

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

ITA No.214/RJT/2017
निर्धारण वर्ष/ Asstt. Year: 2011-12

Ranjit D. Rathod Prop. of M/s.Shree Ganesh Marine Nr. Railway Station Delwada	Vs.	ITO, Ward-1(3) Veraval.
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(Applicant)		(Responent)
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Assessee by :	Written submissions
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई की तारीख/Date of Hearing : 20/09/2019
घोषणा की तारीख /Date of Pronouncement: 01/10/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-3, Rajkot dated 1.5.2017 passed for the Asstt.Year 2011-12.

2. None appeared on behalf of the assessee at the time of hearing. Therefore, we proceed to dispose of appeal *ex parte qua* assessee-appellant after hearing the Id.DR and considering the material available on record.

3. Grounds of appeal taken by the assessee are not in consonance with Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief, sole grievance of the

assessee is that the Id.CIT(A) has erred in confirming addition of Rs.1,30,168/- to the total income of the assessee.

4. Brief facts of the case are that the assessee is an individual and proprietor of M/s.Shree Ganesh Marine and trading in fish. He filed return of income on 29.9.2011 declaring a total income at Rs.3,03,870/-. The case of the assessee was selected scrutiny assessment. Notice under section 143(2) of the Act was issued and served upon the assessee. During the assessment proceedings, contra accounts of the sundry creditors were called and on verification of the assessee, the Id.AO noticed certain discrepancies. The discrepancies noticed by the AO in the accounts of the sundry creditors are under:

Sr.No.	Name of the party	Difference (Rs.)
i)	Kalpataru Export	(+) Rs.24,398/-
ii)	Silver Seafoods	(+) Rs.1,310/-
iii)	Bhavani Sea foods	(-) Rs.1,30,168/-
iv)	Sagar Seafoods	(+) Rs.99,830/-
v)	Rameshwar Cold Storage	(+) Rs.35,170/-

The Id.AO sought explanation from the assessee about these variations in sale of fish to dealers. The assessee explained that assessee purchases fishes in large quantity from sea bank and directly from fishermen, and sell the same to wholesale dealers. While transporting the fishes there bound to be a loss on account weight loss and natural spoilage. This apart, to preserve fishes certain degree of deep temperature has to be maintained, for that dealers debit the expenditure to their respective purchases. Therefore, there would be variations in the amount of sales to the various dealers. The explanation of the assessee has been accepted by the AO except in one case i.e. in the case of Bhavani Sea Foods, where as per the books of accounts of the assessee, the

sale made to them was Rs.45,04,591/- while in the books of the said Bhavani Sea food it was Rs.46,34,759/-. The difference of Rs.1,30,168/- was treated as out of book sales and added to the total income of the assessee. Appeal to the CIT(A) did not succeed. The assessee is now before the Tribunal.

5. Before us, assessee filed written submissions, in which it is pleaded that the AO had noticed discrepancies in the cases of five parties. Out of that, sales made to four parties have been accepted by the AO except one in the case of Bhavani Seafoods where the ld.AO ought to have applied same logic and not made any addition. Even otherwise, it is settled position of the law that addition can be made only to the extent of the estimated profit embedded in the sales and the entire sales amount cannot be added to the income of the assessee. In support of this contention, he relied upon certain judgments. He further submitted that at the most difference of excess sales and less sales is to be taken for addition, or estimated GP embedded in the unaccounted sales is to be taken for addition. On the other hand, the ld.DR relied upon the orders of the Revenue authorities.

6. We have heard the ld.DR and also written submissions filed by the assessee. We have also gone through the record and orders of Revenue authorities. We find that the mismatches in the cases of four parties viz. Kalpataru Export, Silver Seafoods, Sagar Seafoods and Rameshwar Cold Storage have been accepted by the Revenue and no adverse inference was taken. But in the case of Bhavani Seafoods, as per the books of the assessee total sales was shown at Rs.45,04,591/- whereas as per the books of this party, it was shown at Rs.46,34,759/-, therefore, difference of Rs.1,30,168/- less shown in the books of assessee was treated as out of book sales and added to the total income of the assessee. We find that the Revenue authorities have taken a different yardstick for the same set of transactions. There should be

logical conclusion at the end of the Revenue while making such addition. In this nature of business, which is perishable nature there bound to be loss on account of weight loss, spoilage etc. at the time when produce reaches at the destination. The reasons pointed out by the assessee, cannot be simply brushed aside, though there may not be documentary evidence to prove same. In this kind of business, 100% reconciliation of accounts is not possible. If the real intention of the assessee to book less sales in the account, and to evade tax, then he would not have shown higher figures sales in the cases of four parties cited above. An assessee having a turnover of more than Rs.45 lakhs, cannot be said or believed to be indulging in un-reporting a meager sale figure of Rs.1,30,168/-. Further, if the AO can buy the explanation of the assessee in the case of sales effected to above four parties, why he cannot apply same logic to the sales made to Bhavani Sea food. After all only actual and real income is to be taxed. We are not convinced with logic given by the Revenue in making the impugned addition. Therefore, we are of the view that looking to the nature of the business, excess sales noticed by the AO amounting to Rs.1,60,708/- should be set off against less sales shown of Rs.1,30,168/-. In other words, only an amount of Rs.30,540/- is to be added to the income of the assessee. We restrict the addition to the extent of Rs.30,540/- and allow the ground of appeal partly.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 1st October, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 01/10/2019