

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ,सुरत
 IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
 BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
 DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.313 & 314/SRT/2022 & CO No.09 & 10/SRT/2022
 (a/o ITA Nos.313 & 314/SRT/2022) (AYs 2012-13 & 2014-15)
 (Hearing in Physical Court)

Assistant Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aayakar Bhavan, Majura Gate, Surat-395001	Vs	M/s Harshit Gems Ltd. 106, Santok Diamond Appt. Haf Falia, Haripara, Surat-395003 PAN : AACCH 2246 L
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent / Cross-objector

ITA No.342 & 344/SRT/2022 (AYs 2012-13 & 2014-15)

Harshit Gems Ltd. 106, Santok Diamond Appt. Hat Falia, Haripara, Surat-395003 PAN : AACCH 2246 L	Vs	Assistant Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Prakash Jhunjhunwala, CA & Shri Pawan Jagetia, CA
राजस्व की ओर से /Revenue by	Shri Ritesh Mishra-CIT-DR
सुनवाई की तारीख/Date of hearing	09.06.2023
उद्घोषणा की तारीख/Date of pronouncement	13.06.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This bunch of four cross-appeals filed by Revenue as well as assessee and two Cross Objections (COs) in revenues appeals by assessee are directed against the separate

orders of Ld. Commissioner of Income-tax (Appeals)-4 Surat [for short to as Ld. CIT(A)] dated 16.08.2022, which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s 147 r.w.s. 263 of the Income Tax Act, 1961 dated 21.06.2021 and 23.04.2021 for assessment years (AYs) 2012-13 and 2014-15 respectively.

2. In all cross-appeals and assessee's COs, both parties have raised certain common and identical grounds of appeals, except variation of additions on account of bogus purchases, facts in all appeals are almost common, therefore, with the consent of parties, all the appeals and Cos were clubbed, heard together and are decided by consolidated order to avoid conflicting decisions.
3. At the time of hearing, the Ld. Authorized Representative (Ld.AR) for the assessee submits that he has instructed by assessee not to press both cross-appeals ITA No.342 and 344/SRT/2022 as he has raised similar grounds in his Cos. Thus, considering the submissions of ld AR for the assessee the appeals of assessee in ITA No(s).342 & 344/SRT/2022 are dismissed as not pressed.

4. The Ld. AR for the assessee further submits that assessment orders passed in both the years are barred by limitation and he has raised specific grounds of appeals. For assessment year 2012-13, the Ld. AR for the assessee submits that assessee filed its Return of Income (ITR for short) under section 139(1) on 29.09.2012. The case of assessee was re-opened under section 147 of the Act and notice under section 148 was served upon the assessee on 29.03.2019. In response to notice under section 148 of the Act the assessee filed its return of income on 27.04.2019. The time limit for completion of re-assessment order as per section 153(2) of the Act was upto 31.12.2019 *i.e.*, within nine months from the end of financial year in which the notice under section 148 was served. The assessing officer passed assessment order under section 143(3) rws 147 on 21.06.2022 which is beyond the time period prescribed under section 153(2) of the Act. Since the assessment order was passed beyond the time period prescribed under the Act and therefore the order is bad in law and subsequent action thereto is *void ab initio*.

5. For assessment year 2014-15, the Ld. AR for the assessee submits that for assessment year 2014-15, the assessee filed its return of income under section 139(1) on 24.09.2014 and initially assessment under section 143(3) was completed on 25.11.2016, which was revised by Ld. PCIT by invoking his power under section 263 of the Act on 08.03.2019. The time limit under section 153(3) for completion of re-assessment in terms of direction of Ld. PCIT was upto 31.12.2019 *i.e.*, within nine months from the end of financial year in which the order passed under section 263 of the Act by Ld. PCIT. The assessment order under section 143(3) r.w.s. 263 of the Act on 23.04.2021 passed by Assessing Officer, which is beyond the time period prescribed under section 153(3) of the Act. The Ld. AR for the assessee submits that provision of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) came into effect with effect from 20.03.2020 to December, 2020 and the time period for passing the order in both the matters have already been elapsed. Therefore, the benefit of provisions of Taxation and Other Laws (Relaxation and Amendment of

Certain Provisions) Act, 2020 is not applicable on the facts of the present cases.

6. On the other hand, Ld. CIT-DR for the Revenue supported the orders of Assessing Officer. The Ld. CIT-DR for the Revenue submits that assessee has raised objection in its Cos against the validity of reopening, however, at the time of submission before Ld. CIT(A) such grounds of appeal were not pressed for adjudication. Therefore, the assessee is now precluded raising such objection / grounds of its Cos.
7. In rejoinder submission, Ld. AR for the assessee submits that in assessee's Co he has raised the grounds of Co as additional ground of appeal. The fact relating the adjudication of additional ground of appeal are emanating from the order of lower authorities and no new fact is required to be brought on record for adjudication of such additional/ legal ground. The additional ground of appeal is purely legal in nature and can be raised at any stage if it goes root of the cause. To support his submission, Ld. AR for the assessee relied upon the decision of Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. vs. Commissioner of income-tax* (1998) 229 ITR 383 (SC).

8. We have considered the rival submissions of both the parties and have gone through the orders of authorities below. We find that assessee has raised following ground in its Co(s);

C.O.No.09/SRT/2023 (A.Y 12-13) in ITA No. 313/SRT/2022

The appellant prefers an cross objection appeal against an order passed by Ld. Commissioner of Income Tax (Appeal)-4, Surat dated 16/08/2022 on following amongst other grounds each of which are without prejudice to any other:-

Additional Ground

1.0 *On facts and circumstances of the case and in law, the reassessment order passed u/s 143(3) r.w.s 147 dated 21/06/2021 is non-est and bad-in-law, since had been passed beyond the limitation period specified u/s 153(2) as the notice u/s 148 had been served on 29/03/2019 and due date to pass the re-assessment order had expired on 31/12/2019;*

Other Grounds

2.0 *On fact and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of purchase, in part of Rs.28,28,621/- @ 2% of disputed purchase of Rs.13.14 crores;*

3.0 *The Ld. CIT(A), before confirming the disallowance of purchase of Rs.28,28,621/- @ 2% of disputed purchase ought to have further considered the understated vital facts, being;*

a) *The exhaustive documentary evidences such as purchase bills, own bank statements, confirmation of account, stock register, Quantity tally, corresponding sale bills, IT acknowledgment receipt and bank statement of the suppliers had been filed on record;*

b) *The entire payments had been made through banking channel by A/c payee cheques/RTGS;*

c) *The addition sustained on relying on the statement of 3rd party recorded at back of appellant and without allowing an*

opportunity of cross examination, inspite of written request, is incorrect;

d) The disallowance of purchase sustained without rejecting the appellant's books of accounts u/s 145(3) is not justified.

4.0 Without prejudice, the estimation of disallowance of disputed purchase could utmost be made in par to the normal profits disclosed on accepted genuine purchase.

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

C.O No.10/SRT/2023 (A.Y 14015) in ITA No. 314/SRT/2022

The appellant prefers an cross objection appeal against an order passed by Ld. Commissioner of Income Tax (Appeal)-4, Surat dated 16/08/2022 on following amongst other grounds each of which are without prejudice to any other:-

Additional Ground

1.0 On facts and circumstances of the case and in law, the re-assessment order passed u/s 143(3) r.w.s 263 dated 23/04/2021 is non-est and bad-in-law, since had been passed beyond the limitation period specified u/s 153(3) as the revision order u/s 263 was passed on 08/03/2019 and due date to pass the set aside assessment order had expired on 31/12/2019;

Other Grounds

2.0 On fact and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of purchase, in part of Rs.18,43,587/- @ 2% of disputed purchase of Rs.9.22 crores;

3.0 The Ld. CIT(A) before confirming the disallowance of purchase of Rs.18,43,587/- @ 2% of disputed purchase ought to have further considered the understated vital facts, being;

4.0 Without prejudice, the estimation of disallowance of disputed purchase could utmost be made in par to the normal profits disclosed on accepted genuine purchases.

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

9. We find that in both the appeals of revenues the assessee has filed Cross Objections and raised additional grounds that the assessment order is passed beyond prescribed period of limitation. All facts for ascertaining the date of passing the assessment order is available on record. Otherwise. Issuance of notice under section 148 or order of ld PCIT is not in dispute. Therefore, no additional fact or new fact, is required to be brought on record and facts emanating from the orders of lower authorities. Moreover, the additional ground raised by assessee in its Cos are purely legal in nature which goes to the root of the matter. Thus, keeping in view, the ratio of decision in the case of *National Thermal Power Co. Ltd.* (supra), hence the additional grounds raised in assessee's Cos are taken for adjudication.

10. Now turning to the facts the adjudication of additional grounds of assessee's Cos, we find that case of assessee for assessment year 2012-13 was reopened under section 147 of the Act. The notice under section 148 was served upon the assessee on 29.03.2019 as recorded in **para-2** of the assessment order. In response to notice under section 148

of the Act, the assessee filed its return of income on 27.04.2019 and assessment was completed on 21.06.2021. We find that time period for passing the re-assessment was up to 31.12.2019. Thus, the assessment order, is passed beyond the time period prescribed under section 153(2) of the Act. The Ld. CIT-DR for the Revenue objected against the submission of Ld. AR for the assessee and argued that assessee raised additional grounds in its Cos against the validity of re-opening and the same was not pressed before Ld. CIT(A). We find that additional grounds raised by assessee in its Cos is a separate and independent of the validity of re-opening. In the additional grounds raised by assessee in its COs, *wherein* the assessee has pleaded against the time period prescribed for passing the assessment order. We find that assessment order passed beyond the time period prescribed under section 153(2) of the Act. Hence, the assessment order is set aside / quashed and subsequent action initiated thereupon is *void ab initio*. Thus, additional ground of assessee's Co is allowed and resultantly the appeal filed by the Revenue is also dismissed as infructuous. As we have set aside the assessment order

on legal issue thus, adjudication on various other grounds in assessee's CO and in revenues appeal have become academic.

11. In the result, assessee's Co is allowed and Revenue's appeal is dismissed.

12. Now we coming to Revenue's appeal ITA No.314/SRT/2022 and assessee's CO No.10/SRT/2023. The assessee filed its ROI under section 139(1) on 24.09.2014. The case was selected for scrutiny and assessment under section 143(3) was completed on 25.11.2016 and assessment order dated 25.11.2016 was revised by Ld. PCIT vide his order dated 08.03.2019. The time limit for passing the assessment order giving effect was upto 31.12.2019. The Assessing Officer passed assessment order on 23.04.2021. Thus the assessment order is absolutely beyond time period prescribed under section 153(3) of the Act, therefore same is set aside / quashed and subsequent action initiated thereon as *void ab initio*. No contrary facts or law is brought to our notice to take other view. Hence, the ground of assessee's CO is allowed whereas appeal of Revenue has become infructuous and dismissed as such.

13.In the result, assessee's CO is allowed and Revenue's appeal is dismissed as infructuous.

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

Order pronounced in open Court on 13/06/2023.

Sd/-

(लेखा सदस्य/**Dr ARJUN LAL SAINI**)
ACCOUNTANT MEMBER

सूरत /Surat,

Dated: 13/06/2023

Dkp. Outsourcing Sr.P.S.

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-2, Surat
4. CIT
5. DR
6. Guard File

// True Copy //

Sd/-

(न्यायिक सदस्य **PAWAN SINGH**)
JUDICIAL MEMBER

By order

Sr.P.S/P.S /Assistant Registrar, ITAT, Surat