

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Mahavir Prasad, Judicial Member
and Shri Amarjit Singh, Accountant Member**

[Conducted through E-Court at Ahmedabad]

**ITA No. 429/Rjt/2015
Assessment Year 2007-08**

Perfect Woven Sacks Pvt. Ltd. 217, Sanjay Commercial Centre, Rajput Para Main Road, Rajkot-360002 PAN: AABCP2858B (Appellant)	Vs	The ITO, Ward-1(3), Rajkot-360001 (Respondent)
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**Revenue by: Shri Praveen Verma, Sr. D.R.
Assessee by: Shri Vimal Desai, A.R.**

Date of hearing : 03-07-2019
Date of pronouncement : 15-07-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2007-08, arises from order of the CIT(A)-1, Rajkot dated 30-06-2015, in confirming the addition of Rs.

18,50,000/- in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Actö.

2. The fact in brief is that return of income declaring income of Rs. Nil was filed on 31st October, 2007. The case was selected under security by issuing of notice u/s. 143(2) of the act. The assessee company was engaged in the business of manufacturing of HDPE/PP Woven. During the course of assessment proceedings, the assessing officer noticed that assessee has obtained cash credit facility from SBS (as per statement) under two cash credit account bearing no. 10293092118 and cc a/c. no. 10293092107. The assessee has tendered guaranty of Shri Mahendrabhai Ladhahai Satodiya as a guarantor of the aforesaid cash credit facility. The aforesaid guarantor had hypothecated/pledged his agricultural land at survey no. 460, 460, 707 situated at Gundala road with the bank. On verification of the cash credit account as cited above, the assessing officer noticed that an amount of Rs. 4 lac was deposited in CC a/c. no. 10293092118 on 31st July, 2006 and an amount of Rs. 14,50,000/- was deposited in cc a/c no. 10293092107 on 31st July, 2008 respectively. The assessee was asked to explain the nature of aforesaid transaction cash deposit of Rs. 18,50,000/- in the said account. The assessee responded that Shri Mahendrabhai (guarantor) had deposited the aforesaid amount of Rs. 18,50,000/- in cash directly to the CC a/c. of the assessee in order to get his property released which was mortgaged with the bank. In response to summon issued u/s. 131 the aforesaid guarantor has confirmed in his submission that his property was mortgaged with the SBS against which the bank has sanctioned cash credit to the assessee, however, he has submitted that he has not deposited any cash in the account of the

assessee maintained with the SBS Bank. The guarantor has stated that it is the assessee who had directly deposited the cash of Rs. 18,50,000/- in the company's account. Therefore, the show cause notice was issued to the assessee and the assessee has responded that guarantor Mr. Mahendrabhai has deposited the aforesaid amount in the account of the assessee. The assessing officer has not accepted the submission of the assessee on the reasoning that the guarantor has confirmed that he has not deposited the aforesaid cash in the account of the assessee. Consequently, an amount of Rs. 18,50,000/- was considered as unexplained investment of the assessee company and the same added to the total income of the assessee.

3. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee reiterating the reason reported by the assessing officer in his assessment order.

4. During the course of appellate proceedings before us, the Id. counsel has furnished paper book containing detail of submission made before the Id. CIT(A) and assessing officer. The Id. counsel has contended that Id. CIT(A) has not considered all the relevant detail and supporting evidences furnished during the course of appellate proceedings. The Id. counsel has also submitted that Id. CIT(A) has not given detailed reason for dismissing the appeal of the assessee. The Id. counsel has also contended that the copy of pay-in-slip dated 18th July, 2006 signed and submitted by Shri Mahendrabhai to the bank was also furnished before the Id. CIT(A) during the course of appellate proceedings which was not considered by the Id. CIT(A). It is also contended that copy of confirmation given by the SBS in

respect of cash deposit was also submitted before the Id. CIT(A) and the same was not was considered by Id. CIT(A). Therefore, the Id. counsel has contended that Id. CIT(A) has erred in adjudicating that cash deposited in the account of the assessee was the unexplained investment to be assessed in the hand of the assessee. On the other hand, Id. departmental representative has placed reliance on the decision of Id. CIT(A).

5. We have heard the rival contentions and perused the material on record carefully. During the course of appellate proceedings, the assessing officer has found that cash of Rs. 18,50,000/- was deposited in the CC account of the assessee company maintained with the SBS Bank. The assessee has explained that Shri Mahendrabahi Ladhahbai Satodiya was the guarantor of the said loan obtained by the assessee from the SBS Bank and he had also mortgaged his land to the bank as a security against the loan provided by the bank to the assessee. The assessee has claimed that said cash of Rs. 18,50,000/- was directly deposited by the aforesaid guarantor in the CC account of the assessee. However, in response to summon u/s. 113(1) issued to the guarantor, the guarantor has confirmed that he has not deposited the cash in the account of the assessee and the assessee has directly deposited cash of Rs. 18,50,000/- in the company account by mentioning his name. On perusal of the material on record, we noticed that assessee has submitted copy of pay-in-slip dated 18th July, 2006 claimed to be signed by Shri Mahendrabhai and copy of confirmation issued by the Bank in respect of depositing of cash by guarantor placed at page 43 of the paper book. Copy of settlement application dated 18th July, 2006 signed furnished by Shri Mahendrabhai Ladhahbai Satodiya. Guarantor, was placed page no. 9 of the

paper book. On perusal of the aforesaid material and other documents placed in the paper book, we observe that Id. CIT(A) has not incorporated his finding on the relevancy of the documents placed in the paper book. It is clear from the decision of the Id. CIT(A) that the instant issue in the appeal was not adjudicated according to provision of section 250(6) of the act. The decision of Id. CIT(A) is reproduced as under:-

“Decision:

5. I have duly considered the submission of the appellant and also gone through the assessment order.

5.1 I am of the view that the statement of Shri Mahendrabhai L Satodiya carries more weight than any other evidence. He has categorically denied having made cash payment to the bank account of the appellant. Hence the source of the cash deposited in appellant's bank account remains unexplained. The AO has rightly taxed this amount in appellant's hands. Hence the ground of appeal is dismissed.”

After referring the decision of Id. CIT(A) as reported above, we consider that section 250(6) contemplates that first appellate authority would state the points in dispute and thereafter record reasons in support of his finding on these points in dispute. Normally, whenever any irregularity crept in the proceedings then after removing irregularities proceeding is to be instituted from that stage by remitting the issue to the first appellate authority. However, in the case of the assessee it is noticed that the basic inquiry and verification from the bank authority has not made by the assessing officer to find out the genuineness of the transaction. The assessing officer has not examined various evidences available with the SBS to find out authenticity of deposit cash of Rs. 18,50,000/- whether it was deposited by the guarantor Shri Mahendrabhai or not. In view of the aforesaid ambiguity observed in the finding of Id. CIT(A) as reported above in this order, we restore this case to the file of Id. CIT(A) for adjudicating afresh by speaking order with

proper reasoning as contemplated in section 250(6). Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15-07-2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 15/07/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

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

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot