

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMEBR**  
**& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 2190/Ahd/2018  
(निर्धारण वर्ष / Assessment Year : 2008-09)

<b>M/s. Siddhi Diamond</b> 36A, Gurukrupa, Sarita Society, Bhavnagar-Para, Bhavnagar - 364003	<b>बनाम/</b> Vs.	<b>Income Tax Officer</b> Ward 1(5), Bhavnagar
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOFS5974P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri M. J. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri N. J. Vyas, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	08/07/2022
घोषणा की तारीख /Date of Pronouncement	12/07/2022

**ORDER**

**PER MAHAVIR PRASAD, JM:**

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad ('CIT(A)' in short) vide Appeal No. CIT(A)-6/252/16-17 dated 05.07.2018 arising in the assessment order dated 29.02.2016 passed by the Assessing Officer (AO) under s. 144 r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY. 2008-09.

2. There is a delay of 31 days for filing of appeal before the Tribunal. In support of its contention, assessee has filed application alongwith affidavit stating that due to inadvertent mistake, same was skipped from the mind of the assessee to forward the details to his AR. Since the above delay is not a big delay, we, therefore, satisfy with the contention of the Department and condone the delay and proceed the appeal.

3. The ground of appeal raised by assessee reads as under:

*“The Learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs.5,18,803/- by treating the purchases made from M/s. Sparsh Exports Private Limited as bogus.”*

4. The facts of the case are that assessee's case was reopened under S. 147 of the Act after recording the reasons that assessee has received accommodation entry of bogus purchase from M/s. Sparsh Exports Pvt. Ltd. amounting to Rs.5,18,803/-. Accordingly, notice under S.148 of the Act was issued on 31.03.2015 and duly served upon the assessee. But, assessee had not complied the notice issued under S.148 of the Act. Notices were sent to the assessee for asking for the reply and to submitting evidences and details in support of his case, but, he did not appear before the AO. Therefore, on the basis of material available on record, learned AO made addition of Rs.5,18,803/-.

5. Thereafter, against the assessment order, assessee preferred first statutory appeal before the learned CIT(A). Before the learned CIT(A), learned AR appeared on behalf of the assessee and filed certain documents as additional evidence, such as, i. assessment order for A.Y. 2007-08 in case of the assessee; ii. penalty notice under S. 274 r.w.s. 271(1)(c) of the Act for A.Y. 2007-08; iii. Copy of appeal order dated 26.12.2006 for A.Y. 2007-08 in the case of the appellant passed by the CIT(A)-6, Ahmedabad dismissing the appeal of the appellant; & iv. Assessment order for A.Y.

2008-09 in the case of Sparsh Export Pvt. Ltd. Thereafter, a remand report was sought from the learned AO and he submitted the following report:

*"A search was carried out at the premises of Rajendra Jain & others Group on 03.10.2013. During the course of search it was revealed that group of companies has indulged in giving accommodation entries. Sparsh exports is one of the group companies engaged in providing accommodation entries and it was found that M/s Siduhi Diamond is one of the beneficiaries.*

*The case was re-opened u/s 147 of the I.T. Act on the basis of information received and the same was completed by passing an order u/s 144 rws 147 of the I.T. Act. Ample opportunities were given to the assessee vide notices u/s 142(1) dated 15.06.2015, 04.09.2015, 23.10.2015, 25.01.2016, 17.02.2016, and 24.02.2016 to submit its contentions with regard to the accommodation entry of bogus purchases amounting to Rs. 5,18,803/-. However the assessee did not bother to furnish its reply and therefore the assessment was finalized on the basis of information available with the department. The AO has clearly stated in para 3 of the assessment order that the assessee is one of the beneficiary of the accommodation entry received from M/s Sparsh Exports.*

*Thus the contention of the assessee in the additional evidences submitted that there is no mention of it being one of the beneficiary of the accommodation entry is baseless and false. The assessee seems to refer to the assessment order related to A.Y. 2007-08. The present assessment relates to A.Y. 2008-09. Moreover ample opportunities were given to the assessee vide the above cited notices to submit its contentions on the issue. However the assessee failed to do so.*

*From the above stated facts and the submissions made by the assessee, it is amply clear that there is no violation of Rule 46A(I)(a)(b)(c) & (d) and therefore the evidences submitted may not be accepted and the addition confirmed if deemed fit."*

6. In rebuttal of the remand report, the assessee submitted following details:

*"With respect to admission of additional evidence under Rule 46A of the Income-tax Rules, 1962:*

*The appellant was deprived from submitting the evidence such as assessment order of M/s Sparsh Exports Pvt. Ltd. and other relevant documentary evidence at the time of assessment proceeding. Further, there are numerous judicial precedents which allow admitting additional evidence where the assessee could collect various evidences only after passing of the assessment order and held that Income Tax Rules which regulates the admission of additional evidence by the CIT(A) cannot override the principles of natural justice.*

*In this regard, we rely on the following decisions:*

- *Avan Gidwani v. ACIT (Mum.)(Trib.) (I.T.A. No.5138/Mum/2015, dt. 06.04.2016)*
- *CIT v. E.D. Benny & Ors. (2015) 234 Taxman 802 / 126 DTR 296 (Ker.HC)*
- *Naresh Chauhan v. Dy.CIT (2016) 48 ITR 1 (Chd.)(Trib)*
- *ACIT v. Saraswati Builders (2017) 183 TTJ13 (UO) (Asr.)(Trib.)*
- *ACIT v. Krafts Palace (2015) 68 SOT 338(URO) / 40 iTR 158 / 154 ITD 275 (Agra)(Trib.)*
- *Smt. Prabhavati S. Shah v. Commissioner Of Income-Tax (Bom HC) With respect to AO's remand report:*
- *We would like to submit that the AO has through oversight/mistakenly understood the Appellant's submission/contention to the fact that there is no mention of it being*

*one of the beneficiary of the accommodation entry in the Assessment order of the Appellant instead of the Assessment order of M/s Sparsh Exports Pvt. Ltd.*

- *We would like to make our contention clear that:*
- *The addition is made on the basis of information received from the Addl CIT, Central Range, Surat in case of search action carried out at the premises of Rajendra Jain & others group where name of M/s Sparsh Exports Pvt. Ltd. was involved for accommodation entries*
- *Under such circumstances we would like to draw your kind attention to the fact that, amongst others, there is no mention of any bogus entries between the appellant and M/s. Sparsh Exports Pvt. Ltd. in the assessment order of the Sparsh Exports Pvt. Ltd, for A.Y. 2008-09.*
- *Thus, it cannot be said that all the sales by M/s Sparsh Exports Pvt. Ltd. is an accommodation entry. Only those sales entries which are identified by the AO in the assessment order of Sparsh Exports Pvt. Ltd. are to be considered as accommodation entry.*
- *Thus, we would request your honor to kindly delete the above addition as the very basis of the same is deluded and without any justification.*
- *Without prejudice to our above submission, we would like to further state that the, additions were not sustained in case of ail the other companies alleged to have entered' into accommodation entry business with M/s. Sparsh exports Pvt Ltd in their respective assessments.*
- *Thus the addition on account of bogus purchase entries amounting to Rs. 5,18,803/- be deleted."*

The learned CIT(A), after considering the documents and remand report submitted by the AO, dismissed the appeal of the assessee.

7. Now, assessee has come before us against the order of learned CIT(A) by way of a second statutory appeal.

8. We have gone through the impugned order, remand report and materials available on record. In this case, addition was made on the basis of information received from the Adl. C.I.T., Central Range, Surat. In this matter, a search action was carried out at the premises of Rajendra Jain and others group where name of one M/s. Sparsh Exports Pvt. Ltd. was alleged to be involved for accommodation entries. Thereafter, the case was reopened on the basis of information received by the AO from Investigation Wing. In remand report, learned AO reiterated that as assessee did not participate in the assessment proceedings, therefore, his evidences under Rule 46A should not be admitted. Thereafter, the learned CIT(A) admitted the additional evidences. In this case, the assessee has

filed the order of learned CIT(A) in assessee's own case for A.Y. 2007-08 wherein learned CIT(A) has held that AO has analyzed the transaction through assessment order and established that there was no genuine purchase of the diamond and estimated profit @12.5 % in the case of the Hon'ble Gujarat High Court in the case of Smith P. Sheth (2013) TMI 1028 vide order dated 16.01.2013.

9. Since, above order has been filed by the AR in support of his argument, therefore, we direct the AO to estimate the profit @12.5% amounting to Rs.5,18,803/- which was treated as bogus purchase on the basis of plethora of judgments. It has been held only profit can be added to the income of the assessee. In view of the above, appeal of the assessee is partly allowed.

10. In the result, the appeal filed by the Assessee is partly allowed.

**This Order pronounced in Open Court on 12/07/2022**

Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 12/07/2022

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।