

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.294/SRT/2019 (AY 2010-11)

(Hearing in Virtual Court)

Shri Iqbal Ahmed Gulamnabi Ansari, Ayesha Bakery, Dhobi Talav, Shapur Nagar, Valsad. PAN: AOCPA 3493 H	Vs	The Income Tax Officer, Ward-2, Valsad.
Assessee / appellant		Revenue / respondent

Assessee by	Shri Rajesh Upadhyay – ITP
Revenue by	Ms Anupma Singla – Sr.DR
Date of hearing	01/10/2021
Date of pronouncement	09/12/2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Valsad dated 18.03.2019, which in turn arise against the assessment order dated 18.03.2019 for the Assessment Year 2010-11. The assessee raised the following grounds of appeal:

“1. Ld. CIT(A), Valsad has erred in law and on facts to reject appellant’s ground for arbitrary reopening of assessment without there being any discussion in his body of order.

2. Ld. CIT(A), Valsad has erred in law and on facts in condoning short delay of 144 days occurred by the appellant in filing of 1st appeal before him.

3. Ld.CIT(A), Valsad has erred in law and on facts to upheld A.O.’s estimation of profit at 12% by incorrectly applying provisions of Section 44AF/ 44AD of the Act.”

2. Brief facts of the case are that the case of assessee was reopened under section 147 of the Act. The Assessing Officer (AO) recorded the reasons that as per information gathered, ITD System, the assessee deposited cash amount of Rs.18,14,000/- with bank account in HDFC Bank, Valsad. The AO on verification of details in ITD, noted that assessee has not filed return of income for the A.Y. 2010-11, accordingly, the query letter was issued to assessee on 21.06.2016, 29.07.2016 and 04.01.2017. The assessee not furnished any reply. The AO on the basis of such information, has a reason to believe that income of assessee to the extent of Rs.18,14,000/- has escaped assessment. Notice under section 148 of the Act was issued on 23.03.2017. In response to the notice under section 148 of the Act, the assessee filed his return of income on 06.07.2017 declaring income of Rs.1,43,770/-. The AO provided the reasons recorded along with the notice under section 143(2) of the Act and proceeded for assessment.
3. During the assessment, the AO noted that assessee is involved in business of running a Bakery in the Ayesha Bakery, Dhobi Talav, Valsad. The assessee was asked to produce the purchase bills, sale of bakery products (pav) and vouchers of expenses. The AO recorded that assessee expressed inability to produce the same. However, the assessee has produced the copy of ledger account of M/s. Babulal Chabildas & Co. from whom the assessee purchased

Maida. The AO issued notice under section 133(6) of the Act to Babulal Chabildas & Co. Babulal Chabildas & Co expressed his inability to produce the bills. The AO recorded the statement of assessee under section 131 of the Act. As per the statement of assessee, the expenses for production of Pav (Bakery item), out of 90 kilograms of Maida comes to Rs.2,100/- and the sale consideration on production of 90 kg of Maida is Rs.2,430/-, therefore, the profit of the assessee is Rs.13.58%. The AO, accordingly issued the show the profit of assessee may not be assessed @ 13.58%. The assessee filed its reply dated 10.08.2017. In the reply the assessee submitted that while recording his statement he could not give proper answer and the figure of percentage of profit is erroneous and his profit would be 6%. The copy of show cause notice under reply of assessee is recorded in para 5 & 6 of the assessment order respectively [in Gujarati Language]. The AO on the basis of his observation that assessee has not produced the bills of purchase or sales, the AO estimated profit @12% of turnover of sale at Rs.37,64,845/- thereby made an addition of Rs.4,51,789/- . Aggrieved by the reopening as well as addition in the assessment order, the assessee filed appeal before the Id.CIT(A). There was delay of about 144 days in filing appeal before the Id.CIT(A). The assessee filed application for condonation of delay in filing appeal before the Id.CIT(A). The Id. CIT(A) not condoned the delay. Surprisingly, the Id.CIT(A), despite not condoning the

delay, gave his finding of merit of the case as well and upheld the addition @12% of turnover. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. We have heard the submission of Id. Authorised Representative (Id.AR) of the assessee and Sr. Departmental Representative (Id. Sr. DR) for the Revenue and have gone through the orders of Lower Authorities carefully. The Id.AR for the assessee submits that the reasons recorded by the AO are not valid. The AO recorded that no return of income was filed, however, the assessee has filed return of income, thus, reasons recorded were not valid, therefore, the subsequent action on the basis of invalid reasons, the assessment become *void-ab-initio*.
5. In alternative submission, the Id.AR of the assessee submits that no addition was made on the basis of reasons recorded. The AO made addition on other income than for which reopening was made. So, the assessment order is liable to quashed in view of the decision of Hon'ble Gujarat High Court in CIT Vs Mohmed Juned Dadani [2013] 355 ITR 0172 and decision of Hon'ble High Court in Jet Airways (331 ITR 236 Bombay).
6. On merit, the Id.AR of the assessee submits that the Id.AO made addition @12% of turnover of sales shown by assessee. At one hand the AO has rejected the books of accounts and on the other hand, he is relying on same set books for making estimated addition. There was no basis of estimation @12%

net Profit (NP) without bringing comparable instances on record. The ld.AR submits that in subsequent year, the AO made addition @ 6%. The ld.AR furnished the sales from A.Y. 2010-11 to 2014-15 and Gross Profit and Net Profit ratio varying from 4.11% to 2.21% in the following manner:

A.Y.	SALES	G.P.[Rs.]	G.P.%	N.P.[Rs.]	N.P.%
2010-11	3764845/-	229838/-	6.10%	154694.20	4.11%
2011-12	5847600/-	422785/-	7.23%	340550.60	5.82%
2012-13	6067670/-	440930/-	7.27%	358935.60	5.92%
2013-14	7020500/-	453100/-	6.45%	198660.00	2.83%
2014-15	9894500/-	614755/-	6.21%	218497.00	2.21%

7. On the other hand, the ld. Sr. DR for the Revenue supported the order of Lower Authorities. The ld. DR submits that the AO has made a very reasonable addition. On the validity of addition, the ld. DR for the Revenue supported the order of AO and would submits that the addition on estimated basis was made after giving full opportunity to the assessee. As per assesses own stamen the assessee was earning profit of 13.58%.
8. We have considered the rival submissions of both the parties and have gone through the order of Lower Authorities carefully. We find that the case of the assessee was reopened by the AO on recording reasons that on the basis of AIR information gathered from ITD System, the assessee deposited the cash amount of Rs.18,14,000/- on HDFC Bank, Valsad. On the basis of which the AO has a reason to believe that an investment of Rs.18,14,000/- has escaped assessment in the hand of assessee for the year under consideration. We find that the AO while passing the assessment order has not made any addition on account of cash deposit in the bank account of assessee. The AO made

estimated addition of Rs.4,51,751/- being 12% of total sale turnover of assessee and income from other sources of Rs.9,077/-. We find that there is no discussion about the addition of income from other sources in the assessment order. The ld. AR of the assessee vehemently submitted before us that the ld.AO has not made addition on the basis of reasons of reopening. The Hon'ble Jurisdictional High Court in CIT vs Mohmed Juned Dadani (supra) held that when on ground of which reopening of assessment was made by AO, he could not have made addition and some other grounds which did not form part of reasons recorded by him.

9. We find that similar view that taken by the Hon'ble Bombay High Court in CIT vs Jet Airways (supra) and Hon'ble Delhi High Court in Ranbaxy Laboratories Ltd. vs CIT (336 ITR 136 Delhi). Therefore, in view of the aforesaid legal position, we find merit in the submission of ld.AR of the assessee that in absence of addition on the ground which did not form part of reasons recorded, the AO could not have make addition on some other ground, therefore, the plea of the ld.AR of the assessee is allowed and assessment order dated 11.08.2017 is set-aside.
10. Considering the fact that we have set-aside the assessment on the legal submissions of ld AR of the assessee, therefore, discussion on merit and other submission of ld.AR of the assessee and discussion on merit of the case have become academic.
11. In the result, appeal of the assessee is allowed.

Order announced on 09 December, 2021 by placing the result on the notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 09/12/2021 /SGR*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

/ / TRUE COPY / /

Sr.Pvt. Secretary, ITAT, Surat