

आयकर अपीलिय अधिकरण,सुरत न्यायपीठ, सुरत
**IN THE INCOME TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUTANT MEMBER**

आ.अ.सं./I.T.A No.65/SRT/2017

निर्धारण वर्ष/Assessment Year:2013-14

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| Smt. Kiran Vallabhai Ahir, 299,Kamal Park Society, Matavadi, L.H. Road Varachha Surat 395006 | V. | Income Tax Officer, Ward- 3(3)(3)Surat |
| PAN: AJKPA 9068 P | | |
| अपीलार्थी Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारिती की ओर से /Assessee by | Shri Ramesh Malapani, CA |
| राजस्व की ओर से /Revenue by | Mrs. Anupama Singla, Sr.D.R. |

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| सुनवाई की तारीख/ Date of hearing: | 10.02.2020 |
| उद्घोषणा की तारीख/Pronouncement on | 10.02.2020 |

आदेश /O R D E R

PER O. P. MEENA, AM:

- 1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-3, Surat(in short “the CIT (A)”) dated 06.06.2017 pertaining to Assessment Year 2013-14, which in turn has arisen from the assessment order passed under section 143 (3) dated 17.02.2016 of Income Tax Act, 1961 (in short ‘the Act’) by the Income Tax Officer, Ward- 3(3)(3)Surat(in short “the AO”).**
- 2. Ground No.1 to 3 states that Ld. CIT (A) has erred in sustaining addition of Rs. 53,32,345 made by the AO treating the entire cash deposits in bank account as unexplained cash deposits, whereas entire cash deposits are sale proceeds of the assessee on which profit can be**

estimated and without prejudice even if cash deposits is not accepted as business transactions, then also CIT (A) erred in sustaining entire cash deposits in bank account as income of the appellant whereas only peak credit balance of the bank account should be treated as net unexplained cash credit.

3. Succinct facts are that AIR information revealed that the assessee had a bank account in HDFC Varachha Branch Surat wherein cash deposits of Rs. 53,27,345 were reflected beside cash deposits of Rs.5,000 in bank account with OBC Ichhapor, Surat. These bank accounts have not been disclosed in return of income of the assessee. Therefore, a show-cause notice was issued on 21.01.2016 to explain the source of bank deposits by 27.01.2016. But, no explanation was filed, therefore, the AO treated the entire bank deposits as unexplained cash deposits and added to total income.

4. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). Wherein the assessee submitted that the deposits in bank account comprises mainly for cash deposits and the same deposit represents sale proceeds of items sold by the assessee and cash withdrawn from bank. It was further submitted that an amount of Rs.7,46,000 was withdrawn in cash and also cheque amounting to Rs.1,21,500 have been returned. Therefore, these should not be considered while calculating the total deposits in the bank account. Here it is to be noted that cash withdrawn from this bank account have been used to be redeposited again in the same

bank and accordingly cash with the from this bank account should also reduced from the total additions made. Therefore, effectively total deposits made in HDFC bank account would work out to be Rs.45, 58,845. It was further submitted that estimation of profit rate is the only logical option under the facts of the case, since, the assessee has not made any unexplained investment to the extent of addition of Rs.53,32,345 made by the AO out of above bank accounts. The transaction in said bank account pertains to trading activity only, and in order to overcome any controversy and put an end to the litigation, the deposits in bank account excluding the cash withdrawn from this bank account and cheque returned which amounts to Rs 45,58,845 may be treated as turnover and profit at the rate of 8%, be estimated as provided under section 44AD of the Act. The assessee has ready to pay tax on the net profit, which is worked out to Rs. 3,64,707. Without prejudice, it was further submitted, that if the above plea of the assessee is not accepted, the addition if any, can be made only in respect of peak credit since cash deposits in bank account has been utilised in the manner as explained above, and if the same is not recorded as expenditure of assessee in that case, the obvious conclusion is that the assessee has not parted with the cash and the same is available with him for redeposit in the bank account. Therefore, it is the peak credit of the bank account which comes to Rs.6,60, 603 as on 21. 01. 2013. Hence, only peak credit balance can be added for which reliance was placed on the decision of ITAT Ahmedabad in the case of Vishal Chug I.T.A.No.

866/Ahd/2013. However, CIT (A) did not accept the pleas of the assessee on the ground that no VAT No., business address was submitted and no evidence to show whether business has been actually done was filed. Therefore, the addition made by the AO was confirmed.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that most of cash deposits have been made from places out of Surat. If the bank account is properly analyzed, it is evident that cash has been deposited at Saharanpur (UP), Dalhousie , Chandani Chowk Delhi , Rewari , Muzzafar Nagar, Philkuwa , Jabalpur , Gwalior etc. This facts proved that cash deposits are out of sale proceeds of textile trading. Further, the payment have been made to various textile firms such as Rajlaxmi Fabrics, Rajlaxmi Fab, Chirag Synthetics, Shyam Textile. Similarly, there are debits in bank account, which are in respect of textile trading of business. Thus, only estimated profit for such turnover could be added. The learned counsel for the assessee also placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT-VII v. Pradeep Shantilal Patel [2014] 42 taxmann.com wherein it was held that in such case at the most estimated profit of such turnover can be added. Therefore, addition of the entire turnover amount is clearly unjustified. Learned Counsel submitted that though the Department is accepting net profit of 2% to 5% in this line of business , but since the assessee has not maintained books of accounts hence, at the most net profit @8% as per section 44AD can be sustained and not the

whole addition made by the AO. The learned counsel for the assessee also filed additional evidence in respect of business transaction in the form of confirmation and or purchase bills of two suppliers.

6. *Per contra*, the ld. Sr. D.R. submitted that no proper application has been made for additional evidence hence, same is not admissible. Furthermore, the assessee has not filed any submission during the course of assessment proceedings, hence, CIT (A) has rightly upheld the order of the AO.

7. We have heard the rival submissions and perused the relevant material on record. The perusal of assessment order reveals that the assessee has not filed any details before the AO. However, before CIT (A) the claim was made that the cash deposits in bank account pertained to textile business carried out by the assessee, though no books of accounts were maintained nor the bank account were disclosed in return of income. However, it is discernible from bank account that cash deposits were made for various out stations like Delhi and UP. The bank account also reflects payments made to textile concerns. Therefore, it is clearly apparent that cash deposits are linked with business transaction of the assessee. Since the assessee has not maintained any books of accounts, hence, in such situation only net profit as per provisions of section 44AD of the Act is required to be estimated as net profit and not entire turnover or cash deposits reflected in the bank account. Therefore, following the ratio laid down in the case of CIT V. Pradeep Shantilal Patel [2014] 42 taxmann.com

2 (Gujarat) wherein it was held that where assessee admitted that cash deposits pertained to his retail business but details and nature of business were not forthcoming from record, considering total turnover of assessee, net income to be determined under section 44AD of the Act, the AO is directed to estimate net profit @ 8% of total turnover of Rs. 53,32,345 being cash deposits in bank account. Accordingly, Ground No. 1 to 3 of appeal are partly allowed.

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

9. Order pronounced in the open Court on 10.02.2020.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 10th February, 2020/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/ Guard
file of ITAT.

// TRUE COPY //

By order
Assistant Registrar, Surat