

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
(Conducted Through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT

आयकर अपील सं./ITA No. 1760/Ahd/2019

(निर्धारण वर्ष/Assessment Year : 2011-12)

Shardaben Kalabhai Patel At Post Village Moti Dugdol Tal : Dhanera Banaskantha – 385 310	बनाम/ Vs.	The Income Tax Officer Ward-3 Palanpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ATJPP 7110 Q		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Written submission
प्रत्यर्थी की ओर से/ Respondent by:	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/ Date of Hearing	04/01/2022
घोषणा की तारीख/ Date of Pronouncement	17/01/2022

आदेश / O R D E R

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income Tax(Appeals)-4, Ahmedabad [‘CIT(A)’ in short] vide order in CIT(A)-4/10551/2018-19 dated 01/10/2019 passed for the Assessment Year (AY) 2011-12.

2. The Assessee has raised following grounds of appeal:

1. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO made addition to tune of Rs.8,15,086/- as 1% of Total Transaction on Non Speculative*

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Business of Rs.8,15,08,625/- without giving effect of the gross purchase of the share transaction, and raised tax demand of Rs.2,76,490/-.

2. *The learned CIT(A) has erred both in law and on the facts of the case for considering that the Bank account of the Sub Broker is bank Account of the assessee.*
3. *The learned CIT(A) ahs erred both in law and on the facts of the case in confirming that assessee has made Non Speculative loss of Rs.2,45,104/- during the A.Y. 2011-12.*

3. When the matter is called for hearing, the Assessee's Representative was not present. However, a written submission dated 03/01/2022 was filed before the Tribunal. Based on the above written submission and the submission of the Ld.DR, the case is decided with available material on record.

4. The brief facts of the case is that for the Assessment Year 2011-12, the assessee has not filed her Return of Income. However, the assessee had made a total transaction on Non Speculative Business of ₹8,15,08,625/-. As this income has not been offered by the assessee for taxation, a notice u/s.148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued on 24/03/2018 which was duly served upon the assessee by Speed Post. In response to the same, no Return of Income was filed by the assessee. Therefore, the Assessing Officer issued further notices u/s.142(1) of the Act and also a show-cause notice dated 13/12/2018 fixing the case for hearing on 19/12/2018, which was served upon the assessee as there was no response for the

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above notices, the Assessing Officer framed the assessment u/s.144 r.w.s. 147 of the Act. Further, the assessee has not co-operated with the Department, the Assessing Officer estimated the profit on Share Commodity Transaction amounting to Rs.8,15,08,625/- at 1% which is found to be reasonable and demanded a tax thereon.

5. Aggrieved against the assessment order, assessee filed appeal before the Id.CIT(A)-4, Ahmedabad challenging the *ex-parte* order. During the appellate proceedings before the Id.CIT(A), the assessee has not appeared in person and not produced any document. The Id.CIT(A) considered one identical issue of Shri Ajababhai A.Patel, brother of Shri Kalabhai (husband of the present appellant) for the same AY 2011-12, wherein the Id.CIT(A) held as follows:

“...Neither any confirmation from Kalabhai was filed nor it was explained as to how the payment can be kept pending/unsettled especially when the transactions are in commodity stock exchange. The appellant never filed return of income as per time stipulated u/s.139(1) of the I.T. Act, therefore, the claim of alleged loss incurred in commodity transactions is not permissible as per law. The fact remains that the appellant has introduced cash in the system for which self serving statements are being made. Technically, the cash is in the bank account of Kalabhai therefore, the total cash of Rs.41,30,000/- cannot be taxed in the hands of appellant. In the circumstances and as per facts of the case it is felt that the addition made by AO is on estimation basis and the same is within parameters upheld by various courts. In the circumstances, a benefit of doubt is given to the appellant and an addition of Rs.29,41,790/- is upheld with the comment that the appellant has introduced unexplained cash to the extent of Rs.29,41,790/-. The ground nos.1 & 2 of appeal are dismissed. ...”.

6. Since the facts of the case before the Ld.CIT(A) was also identical and in the absence of any documentary evidence produced by the

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assessee, the CIT(A) confirmed the estimation of 1% made by the Assessing Officer.

7. I have carefully considered the written submissions filed by the assessee. There is no any material evidence in respect of its claim except disputing the estimation of 1% made by the Assessing Officer. As the assessee has not filed the Return of Income in the normal course and also in response to the notice issued u/s.148 of the Act and consistently not produced any evidence to its claim, the estimation made by the Assessing Officer at 1% does not require any interference and thus the grounds of appeal raised the assessee are dismissed.

8. In the result, appeal of the assessee stands dismissed.

This Order pronounced in Open Court on	17/01/2022
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Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Ahmedabad; Dated 17/01/2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-4, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad