

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.431 &440/SRT/2022

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Physical Court Hearing)

Marudhar Diamond Pvt. Ltd. 412, Dharmanandan Chamber, Balisheri, Mahidhar Pura, Surat- 395003	Vs.	Dy. Commissioner of Income Tax, Central Circle-3, Aaykar Bhavan, Majura Gate, Surat-395001
Asstt. Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aayakar Bhawan, Majurat Gate, Surat-395001		M/s Marudhar Diamond Pvt. Ltd., 412, Dharmanandan Chamber, Balasheri, Mahidharpura, Surat- 395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECM 8792 L		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.432 &436/SRT/2022

(निर्धारणवर्ष / Assessment Year: (2012-13)

Saffron Gems Pvt. Ltd., 103, Vedant Complex, Bhojabhai Ni Sheri, Mahidhar Pura, Surat-395003	Vs.	Dy. Commissioner of Income Tax, Central Circle-2, Aaykar Bhavan, Majura Gate, Surat-395001
Asstt. Commissioner of Income-tax, Central Circle-2, Surat, Room No.503, 5 th Floor, Aayakar Bhawan, Majurat Gate, Surat-395001		M/s Saffron Gems Pvt. Ltd., 103, Vedant Complex, Bhojabhai Ni Sheri, Mahidharpura, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AANCS 2828 J		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.350 & 346/SRT/2022

(निर्धारणवर्ष / Assessment Year: (2017-18)

Nobal Jewells Pvt. Ltd. Office No.101, 1 st Floor, Millenium Trade Centre, Thoba Sheri, Surat City, Mahidharpur, SO, Surat- 395003	Vs.	Dy. Commissioner of Income Tax, Central Circle-3, Aaykar Bhavan, Majura Gate, Surat-395001
Asstt. Commissioner of Income-tax,		M/s Nobal Jewells Pvt. Ltd.,

Central Circle-2, Surat, Room No.503, 5 th Floor, Aayakar Bhawan, Majurat Gate, Surat-395001		Office No.101, 1 st Floor, Millenium Trade Centre, Thoba Sheri, Surat City, Mahidharpur, SO, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECN 8548 D		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.351 & 347/SRT/2022
(निर्धारणवर्ष / Assessment Year: (2017-18))

Antique Exim Pvt. Ltd. A-104, Shilalekh Commercial Co-Op. Society, Bhoja Bhai Ni Sheri, Mahidharpura, SO, Surat-395003		Dy. Commissioner of Income-tax, Central Circle-3, Surat, 507, Aayakar Bhawan, Majura Gate, Surat-395001
Asstt. Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aayakar Bhawan, Majurat Gate, Surat-395001	Vs.	M/s Antique Exim Pvt. Ltd. A-104, Shilalekh Commercial Co-Op. Society, Bhoja Bhai Ni Sheri, Surat City, Mahidharpur SO, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJCA 9815 B		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Prakash Jhunjunwala, C.A
Shri Pawan Jagetia, CA &
Shri Anand Chourasia, C.A
राजस्व की ओर से /Respondent by : Shri Ashok B. Koli, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 21/04/2023
घोषणा की तारीख/Date of Pronouncement : /04/2023

आदेश / ORDER

PER BENCH:

This is bunch of eight appeals, consisting four appeals filed by the Revenue and four cross appeals filed by the different assesseees, pertaining to assessment years 2012-13 and 2017-18 (assessment year-wise), all are directed against the separate orders passed by the Learned Commissioner of Income-Tax (Appeals)-4,

Surat (for short 'Ld. CIT(A)', dated 19.10.2022, 28.09.2022 and 29.09.2022, which in turn arise, out of separate assessment orders passed by the Assessing Officer under section 143(3)/ 147 of the Income Tax Act, 1961 (in short 'the Act').

2. At the outset, we note that appeal filed by the assessee in the case of M/s Nobal Jewels Pvt. Ltd. in ITA No.350/SRT/2022 for A.Y. 2017-18 is barred by limitation by one day. The Ld. Counsel for the assessee has explained that actually, it is not a delay in filing the appeal; it is rather a mistake in computing the days of delay, hence there is no question for condonation of delay.

3. We have heard both the parties on this preliminary issue and noted that while computing the delay, the date on which appeal has been filed, has not been excluded. We are of the view that the date on which appeal has been filed by the assessee, should not be included in computing the delay in filing the appeal, the reason being on said date the appeal has reached to the Registry of the Tribunal. Therefore, if the date of filing is excluded than there is no delay in filing this appeal. Hence, having regard to the reasons given by the Ld. Counsel for the assessee, we find that there is no delay in filing this appeal and therefore we admit the appeal for adjudication.

4. Since the issues involved in all these appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in in ITA No.351/SRT/2022, for assessment year 2017-18, have been taken into consideration for deciding the above appeals *en masse*.

5. The grounds of appeals raised by the assessee in "*lead*" case in ITA No.351/SRT/2022 for A.Y. 2017-18 are as follows:

*"1. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) is **bad-in-law**, since it had been passed beyond the limitation period specified u/s 153(1) of the Act;*

2. *On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of suppressed profits on sale of goods (diamonds) of Rs.9,72,422/- @ 2% of sales made to disputed parties of Rs.4,86,21,078/-.*

3. *On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of Rs.26,73,775/- @ 2% of purchase of goods (diamonds) made from disputed parties of Rs.13,36,88,750/-.*

4. *The Ld. CIT(A) before estimating the addition of suppressed profits on disputed purchase and sale of goods of Rs.36,46,197/-, ought to have considered the understated vital facts, being; a) The exhaustive documentary evidences such as sale bills, purchase bills, sale bills, Ledge/confirmation of account, stock register, Quantity tally, bank statements and I.T. acknowledgement receipts of disputed parties had been filed on record; b) The entire payments had been made/received only through banking channel by A/c payee cheques/RTGS; c) The additions/disallowance made relying on the statement of 3rd parties recorded at bank of appellant and without allowing an opportunity of cross-examination is unjustified.*

5. *The Ld. CIT(A) ought to have estimated the suppressed profits reasonably on disputed purchase and sale transactions in part to the normal profits disclosed on accepted genuine purchase and sale transactions.”*

6. The assessee has also raised additional grounds of appeal, which is reproduced below:

“The assessee prefers an additional ground of appeal against an order passed by Ld. Commissioner of Income Tax (Appeals)-4, Surat dated 29/09/2022 on following amongst other grounds each of which are without prejudice to any other:

1.0 On facts and circumstances of the case and in law, the assessment order passed u/s 143(3) dated 30/09/20021 is bad-in-law, since it had been passed beyond the limitation period specified u/s 153(1) of the Act.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”

7. Shri Prakash Jhunjhunwala, Learned Counsel for the assessee, at the outset, begins by pointing out that assessee has raised an additional ground stating that assessment order passed u/s 143(3) dated 30/09/20021 is bad-in-law, since it had been passed beyond the limitation period specified u/s 153(1) of the Act. Since the assessee has raised the technical and legal ground challenging the validity of assessment/reassessment orders passed u/s 143(3)/147 of the Act, which goes to

the root of the matter, therefore such additional ground raised by the assessee should be admitted and adjudicated first.

6. On the other hand, Learned CIT-DR for the Revenue has objected that since the assessee has not raised this additional technical ground, challenging assessment / re-assessment proceedings before the lower authorities, therefore, the assessee cannot raise fresh ground at this stage before the Tribunal for the first time. Therefore, additional ground raised by the assessee should not be admitted.

7. 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. First of all, we note that additional ground raised by the assessee, ought not to be treated as an additional ground. In the appeal memo along with Form No.36, the assessee has taken ground No.1 which is akin to an additional ground raised by the assessee before this Tribunal. For the sake of understanding, the original ground No.1 raised by the assessee, along with Form No.36, is reproduced below:

*“1. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) is **bad-in-law**, since it had been passed beyond the limitation period specified u/s 153(1) of the Act”*

8. From the above ground of appeal, it is vivid that assessee has already taken the original ground No.1 raised by the assessee, along with Form No.36, which is akin to an additional ground raised by the assessee before this Tribunal. Therefore, we note that Id Counsel for the assessee as well as Id DR for the Revenue, both have misunderstood/confused whether it is an additional ground. No doubt, the assessee has taken an additional ground before this Tribunal, which is akin and similar to original ground No.1 raised by the assessee, hence there was no need to raise such additional ground by the assessee, as the original ground No.1 raised by the assessee is sufficient to adjudicate the legal issue involved.

9. We agree with the Id DR for the Revenue that assessee has raised first time in the original grounds of appeal a legal issue challenging the validity of assessment/reassessment proceedings stating that assessment/reassessment had been passed beyond the limitation period specified u/s 153(1) of the Act. The Id

DR stated that such legal plea was not raised by the assessee before the lower authorities therefore at this stage, such legal ground should not be entertained. Therefore, Id DR strongly objected that such legal issue should not be adjudicated by the Tribunal.

10. We are of the opinion that such objection raised by the Ld. CIT-DR for the Revenue should not be acceptable. We note ground No.1 raised by the assessee in the original grounds of appeal, is purely a legal issue and all facts are already on record which goes to the root of the matter and no further inquiry is required for deciding the same as all facts are already on record. Therefore, in the light of ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd., vs. CIT* (1998) 229 ITR 382 (SC), we admit the legal ground No.1 raised by the assessee, for adjudication.

11. Since the legal/technical ground No.1 raised by the assessee goes to the root of the mater therefore, first we shall adjudicate the said ground.

12. Shri Prakash Jhunjhunwala, Learned Counsel for the assessee, argued on legal/technical ground No.1 taking the “*lead*” case in *ITA No.351/SRT/2022*, for A.Y. 2017-18 and submitted that assessee filed return of income u/s 139(1) of the Act on 06.10.2017. Thereafter a notice u/s 143(2) was served by Assessing Officer on 27.02.2018. The Ld. Counsel stated that time limit for completion of assessment u/s 153(1) was within 21 Months from the end of the assessment year in which the income was first assessable, that is, on 31.12.2019. In other words, the time limit for passing the assessment was expired on 31.12.2019, that is, assessment order for assessment year 2017-18, must have been framed/passed on or before 31.12.2019. However, the assessment order has framed/passed by the Assessing Officer u/s 143(3) of the Act on 30.09.2021, which is a time barred assessment. Therefore, assessment order passed by the Assessing Officer u/s 143(3) of the Act dated 30.09.2021, is not within the time-limit for completion of assessment u/s 153(1) of the Act. Hence, Id Counsel pleaded that it is a time

barred assessment therefore the entire assessment should be quashed and appeal of the assessee may be allowed.

13. On the other hand, Ld. CIT-DR for the Revenue submitted that the assessment order was framed within the extended period allowed by the Income Tax Act. Therefore, assessment should not be time barred and assessment framed by the Assessing Officer should not be quashed. Apart from this, Ld. CIT-DR submitted before the Bench a written submission about the time limit, which is reproduced below:

“This case as selected for scrutiny through CASS and notice u/s 143(2) of the Act bearing No. ITBA/AST/S/143(2)/2018-19/1012656394(1) was issued on 27.09.2018 and duly served upon the assessee. Subsequently, order u/s 143(3) of the Act was passed on 30.09.2021 determining total income of Rs.57,44,33,240/-. The assessee as well as department both preferred the appeal before your honour. During the course of appellate proceedings, these company has filed additional ground on 17.3.2023, relevant part of the same which is reproduced as hereunder:

The assessee prefers an additional ground of appeal against an order passed by Ld. Commissioner of Income Tax (Appeal)-4, Surat dated 28/09/2022 on following amongst other grounds each of which are without prejudice to any other:-

1.0 On the facts and circumstances of the case and in law, the assessment order passed u/s 143(3) dated 30/09/20021 is bad-in-law, since had been passed beyond the limitation period specified u/s 153(1) of the Act;’

1. In the additional ground of the appeal the assessee company has taken shelter under time limits specified in the provision of Section 153(1) of the Act, the relevant part of the same is reproduced as hereunder:

[Time limit for completion of assessment, reassessment and recomputation. 153.(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

[Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “eighteen months” had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the

provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted.]

1.2 For counter argument for the additional grounds of appeal filed by the assessee, it is enunciated that the Govt. of India published Gazette of India in the title of ‘THE TAXATION AND OTHER LAWS RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT 2020 No.38 of 2020. By publishing this Gazette, certain dates were specified in section 3(1) of this Gazette. In this it was clearly mentioned that any time-limit has been specified in, or prescribed or notified under the specified Act which falls during the period from the 20th day of March-2020 to the December, 2020 or such other date after the 31st day of December, 2020. Further, this time-line was extended upto 30th September by issuing/publishing several notifications and press release. The details of this Gazette, notifications and press release is enlisted as under:

Sr.No.	Notification No.	Date extended upto	Remarks
1	THE TAXATION AND OTHER LAWS (RELAAXTION AND AMENDMENT OF CERTAIN PROVISIONS) ACT 2020 No.38 of 2020	Not applicable	Copy enclosed
2	Notification S.O 4805(E) [No.93/2020/F. No.370142/35/2020-TPL]	31.03.2021	Copy enclosed
3	Notification S.O 1703(E) [No.38/2021/F. No.370142/35/2020-TPL]	30.04.2021	Copy enclosed
4	Press Release dated 21.04.2021	30.06.2021	Copy enclosed
5	Notification S.O. 2580(E) [No.74/2021/F. No.370142/35/2020-TPL]	30.09.2021	Copy enclosed

2. In view of the above Notification and Press Release the time limit was extended passing the assessment order u/s 143(3) of the Act upto 30th September-2021. The Order in question was passed on 30.09.2021 which is in due time hence not barred from limitation period specified in section u/s 153(1) of the Act. Therefore, the additional ground taken by the assessee is not maintainable.

2.1 In the light of above facts, I pray before your honour that the additional ground taken by the assessee may kindly be **rejected**.”

14. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. The necessary facts of the case have already been discussed in paragraphs above. On examination of the facts and legal issue involved in the assessee`s case, we note that assessment/reassessment

framed/passed by the Assessing Officer is in violation of the provisions of the Act, that is, it is outside the time limit for completion of assessment u/s 153(1) of the Act, which was within 21 Months. In the assessee's case the assessment was not framed/passed by the Assessing Officer within 21 months from the end of the assessment year in which the income was first assessable, that is, on 31.12.2019. The Assessing Officer has passed/framed assessment order u/s 143(3) of the Act on 30.09.2021, which is beyond the time-limit for completion of assessment u/s 153(1) of the Act. The sequence of events narrated by Ld. Counsel is reproduced below:

Sequence of Events:

Return of income u/s 139(1)	06.10/2017
Notice u/s 143(2) served	27/09/2018
Time limit for completion of the assessment u/s 153(1) (within 21 months from end of assessment year in which the income was first assessable)	31/12/2019
Assessment order passed u/s 143(3)	30/09/2021

Therefore, assessment order framed by the Assessing Officer is *non est* in the eye of law, hence liable to be quashed.

15. We have examined these above narrated facts with help of copy of Income Tax Return (ITR) filed before us for A.Y. 2017-18, u/s 139(1) of the Act, wherein it is mentioned that ITR was filed by assessee u/s 139(1) on 06.10.2017. We have examined the notice under section 143(2) of the Act, dated 27.09.2018, issued by the Assessing Officer, which is placed in paper book page-2 filed by the assessee. We have also examined the assessment order framed by the Assessing Officer u/s 143(3) of the Act on 30.09.2021 (*vide intimation letter for order u/s 143(3) dated 01.10.2021, which is placed at page-3 of the paper book filed by the assessee*). We note that as per section 153(1) of the Act, the time limit for completion of assessment u/s 153(1) of the Act was within 21 months from the end of assessment year, in which the income was first assessable and in assessee's case it expires on 31.12.2019. Therefore, the Assessing Officer should have passed assessment order

u/s 143(3) of the Act on or before 31.12.2019. However, the Assessing Officer has passed/framed assessment order u/s 143(3) of the Act on 30.09.2021, which is beyond the time-limit for completion of assessment u/s 153(1) of the Act. Therefore, based on this factual position, clearly the assessment order framed by the Assessing Officer is time barred and hence liable to be quashed.

16. We do not agree with arguments advanced by the Ld. CIT-DR for the Revenue to the effect that assessee's case falls in the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 because "The Taxation and other Laws (relaxation and Amendment of Certain Provisions) Act, 2020 came into effect from 20.03.2020 to December, 2020 and further the time-limit was extended upto 30.09.2021. Therefore, we note that assessee's case does not fall even in the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 because "The Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 came into effect from 20.03.2020 to December, 2020 and further the time-limit was extended upto 30.09.2021, however in the assessee's case under consideration, the assessment must have been framed before 31.12.2019, which is prior to insertion of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Hence these amended provisions does not apply to the assessee under consideration.

17. We note that Constitution of India, vide Article 265 of the Constitution of India, which lays down that, "No tax shall be levied or collected except by authority of law". The Hon'ble Supreme Court of India has held that the provision under Article 265 of the Constitution of India is applicable not only for levy but also for the collection of taxes and the expression "**assessment**" within its compass covers both the aspects carried out by the executive functionary. Chottabhai Vs. Union of India 1962 SCR Supl.2 1006. Therefore, it is required that whole of the process of taxation must follow the procedures which are valid under the law and must adhere to law i.e. substantive one as well as procedural one too. Therefore, in other words it is

provided in the Constitution of India that every step should be taken to ensure that levy and collection of the taxes is strictly in accordance with law – not only substantive one but the procedural law, as well.

18. Time limit is laid down for dealing with the return of income filed by an assessee. The time limit for completion of assessment u/s 153(1) of the Act, in the assessee's case is within 21 months. In the assessee's case the assessment was not framed/passed by the Assessing Officer within 21 months from the end of the assessment year in which the income was first assessable, that is, on 31.12.2019. The Assessing Officer should follow the time limit prescribed under the Act, otherwise assessment order passed by him will not be recognized in the eye of law. Why the time limit in the Income Tax Act is so necessary? This is to ensure finality to all matters. Purpose behind time limit laid down in various provisions are:

(i) To promote Repose. In the context of limitation of actions, "**repose**" includes at least four distinct but overlapping concepts: (a) to allow peace of mind; (b) to avoid disrupting settled expectations; (c) to reduce uncertainty about the future; and (d) to reduce the cost of measures designed to guard against the risk of untimely claims.

(ii) Minimize Deterioration of Evidence. Another policy underlying statutes of limitation is the policy of avoiding deterioration of evidence. Like the policy of promoting repose, however, avoiding deterioration of evidence serves several distinct but overlapping purposes: (a) to ensure accuracy in fact finding; (b) to prevent the assertion of fraudulent claims; (c) to reduce the costs of litigation; and (d) to preserve the integrity of the legal system.

(iii) Place Assessee and Revenue on an Equal Footing. One of the most powerful policies supporting limitation of actions is the concern that the passage of time will not only result in the deterioration of evidence, but that it will also allow the Assessee to gain an unfair advantage over the Revenue or reverse situation may happen. Many cases have recognized that one of the

purposes of a limitation system is to avoid making it unreasonably difficult for defendants to answer the claims against them.

(iv) Encourage the Prompt Enforcement of Substantive Law. Arguably, "the central purpose of law is to guide behavior."

19. Conclusion: At the cost of repetition, we state that assessment/reassessment framed/passed by the Assessing Officer is in violation of the provisions of the Act, that is, it is outside the time limit for completion of assessment u/s 153(1) of the Act, which was within 21 months. In the assessee's case, the assessment was not framed/passed by the Assessing Officer within 21 months from the end of the assessment year in which the income was first assessable, that is, on 31.12.2019. The Assessing Officer has passed/framed assessment order u/s 143(3) of the Act on 30.09.2021, which is beyond the time-limit for completion of assessment u/s 153(1) of the Act. Therefore, assessment order framed by the Assessing Officer is in violation of the provisions of section 153(1) of the Act, which is bad in law, hence we quash the assessment order, dated 30.09.2021, framed by the Assessing Officer u/s 143(3) of the Act, being *void ab initio*.

20. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that assessment order framed by the Assessing Officer was not in accordance with law, therefore we have quashed the assessment order. As the assessment/ reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

21. We have adjudicated the technical/legal issue by taking the "lead" case in ITA No.351/SRT/2022 in the case of Antique Exim Pvt. Ltd. for A.Y 2017-18 and the same identical and similar facts are involved in other remaining appeals of different assessees, therefore, our instant adjudication shall apply *mutatis mutandis* to other appeals of assessees also.

22. In the combined result, these four different assessees' appeals (*in ITA No.432/SRT/2022, 350/SRT/2022, 431 & 351/SRT/2022*) are allowed whereas

Revenue's four appeals (in ITA Nos.436/SRT/2022, 346/SRT/2022, 440/SRT/2022 and 347/SRT/2022) are dismissed.

A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 24/04/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 24/04/2023
Dkp Outsourcing Sr.P.S.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Senior Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat