

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 931/Ahd/2011

निर्धारण वर्ष/Assessment Year: 2003-04

Deputy Director of Income-tax (Exemption), Ahmedabad	V/s.	Naroda Enviro Project Ltd., Plot No.512-515, Phase1, GIDC Naroda, Ahmedabad PAN : AAFN 9138 D
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri Dinesh Singh, Sr. DR.
Assessee(s) by :	Shri S.N. Soparkar, AR

सुनवाई की तारीख/Date of Hearing : 10/06/2015

घोषणा की तारीख /Date of Pronouncement: 19/06/2015

आदेश/O R D E R

PER G.D. AGRAWAL, VICE PRESIDENT:

This is an appeal filed by the Revenue and is directed against the order of the Ld. Commissioner of Income-tax(Appeals)-XXI, Ahmedabad dated 12.01.2011, pertaining to Assessment Year 2003-04.

2. In this appeal by the Revenue following ground is raised:-

1. *The Ld. CIT(A) has erred in law and on facts in directing to delete the addition of Rs.1,13,13,831/- being provision for bad and doubtful debt in computation of book profit u/s 115JB of the I.T. Act, 1961.*

3. At the time of hearing before us, it is submitted by the Id. Counsel for the assessee that under Rule 27 of the ITAT Rules, the respondent is permitted to support the order of the CIT(A) on any ground which is decided against him. He stated that before the CIT(A) the assessee has

challenged the validity of reopening of assessment. The CIT(A) discussed the assessee's contention; however, ultimately did not agree with assessee's contention and decided the appeal of the assessee on merit, deleting the addition made by the Assessing Officer. Since the entire addition made by the Assessing Officer was deleted by the CIT(A), the assessee has not preferred any appeal. However, now the assessee chooses to support the order of the CIT(A), relying upon Rule 27 of the ITAT Rules. He submitted that in the statement of facts furnished by the Assessing Officer alongwith memo of appeal has mentioned that the case was reopened u/s 147 on the basis of audit objection raised by the Revenue audit. He stated that the Hon'ble jurisdictional High Court in the case of Raajratna Metal Industries Ltd. vs. ACIT, [2014] 49 taxmann.com 15 (Gujarat) has held that the reopening of assessment solely on the ground of audit objection is not valid. He, therefore, submitted that once the assessment order itself is not valid, the addition made to the book profit cannot survive. He, therefore, submitted that since the assessee has not filed the appeal or cross-objection against the order of the CIT(A), the assessee cannot claim the quashing of the assessment order, but the only prayer of the assessee is to sustain the order of the CIT(A).

4. The Id. Departmental Representative, on the other hand, relied upon the order of the Assessing Officer and also on the decision of Hon'ble Delhi High Court in the case of New Light Trading Co. vs. CIT, 256 ITR 391, wherein the Hon'ble Delhi High Court has held that audit objection on the point of fact can be a valid ground for re-opening of assessment.

5. We have carefully considered the argument of both the sides and perused the material placed before us. In the statement of facts furnished by the Assessing Officer, paragraph 1 reads as under:-

“The return of income for the A.Y. 2003-04 filed by the assessee with ITO, Ward-5(1) Ahmedabad on 25-11-2003 declaring NIL. The case was reopened u/s 147 of the I.T. Act on the basis of audit objection raised by the revenue audit after obtaining the approval of the Commissioner of Income Tax. There after the case was transferred to the DDIT(E) Ahmedabad. The assessee trust is a limited company incorporated in October 1995 and converted into a company under section 25 of the Companies Act 1956 w.e.f. 25.12.2005.”

6. Thus, the Assessing Officer has clearly mentioned that the case was reopened u/s 147 of the Income-tax Act on the basis of audit objection raised by the Revenue audit after obtaining the approval of the Commissioner of Income-tax. The Hon’ble jurisdictional High Court considered the validity of reopening of assessment u/s 147 in the case of Raajratna Metal Industries Ltd (supra) and held that the reopening of assessment on the basis of audit objection is not permissible. The relevant observation in this regard in paragraph 9 of the order reads as under:-

“9. In view of the above and for the reasons stated herein above, present petition succeeds on the aforesaid ground alone, i.e. the assessment was reopened solely on the ground of audit objections raised by the audit party. Consequently, the impugned reassessment proceedings are hereby Quashed and set aside. Further, it is made clear that we have expressed no opinion with respect to the grounds of objections raised and the impugned reassessment proceedings are quashed and set aside solely on the aforesaid one ground only. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.”

7. The Id. Departmental Representative, on the other hand, has relied upon the decision of Hon’ble Delhi High Court in the case of New Light Trading Co. vs. CIT, 256 ITR 391. However, the ITAT, working in the State of Gujarat, is bound by the decision of Hon’ble Gujarat High Court which is the jurisdictional High Court. The decision of the jurisdictional High Court is binding upon all the authorities working within the jurisdiction of the

Hon'ble Gujarat High Court. Therefore, we, respectfully following the above decision of Hon'ble jurisdictional High Court, hold that the assessment for the year under consideration was not validly reopened u/s 147. Be that as it may be, the assessee has not filed any appeal or cross-objection against the order of the CIT(A). Under rule 27, the respondent may support the order appealed against on any of the grounds decided against him. Therefore, under Rule 27, the maximum relief assessee can get is the sustenance of the order of the CIT(A). In view of above, we, relying upon the decision of the Hon'ble jurisdictional High Court in the case of Raajratna Metal Industries Ltd (supra) and considering Rule 27 of the ITAT Rules, uphold the order of the CIT(A) and dismiss the appeal filed by the Revenue.

8. In the result, the Revenue's appeal is dismissed.

Order pronounced in the Court on 19th June, 2015 at Ahmedabad.

Sd/-

**(S. S. GODARA)
JUDICIAL MEMBER**

Ahmedabad; Dated 19/06/2015

By T., PS

Sd/-

**(G.D. AGRAWAL)
VICE-PRESIDENT**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

TRUE COPY

अप/सहायक पंजीकर (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad