

**IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2718/MUM/2024
(A.Y. 2010-11)**

Ambalal Patel Land Developers Pvt. Ltd. 3 rd Floor, Prabhu Niwas, 99, Jawahar Nagar, Road No. 10, Goregoan (W), Mumbai-400062	v/s. बनाम	DCIT 12(1)(1) Aayakar Bhavan, M K Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AWAACA9849G		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Malav P. Sheth
Respondent by :	Shri Manoj Kumar Sinha

Date of Hearing	05.09.2024
Date of Pronouncement	18.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.]:-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-20/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 24.04.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2010-11.

2. The assessee has raised following grounds of appeal:

“A) Reopening of the assessment is bad in law and liable to be quashed

1. The Ld. CIT(A) (NFAC) erred in sustaining reopening of the assessment without appreciating that-

- a) there is no income that has escaped assessment;
- b) the reasons recorded are contrary to the facts of the case;
- c) there is no tangible material on the basis of which the assessment of the Appellant is reopened;
- d) the reopening is based upon borrowed satisfaction and is merely reason to suspect and not reason to believe;
- e) reopening of assessment is beyond 4 years and original assessment order was passed u/s.143(3) of the Act and there is no allegation of non- disclosure of material facts relevant for computation of income; and hence, the reopening of the assessment is bad in law and liable to be quashed.

Without prejudice to above, on merits:

B) Commodity trading income of Rs.15,67,121/- treated as unexplained income:

2. The Ld. CIT(A) (NFAC) erred in confirming the conclusion of the AO that the genuine business income derived from commodity trading as non-genuine and fictitious activity and thereby unexplained income without appreciating that the Appellant has carried out genuine business transaction and disclosed the same as business income in the return of income filed and hence, treating the genuine business income as unexplained income is unjustified and could not be upheld.

3. The Ld. CIT(A) (NFAC) failed to appreciate that there is no material or evidence relied upon to even remotely prove that the Appellant has carried out fictitious transaction and the Appellant was not given copies of assessment order, statement recorded, if any, as also opportunity to cross examine the broker inspite of specific request made and hence, the conclusion drawn at that the transactions of the Appellant are fictitious is wrong and incorrect and thus, the income earned from commodity trading could not be assessed as unexplained income.

C) Disallowing entire expenses debited to profit and loss account of Rs.22,05,153/- is unjustified and may be deleted:

4. The Ld. CIT(A) (NFAC) erred in disallowing entire expenses debited to the profit and loss account of Rs.22,05,153/- on the ground that no business is carried out since business income is treated as unexplained income without appreciating that the Appellant has carried on business activity in earlier and later years and duly accepted by the department and hence, the disallowance of entire expenses of Rs.22,05,153/- is unjustified and liable to be deleted.

5. Without prejudice to the above, the Ld. CIT(A) (NFAC) failed to appreciate that out of total expenses of Rs.22,05,153/-, the Appellant has itself disallowed expenses of Rs.8,59,936/- and thus, to this extent, there is double disallowance and hence, the expenses of Rs.22,05,153/- disallowed is unjustified and may be deleted.

6. The Ld. CIT(A) (NFAC) failed to appreciate that even assuming without accepting that no business activity was carried out in this year, even then the expenses incurred ought to be allowed since there is no closure of business and



business activity duly carried out in earlier and later years and hence, the disallowance of entire expenses is unjustified and liable to be deleted.

7. The Ld. CIT(A) (NFAC) further failed to appreciate that the Appellant being Corporate entity has to incur expenses in order to maintain the status of the Company and hence, the normal day to day expenses incurred ought to be allowed and thus, the entire disallowance of expenses is unjustified and liable to be deleted.”

3. The brief facts of the case are that the assessee company has furnished its return declaring total income of Rs. 53,06,102/- on 28.09.2010. The case was selected for scrutiny and an order u/s 143(3) was passed on 07.02.2013. Subsequently, a notice dated 24.03.2017 was issued for reopening of the assessment as the Ld. AO had received an information from Ahmedabad Tax Authorities stating that the assessee company had booked loss of Rs. 50,36,811/- through broker M/s. R. P. Jambuwalla on whom a search had been conducted by the Wing. Thereafter, the case was reopened and assessment order u/s 143(3) r.w.s. 147 was passed on 15.12.2017 vide which the AO treated the income of commodity trading amounting to Rs. 15,67,121/- as unexplained income and also added Rs. 22,05,153/- on account of disallowance of administrative expenses (Rs. 7,06,032/-) and depreciation on fixed assets (Rs. 14,99,121/-).

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) challenging the reopening of the assessment on legal grounds and also the additions made on merits. However, vide order dated 24.04.2024, the assessee's appeal was dismissed.



5. Aggrieved with the said order, the assessee is in appeal before us. At the outset, the Ld. AR has challenged the reopening of the assessment on the ground that the reasons recorded are contrary to the facts of the case and that there was no escapement of income.

6. We have heard the rival submissions on legal issue as well as on the merits. To begin with, the reopening of the assessment was made on the basis of information received from the Investigation Wing of the department. The Ld. AO has recorded the reasons for reopening on 24.03.2017. Relevant portion of reasons recorded is reproduced below:

“Ledger copy of Ambalal Patel land Developers Pvt. Ltd. in the books of R.P. Jambuwala for 01.04.2009 to 31.03.2011.

Date	Particulars	Vch Type	Debit (Rs.)	Credit (Rs.)
12.03.2010	Dr HDFC NMCE A/C - 00060340011472	Receipt	-	25,000.00
13.03.2010	Dr. NMCE Exchange Settlement A/C	Journal	-	3,59,914.29
15.03.2010	Dr. NMCE Exchange Settlement A/C	Journal	-	26,933.16
16.03.2010	Dr. NMCE Exchange Settlement A/C	Journal	-	11,12,011.93
17.03.2010	Dr. NMCE Exchange Settlement A/C	Receipt	27,506.06	-
18.03.2010	Dr HDFC NMCE A/C - 00060340011472	Payment	10,00,000.00	-
22.03.2010	Dr. NMCE Exchange Settlement A/C	Journal		92,458.56
23.03.2010	Dr HDFC NMCE A/C - 00060340011472	Payment	5,88,811.88	
			16,16,317.94	16,16,317.94

4. This proves that the assessee company had booked losses to the extent of Rs. 15,63,811/- to reduce their profit in its books of accounts through broker R.P.Jambuwala by mis-using NMCE platform during the AY 2010-11 which



is undisclosed income of the assessee as per the provisions of section 68 of the Act for the AY 2010-11”

7. Thus, the reopening was based on the assumption that the assessee had booked losses amounting to Rs. 50,63,811/- to reduce its profits. However, the assessee had actually declared profit from trading on NMCE and shown his income in the return as under:

i.	Commission	-	5000/-
ii.	Rent	-	72,55,955/-
iii.	Dividend	-	30/-
iv.	Profit from trading Comm. Exch.	-	15,67,121/-

8. Thereafter, during the course of assessment proceedings, the AO also observed that the profits has been shown from the trading of commodity expenses and then proceeded to treat the amount as fictitious profits booked through M/s. R. P. Jambuwala while finalizing the assessment.

9. From the above, it is clear that the reopening was based on wrong facts. The basis of reopening as per the reasons recorded fictitious losses booked in order to set off against the income was incorrect. Since the assessee had actually shown income of Rs. 15,67,121/- and not loss of Rs. 15,63,811/-. We, therefore, hold that the reopening was without application of mind and reasons recorded was factually incorrect. As such the action of the AO in reopening of the assessment u/s 147 was not justified. Accordingly, the reopening being bad in law, the proceedings u/s 147 are hereby quashed.



10. In view of the fact that the legal grounds succeed, rest of the grounds relating to merits are rendered academic in nature and hence not being decided.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.11.2024.

AMIT SHUKLA

(न्यायिक सदस्य/JUDICIAL MEMBER)

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 18.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

