessing Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under assessed and the second is that he must also have reason to believe that such under assessment has occurred by reason of either omission or failure on part of the assessee to make return of his income or omission or failure on part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the taxing officer could have jurisdiction to issue notice for the assessment or reassessment beyond a period of four years.

12.2 In view of the above and after considering facts in totality we find that there was no fresh tangible material before the AO or the assessee failed to disclose all the material facts necessary for assessment. Hence, we hereby quash the reopening/re-assessment order being not sustainable under the law. Thus the ground of appeal of the assessee is hereby allowed.

12.3 As, the assessee succeeds on the technical issue raised by it, we do not find any reason to adjudicate the issue raised by it on merit. Accordingly, we dismiss the

same as infructuous. Hence, the ground of appeal of the assessee is dismissed.

13. In the result, the appeal filed by the assessee is **partly allowed**.

Order pronounced in the Court on 07/09/2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 07/09/2022
Manish (True Copy)