

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 396 of 2018**

=====

VARDAN PETROCHEMICALS PRIVATE LIMITED,  
Versus  
ASSISTANT COMMISSIONER OF INCOME TAX

=====

Appearance:

MR TUSHAR P. HEMANI WITH MS VAIBHAVI K PARIKH(3238) for the  
PETITIONER(s) No. 1  
for the RESPONDENT(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI  
and  
HONOURABLE MR.JUSTICE B.N. KARIA

**Date : 30/04/2018**

**ORAL ORDER**  
**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The assessee is in appeal against the judgment of the Income Tax Appellate Tribunal dated 22.09.2017 raising the following question of law for our consideration;

Whether the Income Tax Appellate Tribunal ought to have held that when on the ground on which the reopening of assessment is based, no additions are made by the Assessing Officer in the order of assessment, he cannot make additions on some other grounds which did not form part of the reasons recorded by him ?

2. The brief facts are as under;

The appellant-assessee is a Private Limited

Company and is engaged in the business of manufacture of chemicals. For the A.Y. 2003-04, the assessee had filed the Return of Income declaring total loss of Rs.43.87 lakhs (rounded off). This Return was accepted without scrutiny. Subsequently, the Assessing Officer issued notice of reopening of assessment. His reason for reopening the assessment was that there was discrepancy in the stock between the assessee's books of accounts and stock statement given to the bank. The assessee appeared before the Assessing Officer and tried to explain that the discrepancy was on account of the stock in transit. The Assessing Officer, however, proceeded to frame re-assessment. By an order dated 20.03.2006, he added a sum of Rs.35.67 lakhs as assessee's undisclosed income. In the process, he rejected the assessee's books of accounts. He did not accept the assessee's declaration of loss of raw-material during manufacturing process. He recorded that the assessee had declared excessive loss as compared to the normal range of evaporation reported in the trade. He adjusted the assessee's Gross Profit rate and on this count, made an addition of Rs.38.93 lakhs (rounded off). In view of this global addition, he made no separate addition on account of excessive loss reported by the assessee. Eventually, the matter reached the

Tribunal. Before the Tribunal, one of the main contentions raised by the assessee was that when the Assessing Officer had not made any addition on the reasons cited for issuing the notice of reopening of assessment, he could not have made addition on any other score. The assessee relied on the decision of the Division Bench of this Court in the case of CIT v. Mohmed Juned Dadani reported in [2013] 355 ITR 172 (Guj). The Tribunal, however, did not accept this contention holding that the Assessing Officer had not made separate addition on the reasons recorded in light of the general addition of Rs.31.98 lakhs made under the revised Gross Profit ratio. It is this judgment that the assessee has challenged in the present Tax Appeal.

3. The prime contention of the assessee before us was also based on the ratio of the judgment of this Court in Mohmed Juned Dadani's case (supra). We have perused the documents on record. We are unable to accept this contention. This Court, in the said judgment, has held that in the reassessment proceedings, if the Assessing Officer makes no addition on the reasons recorded by him for reopening the assessment, he, thereafter, cannot make additions on other grounds. In the present case, the reason for reopening the assessment was described in the

stock reported by the assessee in its books of account, as compared to the stock reported to the bank. The assessee's contention before the Assessing Officer was that this discrepancy was on account of transit of stock. Contrary to what was canvassed before us, we do not find that the Assessing Officer accepted such explanation of the assessee. He merely recorded it and thereafter, examined the materials on record.

4. Two things emerge from such exercise; firstly, he did not accept the assessee's declared evaporational loss of raw materials and secondly, he noticed that the assessee was unable to produce the books of accounts on the ground that the Sales Tax Department had impounded them. He, therefore, proceeded to frame the best judgment assessment. He was of the opinion that the Gross Profit shown by the assessee was low. He made adjustments by citing reasons, which resulted into the additions being made. No where can we see that the Assessing Officer accepted the assessee's contention that the stock discrepancies stood explained. The Assessing Officer noted that in view of the Gross Profit addition, the evaporational loss has not been separately added. The Gross Profit addition, being global in nature, would also include the stock discrepancy. No where do we find that the

Assessing Officer dropped his prime objection to the stock discrepancy cited as a reason for reopening the assessment.

5. The rest of the issues are anyway sent back to the Assessing Officer. No question of law arise. Hence, the Tax Appeal is dismissed.

**(AKIL KURESHI, J)**

**(B.N. KARIA, J)**

PRAVIN KARUNAN