

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

TAX APPEAL NO. 254 of 2012

**ADANI AGRO PVT LTD....Appellant(s)****Versus****DEPUTY COMMISSIONER OF INCOME TAX - CIRCLE - 1....Opponent(s)**

Appearance:

MR SAURABH N SOPARKAR, SR ADVOCATE WITH MR BANDISH S SOPARKAR  
WITH MRS SWATI SOPARKAR, ADVOCATE for the Appellant(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MS JUSTICE SONIA GOKANI**

**Date : 10/12/2012****ORAL ORDER**

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal is filed by the assessee against the decision of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 21.11.2011 as ordered to be corrected by corrigendum dated 10.1.2012.
2. For the assessment years 2006-2007, the assessee had claimed set off of certain gain on sale of shares against unabsorbed speculation loss. The Assessing Officer had granted such claim, according to the Commissioner, without proper inquiry. The Commissioner therefore, took the order of the assessment under revision under section 263 of the Income Tax Act. After giving an opportunity of hearing to the assessee, the Commissioner remanded

the proceedings to the Assessing Officer for verification of certain details before accepting the assessee's claim as noted above. He observed as under:

"7. In view of the above referred facts and legal position it is held that the assessment order u/s 143(3) dated 31.12.2008 passed by the Assessing Officer for the A.Y. 2006-07 in the case of the assessee is erroneous and prejudicial to the interest of Revenue. In the interest of justice the above referred issue needs to be set aside to the file of the Assessing Officer for re-adjudication. Accordingly, the above referred assessment order dated 31.12.2008 is set aside with direction that the Assessing Officer should verify whether the assessee is eligible to avail set off brought forward speculation loss pertaining to the A.Y. 2001-02 from the profit earned this year in view of the amended provisions of Sub-section(4) of Sec. 73 of the I.T. Act, 1961. Further, regarding the issue of sale of shares as per para-5 to be treated as Short Term Capital Gain, is also set aside to the file of the Assessing Officer for re-adjudication, as the details and explanations submitted by the assessee during the course of proceedings u/s 263 of the Act were not adjudicated by the Assessing Officer.

8. Accordingly, the above referred assessment order u/s143(3) dated 31.12.2008 is set aside to the Assessing Officer who will adjudicate on the issues of allowance of set off brought forward speculation loss pertaining to A.Y. 2001-02 against the speculation profit earned this year and whether the profit earned by the assessee on sale of shares of Adani Wilmar and Independent News Services P. Ltd. is Long Term Capital Gain or not, afresh and decide the same as per law. The Assessing Officer will provide sufficient opportunities to the assessee of being heard."

3. Aggrieved by such order of the Commissioner, the assessee approached the Tribunal. Tribunal dismissed the assessee's appeal holding that the order was not erroneous and further clarifying as under :

"However we make it clear that the Assessing Officer

shall not draw any adverse inference from the order of the ld. CIT, but pass appropriate order as per law and merit after considering all the submissions and materials produced by the assessee and also after taking into consideration of all the relevant case laws cited. It is ordered accordingly."

4. Having heard learned senior counsel Shri S.N. Soparkar for the appellant, we do not find any question of law arises. The Commissioner after recording cogent reasons found that the order passed by the Assessing Officer was erroneous and also prejudicial to the interest of the Revenue. He was therefore, on facts of the case entitled to exercise revisional powers under section 263 of the Act. While doing so, he remanded the proceedings before the Assessing Officer for full inquiry and fresh consideration. He had not given any specific directions to consider the issue in particular manner. In any case, the Tribunal further clarified this issue in the impugned order as can be seen from the noted portion of the order itself.

5. In the result, Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

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