

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
[Conducted through E-Court at Ahmedabad]

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

Sl. Nos.	ITA No(s)	Assessment Year (s)	Appeal(s) by	
			Appellant	Respondent
1.	13/Raj/2018	2009-10	Prakash Rameshbhai Nanda Hasmukh Kunj 50, Digvijay Plot Jamnagar PAN:ABFPN 6778A	The Income Tax Officer Ward-3(1) Jamnagar
2.	14/Raj/2018	2010-11	-do- assessee	-Revenue-
3.	15/Raj/2018	2011-12	-do- assessee	-Revenue-
4.	16/Raj/2018	2012-13	-do- assessee	-Revenue-

Assessee by :	Shri Chetan L.Agrawal, AR
Revenue by :	Smt. Usha N. Shrote, Sr.DR

सुनवाई की तारीख / Date of Hearing	14/02/2018
घोषणा की तारीख/ Date of Pronouncement	01/ 03/2018

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed by the assessee against the respective orders of the Commissioner of Income Tax(Appeals)-Jamnagar [CIT(A) in short] arising from the respective assessment orders passed under s.147 r.w.s. 143 of the Income Tax Act, 1961

(hereinafter referred to as "the Act") concerning Assessment Years 2009-10, 2010-11, 2011-12 & 2012-13 respectively as tabulated below:-

Sr.No.	Asstt. Year	CIT(A)'s order dated	AO's order dated passed u/s.147 r.w.s.143
1.	2009-10	18/12/2017	07/12/2016
2.	2010-11	18/12/2017	07/12/2016
3.	2011-12	18/12/2017	07/12/2016
4.	2012-13	18/12/2017	07/12/2016

2. Since all the appeals relate to the same assessee spanning over different assessment years involving similar issues and similar facts, all the appeals have been heard together and are being disposed of by this common order.

3. We shall first take up the appeal of the assessee in ITA No.13/Rjt/2018 concerning AY 2009-10 for adjudication purposes.

ITA No.13/Rjt/2018 – AY 2009-10

4. The ground of appeal raised by the assessee reads as under:-

1. *Ld.CIT(A) had erred in law as well as on fact in confirming addition of Rs.15,45,135 made u/s.68 by ld.AO being entire cash deposited in bank account of appellant.*

He ought to have restricted addition either to peak balance or to estimate reasonable percent of profit embedded in gross

turnover made in said bank account considering facts and circumstances of the case.

5. The assessee has also raised additional grounds of appeal in terms of Rule 11 of the ITAT Rules 1963 which reads as under:-

1. Ld. AO had erred in law as well as on facts in passing order u/s.143(3) r.w.s.147 without issuing mandatory notice u/s.143(2) of the Act.

6. As can be noticed, the assessee has raised legal ground challenging the validity of assessment passed under s.143(3) r.w.s.147 by way of additional grounds of appeal. Since the issue is legal and goes to the root of the matter, we shall first dispose of the same.

7. Addressing the legal ground, the Ld.AR for the assessee Mr.Chetan L.Agrawal submitted that the case was reopened under s.147 by issuance of notice on 23/03/2016 under s.148 of the Act. In this connection, the Ld.AR adverted our attention to the assessment order and pointed out that there is no reference to the issuance of notice under s.143(2) of the Act while initiating reassessment proceedings in consequence of such notice issued under s.148 of the Act. Therefore the jurisdiction assumed for completion of reassessment under s.147 pursuant to notice under s.148 is bad in law. The Ld.AR vehemently contended that the assessment finalized under s.143(3) r.w.s.147 is not

sustainable in the absence of fulfillment of mandatory requirement of issuance of notice under s.143(2) of the Act. The Ld.AR also referred to the certified copy of the order-sheet for reassessment to support its contention that no notice under s.143(2) of the Act was ever issued before completion of the reassessment proceedings. The Ld.AR accordingly submitted that in view of the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Sukhini P.Modi reported at (2014) 367 ITR 682, the impugned reassessment order passed under s.143(3) r.w.s.147 appealed against, requires to be quashed. The Ld.AR also supported its case by the decision of the Hon'ble Delhi High Court in the case of Pr.CIT vs. Shri Jai Shiv Shankar Traders (P)Ltd. (2015) 64 taxmann.com 220 (Delhi) and CIT vs. Panorama Builders (P) Ltd. (2014) 45 taxmann.com 159 (Guj.) to buttress the aforesaid proposition.

8. Notwithstanding and without prejudice, addressing the merits, the Ld.AR adverted our attention to the reassessment order and submitted that the basis of addition of Rs.15,45,135/- towards unexplained cash deposit is observation of Assessing Officer (AO) that certain deposits were made with ICICI Bank Jamnagar. The Ld.AR submitted that the cash deposits were made in the course of trading business of brass parts where the cash deposits were made as received from customers from time to time and were also withdrawn for utilization in the business. The Ld.AR submitted that both the lower authorities failed to appreciate such

cash deposits of very small amounts arising in the course of business over a period of time cannot be regarded as income of the assessee outright. The cash so deposited were simultaneously withdrawn and re-deposited subsequently in tune with trading activities. Thus, the subsequent deposits were made out of withdrawals from the earlier deposits and it is a case of reutilization of the same cash generated in the trading business. The Ld.AR accordingly submitted that in view of the long line of judicial precedents, a fair profit estimates (as arise in trading business where the margins are wafer thin) at best is plausible. The Ld.AR submitted that the profit in such business hardly ranges between 1% to 3% of such alleged unaccounted sales.

9. In summation, the Ld.AR submitted that the reassessment order itself is required to be quashed due to incurable legal defect and without prejudice, on merits, a reasonable fair estimate of gross profit only is plausible. The Ld.AR accordingly pleaded for suitable relief.

10. The Ld.DR, on the other hand, relied upon the orders of the authorities below.

11. We have carefully considered the rival submissions and perused the orders of the authorities below and material placed on record.

12. At the outset, we find substantial merit in the legal plea raised by the assessee by way of additional ground of appeal. The assessee has claimed that no notice under s.143(2) of the Act has been issued to the assessee to enable the revenue to frame the reassessment order under s.143(3) rws 147 of the Act. In this regard, we find no reference to the issuance of such notice under s.143(2) of the Act either in the reassessment order or in the order-sheet maintained by the AO listing the sequence of events. The revenue could not bring anything to contradict the allegation of non-issuance of notice. Thus, in view of the decision of the Hon'ble Gujarat High Court in the case of Sukhini P.Modi (supra), the reassessment order passed under s.143(3) r.w.s.147 of the Act is without authority of law and thus requires to be quashed. Consequently, additional ground raised by the assessee challenging the validity of the reassessment order is allowed.

13. Without prejudice and for the completeness of the redressal of grievances, we also turn to the grievances raised by the assessee on merits.

14. On perusal of the assessment order and the first appellate order, we notice that the assessee has consistently taken a plea that the cash deposits have been recycled after withdrawals for the purposes of its trading business in brass parts. It is also an admitted position by the

revenue that the deposits made in the bank are alleged to be unaccounted sales of the assessee. This being so and having regard to the nature of trade business, some reasonable estimates towards profits arising from such unaccounted sales is required to be made as per several decisions of the Hon'ble High Court as well as Coordinate Bench of Tribunal viz:

- (i) CIT vs. President Industries (2002) 258 ITR 654 (Guj)
- (ii) CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 (MP)
- (iii) M/s.Balkrishna Dwarkadas vs. ITO in ITA No.923/Rjt/2010 order dated 01/01/2010 Rajkot Bench.
- (iv) Shri Rakesh S.Chhapparwal (HUF) vs. ITO in ITA Nod.502 & 503/Rjt/08 order dated 28/08/2009, Rajkot Bench.

15. On perusal of the precedents noted above, we are inclined to agree with the contention of the assessee in principle. The issue of profits on unaccounted sales requires to be seen in factual perspective qua the trading business run by the assessee. The entire amount of unaccounted sales/deposits thus cannot thus be added to the total income of the assessee as wrongly done by the revenue authorities. Many of the precedents in such facts situation have restricted the additions to 1 to 2% of the unaccounted sales holding the same to be reasonable. Some other have estimated profits @ 5% of the unaccounted sales. It is common knowledge that trading business generates comparatively lesser margins of profits. In our view, a profit estimate @ 5% would be just and fair to meet the ends of justice. Therefore, when adjudicated on merits, we do

not see any possibility of additions beyond 5% of the alleged unaccounted sales/cash deposits in the given set of facts. Be it as it may, in view of the reassessment order itself being held to be bad in law, the scaling down of additions on merits does not require any excessive deliberation.

16. In the result, appeal of the assessee in ITA No.13/Rjt/2018 for AY 2009-10 is allowed.

17. We shall now turn to remaining appeals in ITA Nos.14/Rjt/2018, 15/Rjt/2018 and 16/Rjt/2018 relevant to AYs 2010-11, 2011-12 & 2012-13 respectively as captioned above.

18. We find that the facts involved in remaining all these appeals are broadly similar. In view of the factual similarity, the findings arrived in ITA No.13/Rjt/2018 for AY 2009-10 will apply *mutatis mutandis* to the remaining appeals noted above.

19. In the result, appeals in ITA Nos.14 to 16/Rjt/2018 for AYs 2010-11, 2011-12 & 2012-13 are allowed.

20. In the combined result, all the four appeals filed by the assessee are allowed.

This Order pronounced in Open Court on 01 / 03 /2018

(एस.एस.गोदारा)
न्यायिक सदस्य
(S.S. GODARA)
JUDICIAL MEMBER

(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 01/ 03 /2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रहित/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)-Jamnagar
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot