

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.1419/Ahd/2018 & 2708/Ahd/2017
Assessment Year: 2012-13**

Hytasun Magnetics Limited,
Maruti House,
Opp. Air India,
Ashram Road,
Ahmedabad - 380 009.
[PAN – AAACH 3873 C]
(Appellant)

vs. Principal Commissioner of Income
Tax-2/ITO, Ward – 2(1)(3),
Ahmedabad.

(Respondent)

Assessee by : None
Revenue by : Shri Prithvi Raj Meena, CIT DR &
Shri Rakesh Jha, Sr. DR

Date of hearing : 30.11.2022
Date of pronouncement : 16.12.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These two appeals are filed by the Assessee against two separate orders dated 26.03.2018 & 12.10.2017, passed by the PCIT-2 & CIT(A)-2, Ahmedabad respectively, for the Assessment Year 2012-13.

2. The Assessee has raised the following grounds of appeal :-

ITA No.1419/Ahd/2018

- "1. Learned Pr. CIT-2, Ahmedabad has erred in revising assessment u/s.263 because the assessment order itself is null and void based on nonest return. Commissioner cannot have exercised jurisdiction u/s.263.*
- 2. Learned Pr. CIT-2, Ahmedabad has erred in revising u/s. 263 of the order passed by AO Ward-2(1)(3), inasmuch as, the order passed by A.O. is after application of mind and proper detailed inquiry and verification of facts. The order of the AO is not erroneous and prejudicial to the interest of revenue.*

3. *The claim of set off of current depreciation of plant and machinery of Rs.2,11,81,721 and Rs.230 on vehicle in aggregate Rs.2,11,81,951/- was not made in return of income e-filed u/s.148 on 09.09.2015.*
4. *The Book Profit declared u/s.115JB at Rs.44,87,723 as per Audited Books was correct and there is no provision under the Act to reflect LTCG s per government Circle Rate which exceeded the sale price shown in the books.*
5. *The Book Profit worked out u/s.115JB after set off of unabsorbed depreciation of Rs.5,78,94,557 from A.Y. 2001-02, there is no mistake.*
6. *There is no mistake in computation of LTCG claimed by the appellant”.*

ITA No.2708/Ahd/2017

- “1) *The learned Commissioner of income Tax (Appeals) has erred in confirming penalty u/s 271(1)(c) levied by AO of Rs.1,57,21,800/- (reduced to Rs.88,49,023 by AO u/s 154; in as much as ;*
- (i) The penalty is levied on addition made by AO u/s.50C of Rs.4,09,10,877. In as much as addition u/s.50C do not attract Penalty u/s.271(1)(c) of the Act.*
- (ii) The returns of income filed by appellant are treated as nonest by AO penalty u/s..271(1)(c) cannot be levied in absence of return of income.*
- (iii) The A.O. had not framed charge/satisfaction of penalty whether appellant had concealed income or furnished inaccurate particulars of income. Penalty is bad in law.”*

3. Firstly we are taking up ITA No.1419/Ahd/2018 wherein the PCIT has observed that the Assessing Officer has passed the assessment order dated 29.02.2016 without proper application of mind and also without making proper enquiries and verification. The facts of the case are that information was in possession of the Assessing Officer that during the F.Y. 2011-12, the assessee company sold immovable property for a amount of Rs.2.50 Crores which was registered with Sub-Registrar, Mehsana on 16.03.2012. The Sub-Registrar valued the said property at Rs.6,84,18,918/- for the purpose of stamp duty and registration fees. As per the provisions of Section 50C of the Income Tax Act, 1961, the assessee company should have declared capital gain arising on such transaction and, therefore, the Assessing officer made addition of Rs.4,09,10,877/- as income from Long Term Capital Gain (LTCG). The Assessing

Officer also allowed unabsorbed depreciation of Rs.7,26,78,567/- to be carried forward for subsequent year. The PCIT vide notice under Section 263 of the Act dated 19.01.2018 called upon the assessee to show cause as to why the appropriate order under Section 263 of the Act should not be passed in respect of non-application of provisions of Section 112 of the IT Act related to LTCCG and claim of carried forward depreciation/business loss as available to the assessee as per its book for the purpose of Section 115JB of the Act. The PCIT passed order under Section 263 of the Act on 26.03.2018 thereby setting aside the earlier assessment Order and directed the Assessing Officer to make fresh assessment.

4. Being aggrieved by the order under Section 263 of the Act, the assessee filed appeal before us.

5. At the time of hearing, none appeared on behalf of the assessee despite giving several notices. No fresh address/new address has been given to the registry and hence we are proceeding on the basis of the submissions quoted in the order dated 26.03.2018 passed by the PCIT and Assessment Order.

6. The Ld. DR submitted that the Assessing Officer has made addition on account of LTCCG on the very same issue which has been dealt by the PCIT under Section 263 of the Act.

7. The Ld. DR relied upon the order under Section 263 of the Act passed by the PCIT.

8. We have heard Ld. DR and perused all the relevant material available on record. The contention of the assessee before the PCIT was that the assessment order itself is null and void as the same is based on nonest return and, therefore, the PCIT cannot have jurisdiction under Section 263 of the Act. From the perusal of the records, it can be seen that the brought forward worked out under Section 115JB after setting aside unabsorbed claim of Rs.5,78,94,557/- from A.Y. 2001-02 which is not disputed by the PCIT. The Assessing Officer has clearly made addition in respect of income from LTCCG . The relevant documents were before the Assessing Officer

during the assessment proceedings. Thus, the observation made by the PCIT that no proper enquiry and verification was made are not correct. Thus, from the perusal of the assessment order it appears that the assessment order is not erroneous and prejudicial to the interest of Revenue. Hence, the appeal of the assessee is allowed.

9. In respect of ITA No.2708/Ahd/2017,the penalty is imposed on addition made by the Assessing Officer under Section 50C of the Act of Rs.4,09,10,877/- but since the return of income filed by the assessee was treated as nonest by the Assessing Officer, penalty under Section 271(1)(c) of the Act cannot be levied in the absence of return of income as per the assessee's grounds of appeal. From the perusal of the records, we can see that the penalty was levied on the basis of addition under Section 50C of the Act but during the course of assessment proceedings, the differential amount of Rs.5,08,79,556/- was proposed for addition in the Assessment Order and the valid addition of LTCG was made accordingly. The Assessing Officer never doubted the genuineness of the documents and the details furnished by the assessee before the Assessing Officer. The assessee has not concealed the relevant particulars of income or furnished inaccurate particulars of income and, therefore, penalty under Section 271(1)(c) of the Act does not sustain. Appeal filed by the assessee is, therefore, allowed.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on this 16th day of December, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 16th day of December, 2022

PBN/*

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

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*