

**THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH**

**Before Ms. Suchitra Kamble, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 977/Ahd/2024  
Assessment Year 2012-13**

Bhavani Ceramics Pvt. Ltd. B-1, KB Complex, Dairy Road, Mehsana, Mehsana-384002 PAN: AABCB2030R (Appellant)	Vs	The ACIT, Mehsana Circle, Mehsana (Respondent)
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**Assessee by: Shri Bandish Soparkar, A.R.**  
**Revenue by: Shri Rameshwar P Meena, Sr. D.R.**

Date of hearing : 22-12-2025  
Date of pronouncement : 26-02-2026

**आदेश/ORDER**

**Per Suchitra Kamble, Judicial Member:**

This is an appeal filed against the order dated 18-03-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

*"The reopening of case and Assessment Order itself was bad in law, but the Hon'ble CIT(A) did not deal with this aspect at all while passing an Order in spite of arguing this point vehemently during virtual hearing. There was change of opinion by the assessing officer on three occasions before making an addition of Rs. 45,08,517. The Order u/s 143 read with 147 was passed without following principles of justice in as much as neither the third party statement of Elite Chemicals taken by department's Investigation Wing, Jodhpur, was ever supplied to the assessee, nor a cross examination of said 'third party' was allowed to the assessee. A sum of Rs. 45,08,517/- was disallowed by CIT(A) based on wrong assumption about local business practice and on*

*totally different pretext of lack of evidences after ignoring assessee's submission containing all evidences and supporting documents.*

*Total Tax Effect: 31,34,440/-”*

3. The assessee is engaged in the business of manufacturing of Sodium Silicate. The assessee filed its original return of income for year under consideration on 30-09-2012 declaring income at Rs. 52,77,040/-. The case of the assessee was selected for scrutiny and order u/s. 143(3) was passed on 12-03-2015 at the assessed income of Rs. 60,27,044/-. The case of the assessee was reopened as the assessee claimed excess expenses to the extent of Rs. 45,08,517/- on account of transportation of sales. The notice u/s. 148 of the Act was issued to the assessee on 29-03-2019 after recording the reasons and obtaining prior approval of the Pr. CIT. In response to the notice u/s. 148 of the Act, the assessee filed return of income on 26-04-2019 declaring total income of Rs. 60,27,050/-. The reasons recorded for initiation of the proceedings u/s. 147 was duly served upon the assessee vide letter dated 14-06-2019. The assessee filed objection to the reopening vide letter dated 08-07-2019. The objections of the assessee was disposed of vide order dated 09-09-2019. After issuing statutory notices and taking the details and responses filed by the assessee on record, the Assessing Officer observed that during the year under consideration, the assessee paid commission on sale to M/s. Elite Chemical Jodhpur. M/s. Elite Chemical Jodhpur in response to summon stated that they have received only commission on sale of goods. There was no actual purchase and sale of the goods of the

assessee upto 31-03-2013. The goods were used to sell at higher prices than it was sent from the assessee company. The difference of sale at higher price was explained as payment of freight, service tax and VAT. The Assessing Officer observed that the assessee has not proved these expenses through supporting documentary evidences such as bills/vouchers in support of claiming genuineness of expenses of transportation regarding sale. Thus, in absence of evidences, the Assessing Officer disallowed Rs. 45,08,517/- in respect of deduction on account of transportation of sales.

4. The assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the notice u/s. 148 was issued after expiry of four years from the end of the relevant assessment year. The ld. A.R. submitted that the Assessing Officer is merely acting mechanically on the information supplied by the Investigation Wing Jodhpur that M/s. Elite Chemical on issue of summon stated that they have not made any sale and purchase upto 31-03-2013 and arrived at a conclusion on the basis of third party that the assessee has debited commission which is not genuine. The ld. A.R. submitted that the reopening itself is bad as original return of income was filed on 30-09-2012. The order u/s. 143(3) was passed on 12-03-2015 and the notice u/s. 148 was issued on 29-03-2019. The assessee submitted the following date chart:

Date	Particulars
30.09.2012	Original ROI filed @ 52.77 lakhs Annual Report
01.10.2014 05.03.2015	Notice at the time of Scrutiny and Replies
12.03.2015	143(3) order @ 60.27 lakhs
15.02.2018 26.02.2019 19.03.2019 22.03.2019	Notice u/s 154 is issued Order u/s 154 is passed Appeal is filed against 154 order <u>154 order is withdrawn specifically noting that</u> 1.Statement of Praveen Agarwal is recorded on 27.01.2014 2.The Statement requires investigation/inquiry to examine authenticity
29.03.2019	148 notice is issued
14.06.2019	Reasons supplied noting the very same reason for which 154 was passed and subsequently withdrawn for want of investigation/inquiry
14.06.2019	143(2) notice
24.07.2019	142(1) notice
31.07.2019	Objections filed
09.09.2019	Objections disposed off
09.09.2019	142(1) notice
12.09.2019	Reply
07.11.2019	Notice u/s 142(1)
12.11.2019	Reply Annexures
25.11.2019	143(3) rws 147 order @ Rs.1.05 crores
27.09.2021	CIT(A) submissions Elite Chemicals Ledger Additional evidences
18.03.2024	CIT(A) dismissed the appeal

The ld. A.R. submitted that there was a change of opinion which is not applicable for reopening u/s. 148 of the Act. The ld. A.R. relied upon the decision of Niko Resources Ltd. 51 taxman.com 568 (Guj) and Adani Enterprise 101 taxman.com 91 (Guj). The ld. A.R. further submitted that the statement of Mr. Praveen Agarwal was recorded on 27-01-2014 i.e. prior to the completion of assessment u/s. 143(3) and thus there was no fresh tangible material with the Assessing Officer. Therefore, there was no failure on the part of the assessee to disclose all the income. The ld. A.R. relied upon the following decisions:

- i) *Shefali Chintan Parikh [2023] 156 taxmann.com 181 (Guj)*
- ii) *Jivraj Tea Ltd. 34 taxmann.com 199 (Guj)*

*iii) Ashwin Khimchand Jhakaria*

The ld. A.R. further submitted that there are reasons that notice u/s. 154 was withdrawn on 22-03-2019 for want of inquiry/investigation. Then, how did the Assessing Officer record reason to believe on the same ground and issue fresh notice u/s. 148 on 29-03-2019. This is not permissible as per the decision of Hon'ble Talangana High Court in case of Millikarjuna Rice Industries 151 taxmann.com 59. The ld. A.R. submitted that no income has escaped and in fact the assessee is already disallowed expenditure to the extent of Rs. 7.50 lacs as per the proceedings u/s. 143(3) of the Act. The ld. A.R further submitted that the assessee was not provided statement of Mr. Praveen Agarwal and also not given any opportunity to cross-examine time. The ld. A.R. submitted that the CIT(A) has not adjudicated the ground of reopening and has not gone into show cause notice for enhancement in addition for other parties. The CIT(A) has also not admitted the additional evidences submitted by the assesses.

6. The ld. D.R. submitted that the reopening was valid as the notice u/s. 154 was issued on 15-02-2018 and order u/s. 154 was passed on 26-02-2019. Though the said order was withdrawn by 22-03-2019, the notice u/s. 148 was validly issued. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the facts remains that the assessee filed original return of income and the assessment was completed u/s. 143(3) on 12-03-2015 wherein the assessee has disallowed the total net transport expenditure to the extent of Rs. 7.5 lacs. This fact was not at all taken into consideration by the Revenue. The reopening was on the very same basis and there was no separate reasons recorded. Thus, the reasons recorded are merely change of opinion and cannot be the criteria for reopening the case u/s. 147 of the Act. The reasons are also invalid because notice u/s. 154 was withdrawn on 22-03-2019 which was on the very same basis for reopening the assessee's case. In fact, from the perusal of the records, it can be seen that there was no income escaped as the expenditure claimed by the assessee has been substantially taken into account. The disallowed portion of the total transport expenditure is to the extent of Rs. 7.5 lacs. Thus, CIT(A) ought to have decided the legal point. Thus, on the legal point itself, the assessment does not survive and hence the reopening is invalid and bad in law.

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

Order pronounced in the open court on 26-02-2026

**Sd/-**  
**(Narendra Prasad Sinha)**  
**Accountant Member**  
**Ahmedabad : Dated 26/02/2026**

**Sd/-**  
**(Suchitra Kamble)**  
**Judicial Member**

a.k.

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद