

आयकर अपील अर्थात् अधिकरण, राजकोट न्यायपीठ, राजकोट ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

श्री राजपाल यादव, न्यायिक सदस्य एवं श्री वसीम अहमद, लेखा सदस्य के समक्ष ।
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.223/Rjt/2015

(प्रधान वर्ष / Assessment Year : 2010-11)

Jayantibhai Devshibhai Manani, Prop of Shivam Traders, 10, Bhaktinagar Station Plot, Rajkot.	बनाम/ Vs.	ITO, Ward-52, Rajkot.
प्रार्थी लेखा सं./जीआइआर सं./PAN/GIR No. : AOMPM6299P		
(अपीलाथ / Appellant)	..	(प्रत्यक्ष / Respondent)

अपीलाथ ओर से / Appellant by :	Written Submission
प्रत्यक्ष ओर से / Respondent by :	Shri Anil Kumar, DR.

सुनवाई का तारख / Date of Hearing	19/09/2019
घोषणा का तारख / Date of Pronouncement	20/09/2019

आदेश / ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad [Ld. CIT(A) in short] of dated 16/03/2015, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 26/03/2013 relevant to Assessment Years (A.Y.) 2010-11.

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The assessee has raised the following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 52,472/-. The addition needs deletion.*
2. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 52,472/- based on factual position which he described wrongly. The addition needs deletion.*
3. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 52,472/- erroneously treating the same as unexplained expenditure which he described wrongly. The addition needs deletion*
4. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 52,472/- erroneously treating the same as unexplained receipts which he described wrongly. The addition needs deletion*
5. *The Ld. CIT(A) has erred in law and facts in confirming addition of Rs. 52,472/- without allowing time to reconcile the same. The addition needs deletion.*
6. *Taking into consideration the legal, statutory, factual and administrative aspects, no addition of an amount of Rs. 52,472/- ought to have been made. The additions need deletion.*
7. *Without prejudice, the assessment made is bad in law and deserves annulment.*
8. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided while passing assessment order. The assessment needs annulment.*
9. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided while passing appeal order. The assessment needs annulment.*
10. *The appellant craves leave to add/alter/amend and/or substitute any or all grounds of appeal before the actual hearing takes place.*

The assessee has raised as many as 10 ground of appeal but the effective issue is that the learned CIT (A) erred in confirming the addition of 52,472 on account of unexplained expenditure/unexplained receipts.

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2. Briefly stated facts are that the assessee in the present case is an individual and engaged in the business of trading in papers on wholesale basis under the name and style of M/s Shivam Traders. The AO during the assessment proceedings noticed that one of the creditor namely M/s Mrugal Offset Printers has shown closing balance of 82,519 whereas the assessee has shown the balance of 1,34,991 leaving difference of 52,472.00. On question by the AO about such difference, the assessee failed to reconcile the same. Accordingly the AO assumed that the assessee has received such amount against the sales but the same was not shown in the books of accounts. Accordingly the same was treated as unaccounted receipt and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

3. The assessee before the learned CIT (A) submitted that he has shown gross receipt of 2.29 crores and therefore there is no reason not to disclose such small amount of 52,472 in the books of accounts.

3.1 The assessee alternatively submitted that the entire amount cannot be added to the total income of the assessee and at the most only the profit element embedded in such amount of difference can be brought to tax.

4. However, the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO.

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5. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

6. The learned AR before us filed a written submission and reiterated the contentions placed before the learned CIT (A).

7. On the other hand the learned DR before us vehemently supported the order of the authorities below.

8. We have heard the learned DR and perused the materials available on record. In the instant case there was difference observed by the AO with respect to the party namely M/s Mrugal Offset in the amount shown in the books of the assessee viz a viz such party. Such difference was treated as income of the assessee.

8.1 However, we note certain infirmity in the order of the AO. First of all, the AO at one place treated such party namely M/s Mrugal Offset as creditor of the assessee. This fact can be verified from the order of the AO which is reproduced as under:

In connection, during the course of assessment proceedings, the confirmations of some the Sundry Creditors were called for by issue of letter calling information u/s. 133(6) of the Act.

On verification of the confirmation accounts received from M/s. Mrugal Offset Printers, Ankleshwar, it is found that as per the contra account of the Mrugal Off Set Printer the closing balance shown of Rs. 82,519/-, beside on verification of your account, you have shown closing balance Rs.1,34,991 in account of Mrugal Off Set Printers. Therefore, there is difference of Rs.52,472/- between both the accounts. Accordingly, the difference amounting to of Rs.52,472/- which the payment was already been received by you and the same was not reflected in to the your's accounts are proposed to be added in to your total income declared.

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8.2 If the party namely M/s Mrugal Offset is treated as creditor then the assessee is liable to make the payment to such creditor against the purchases/ expenses incurred by him.

8.3 Similarly we also note that, the AO at one place has treated such party namely M/s Mrugal Offset as sundry debtors. This fact can be verified from the order of the AO which is reproduced as under:

Also it is clear noticed from the account the assessee that the assessee had received the payments from M/s.Mrugal Offset against sales but shown in the books of account. Therefore, on the basis of account submitted by the assessee and confirmation received from M/s.Nrugal receipts and required to be added in to the total income declared. Accordingly, Rs.52,472/- is added in the total income of the assessee.

From the above, we note that the AO has not applied his mind properly. Supposing the impugned the party is treated as the sundry debtors then to our mind there cannot be any addition if the assessee has received any sum of money without recording the same in the books of accounts. It is because such receipt was against the sale which has not been disturbed by the AO.

8.4 Similarly, even if we treat such party namely M/s Mrugal Offset as sundry creditor, then the assessee is liable to make the payment to such party. We further note that, the AO also erred in presuming the difference as income of the assessee without disturbing the purchases/expenses incurred in the name of such party.

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8.5 On the similar reasoning, we are not convinced with the finding of the learned CIT (A). Accordingly, we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

9. In the result the appeal of the assessee is allowed.

This Order pronounced in Open Court on 20/09/2019

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(राजपाल यादव)

ऀयाऀयक सदऀय

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated 20/09/2019

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-Sd-

(वसीम अहमद)

लेखा सदऀय

(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)