

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Shri P.M. Jagtap, Vice President  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2621/Ahd/2017  
Assessment Year 2008-09**

Chandrakant Prahladbhai Patel, 2254/1, H.M. House, Mahurat Pole, Manek Chowk, Ahmedabad PAN: AOZPP4246C (Appellant)	Vs	Principal CIT-1, Room No. 304, C Wing, 3 <sup>rd</sup> Floor, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad-380015 (Respondent)
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**Assessee by: Shri A.C. Shah, A.R. &  
Shri Bhadresh Gandhakwala, A.R.  
Revenue by: Shri Mudit Nagpal, CIT-D.R.**

Date of hearing : 28-04-2022  
Date of pronouncement : 20-07-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of Id. Ld. Principal Commissioner of Income Tax-1, Ahmedabad vide order dated 14/11/2017 passed for the assessment year 2008-09.

2. The assessee has taken the following grounds of appeal:-

*“1. The order under Section 263 dated 14-11-2017 is bad in law in as much as the order is passed without providing adequate opportunity of being heard which is nothing but gross violation of principle of natural justice.*

*2. The learned PCIT has erred in holding that the order passed under Section 143(3) read with Section 147 dated 18-03-2016 is erroneous and prejudicial to the interest of revenue under Section 263 on the ground that the AO has not made detailed inquiry in as much as the AO has made the detailed inquiry and the office note is also prepared to this effect and that the copy of the office note was not provided to the assessee in spite of reminders.*

*2.1 The appellant says and submits that the assessee has carried on genuine business and that the allegation made about the accommodation entry is baseless and without appreciating the facts.”*

3. The brief facts of the case are that the assessee filed return of income on 30-09-2008 declaring total income of ₹ 1,55,210/-. Thereafter an intimation was received from Investigation Wing, Mumbai wherein it was mentioned that the assessee was involved in providing accommodation entry of purchase amounting to rupees 225,96,76,090/- to various parties. Based on the information, the case was reopened under section 147 of the Act. However, the re-assessment was completed accepting the returned income of ₹ 1,55,210/- as originally filed by the assessee. Thereafter, the Principal Commissioner of Income Tax-1 Ahmedabad initiated 263 proceedings by observing that it is noticed from the records that the AO has not made any detailed enquiry at the time of assessment before accepting the

accommodation entry as genuine transactions. The AO during the re-assessment proceedings had issued notices under section 133(6) of the Act to four parties and only on the basis of replies filed by those parties through a tapal/post, the AO accepted the purchases from the parties as genuine. Accordingly, after giving opportunity of hearing to the assessee, the PCIT held that the order passed by the AO was erroneous and prejudicial to the interests of the revenue and made the following observations while passing the 263 order:

*“ 4. On perusal of the records, as mentioned above, it is noticed that the case was reopened based on the information received from DDIT(Inv) Unit-2(3), Mumbai that the assessee had indulged in providing accommodation entries, i.e. bogus purchase without actual supply of any goods or services. Detailed analysis revealed that the assessee had provided accommodation entries of purchase to the tune of Rs. 2,25,96,76,090/-. While recording the reason, the commission on these accommodation entries itself was estimated at Rs. 7,90,88,663/- being 3.5% of the amount of accommodation entries. However, the case was assessed by the successor Assessing Officer vide order dated. 18-03-2016 u/s. 143(3) r.w.s. 147, determining total income at Rs. 1,55,210/- only, i.e. accepting the returned income without making any addition and disallowance. It is noticed from the records that the Assessing Officer has not made nay detailed inquiry at the time of assessment, before accepting the accommodation entry as genuine transactions. The Assessing Officer during the assessment proceedings had only issued notice u/s. 133(6) of the IT Act to certain parties. Viz (i) Pushpak Bullion Pvt. Ltd. (ii) Express Ind. Pvt. Ltd. (iii) Jorss Buillion Pvt. Ltd. (iv) R.S. Bullion. Replies were filed from these parties through the tapal/post. Based on the replies from these parties only, the Assessing Officer has accepted the purchases from these parties as genuine. On perusal of the record, it is observed that the verification of the authenticity of the actual purchase and sale of goods had not been carried out by the Assessing Officer as were specifically required as per report of the DDIT (Inv.) Unit. 2(3),*





primarily engaged in sale of gold bullion also gold jewellery to various vendors. The counsel for the assessee then drew our attention to paper book dated 25-06-2009 and submitted that from time-to-time detailed submissions were made by the assessee during the course of 147 proceedings before the AO, which were duly considered by him in the assessment order. The counsel for the assessee also relied on order sheet entries for the impugned assessment year to assert that due enquiries were made by the AO during the course of reassessment proceedings. The counsel submitted that a perusal of the order sheet entries reflect that the assessee had submitted bills of purchases, sales bills, cash book, bank book, bank statements etc. during course of 147 proceedings, which were duly considered by the AO while passing the order. He further submitted that copies of VAT returns were filed during reassessment proceedings in order to reconcile the books of account, which were duly taken on record and considered by the assessing officer while passing the 147 order. He submitted that vide letter dated 25-03-2016, the assessee submitted copy of VAT audit report and also sales quantity summary for the impugned financial year. The Counsel submitted that response from four parties were received and these are the main parties to whom approximately 85% of the sales were made by the assessee during the year under consideration. In response, the Ld. DR primarily relied on the observations made by PCIT in the 263 order. He pointed out that a perusal of the order sheet entries reveals that the last reply of from the side of the assessee was received on 11-03-2016 and the last order sheet entry was on 16-03-2016 and the assessment order was passed on 18-03-2016 and therefore apparently no submissions could have been considered by the AO after the date of passing of assessment order. He further drew attention to

page 20 of the paper book dated 25-06-2009 (stock summary) and pointed out that the stock summary neither contains an opening or closing balance and therefore the same cannot be relied upon. He submitted that there is a clear lack of enquiry in the instant facts and hence the order passed by the assessing officer is erroneous and prejudicial to the interests of the revenue.

5. We have heard the rival contentions and perused the material on record. We note that though the cash book and bank book were produced before the Ld. Assessing Officer, however, from the order sheet entries produced before us, it is evident that no further enquiries on the basis of the afore-mentioned bank books and cash-book were made with respect to such huge cash deposits which were made during the course of assessment proceedings. There was a specific allegation that the assessee is engaged in providing accommodation entries but the Ld. Assessing Officer did not make any further enquiries with regards to this allegation on the basis of bank book and cash book which were produced before him. A perusal of the bank statement shows that substantial amounts have been deposited and that too not on a regular basis. However, the Ld. Assessing Officer without making any further enquiries accepted the same at their face value as representing business income of the assessee. It is further observed that the Ld. Assessing Officer called for the statements of four parties and accepted the statements of parties on the basis of confirmation given through post / tapal. However, no effort was made to call them or personally examine them, especially in light of the fact when case has been set aside u/s 263 of the Act on the basis of specific allegations of the assessee being engaged in providing accommodation entries. The confirmation letters furnished by the

parties, sent through post, were accepted as genuine by the Id. Assessing officer on their face value, without carrying out any further examination regarding the genuineness of parties, especially when the matter was set aside on the basis of specific allegations of the assessee being an accommodation entry provider. No further enquiry was made regarding the genuineness of the parties or their capacity to advance such huge amounts of money to the assessee. The Ld. Counsel for the assessee placed reliance to letter dated 20-03-2016 addressed to ITO, Ward- 1(3)(2) furnishing ledger account from the books of the parties and also to another letter dated 25-3-2016 again addressed to ITO, Ward- 1(3)(2) furnishing copy of VAT Audit Report and purchase and sale quantity summary for FY 2007-08 to argue that all details have been duly considered by the Ld. Assessing Officer during the course of assessment proceedings and therefore the order has been passed after giving thoughtful consideration to all relevant material. In this regard, the Ld. Counsel for the assessee also furnished submission dated 07-06-2021, wherein at para 4 at pages 5 to 6 of paper-book, it was submitted that the Ld. Assessing Officer had given due consideration to the aforesaid letters submitted before him. However, it is interesting to note that the assessment order has been passed on 18-03-2016 i.e. before the dates when the above letters dated 20-03-2016 and 25-03-2016 and submissions have been stated to have been furnished to the Ld. Assessing Officer for his consideration. Therefore, evidently these letters have not been considered by the Ld. Assessing Officer at the time of passing the order since the assessment order was passed on a prior date, and no reliance can be placed on the same. At the time of hearing, it was contended that there was violation of principles of natural justice in 263 proceedings, since “Office

Note” prepared by AO was not furnished to the assessee. However, we note from the records that vide letter dated 25-06-2019, addressed by ITO to CIT(OSD) that inspection of case records was done by the AR of the assessee and the AR of the assessee had duly inspected the Office Note. Also, the order sheet entries have been produced before us for our perusal. Another noticeable fact is that the assessee on a turnover of Rs. 429 crores approximately, has submitted a net profit of Rs. 1.10 lakhs approximately (Rs. 45,000/- has been declared as salary income by the assessee). Therefore, in percentage terms, the net profit from business of bullion and jewellery comes to approximately 0.0025%. However, during the assessment proceedings, the Ld. Assessing Officer did not make any enquiry regarding why such a miniscule net profit rate of 0.0025% has been offered to tax on the huge turnover. Further, AO during the course of assessment proceedings made no enquiries as to the mode of delivery of such substantial amount of bullion and jewellery. Thus, there seems to be an evident lack of enquiry / investigation into the facts of the case during the course of assessment proceedings and all contentions made by the assessee have been accepted, without detailed examination / analysis. In the case of **JR Industries v. PCIT [2021] 132 taxmann.com 302 (Jaipur - Trib.)**, the ITAT observed that where Assessing Officer sought to reopen assessment in case of assessee on basis of investigation made by Investigation wing of department that assessee had provided accommodation entries in garb of business transactions, but without carrying out any investigation, he treated sales as bogus and charged 25 per cent as income derived out of accommodation entries, order of Assessing Officer being erroneous, Commissioner was

justified in exercising his revisionary jurisdiction. While passing the order, the ITAT made the following relevant observations:

*Having considered the entirety of facts and circumstances of the present case, it is further found **that here the question is not filing the documents by the assessee with the Assessing Officer during the assessment proceedings, however, here the question is with respect to carrying out necessary verifications on the information of the department and that of the documents submitted by the assessee. Unfortunately, there has not been any sort of verification carried out by the Assessing Officer.** It is viewed that the Assessing Officer has proceeded only on the basis that 'modus operandi of providing bogus sales cannot be relied upon in the light of the concrete information available on the record.' Thus, in this way, only on this basis, the Assessing Officer treated the sales as bogus and charged 25 per cent as income derived out in lieu of accommodation entries without any basis, enquiry or verification. **Even, throughout the assessment proceedings, there is not even any whisper from the side of the Assessing Officer that he had carried out any sort of investigation or verification or recorded his satisfaction.** Thus, the findings of the Commissioner are agreed with and the order passed by the Commissioner is upheld, wherein he has pointed out the discrepancies in the order of Assessing Officer. Thus, considering the entirety of facts and circumstances as discussed above and also taking into consideration the judgments relied upon by the respective parties,*

*this ground of appeal raised by the assessee is dismissed and the order passed by the Commissioner under section 263 is upheld.*

The Cochin ITAT in the case of **Kerala State Electricity Board Ltd. [2019] 111 taxmann.com 353 (Cochin - Trib.)** has held that Assessing officer is not expected to mechanically accept what assessee has claimed before him and it is his duty to ascertain truth of facts stated and genuineness of the claims made in return and order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting genuineness of claim which resulted in loss of revenue. In the case of **Jeevan Investment & Finance (P.) Ltd.[2017] 88 taxmann.com 552 (Bombay)**, the Bombay High Court held that where while making assessment, Assessing Officer raised query regarding method of valuation of unquoted shares and in response, assessee merely stated that said shares were valued at cost without submitting method of valuing said shares, order of Assessing Officer accepting loss on sale of said shares without making further enquiry was erroneous and prejudicial to interest of revenue. The Ahmedabad ITAT in the case of **Nakoda Fashion (P.) Ltd. [2018] 92 taxmann.com 46 (Ahmedabad - Trib.)** upholding order passed u/s 263 of the Act has held that where there were material to show that share applicants were paper companies, mere furnishing of particulars or payment by account payee cheque or submission of confirmation letter by share applicants would only prove identity of subscribers and by itself, not enough to establish their creditworthiness and genuineness of transactions. The Ahmedabad ITAT made the following observations while passing the order:

19. From going through all the above judgments and decision, we find that along with evidences, surrounding circumstances, human probability and intentional acts are also to be taken note of while accepting the identity, creditworthiness and genuineness of the cash creditors which in this case is the share applicants. In the case before us we observe that assessee is trying to assert again and again upon the PAN, IT returns, bank statement and confirmations of the impugned 5 parties but has nowhere tried to clarify or disclose the fact which has embedded in the financial statement of these 5 parties which speaks in itself that they are paper companies. Further if it has been genuine transaction and assessee company is asked to produce the new share holders who have been allotted a substantial portion of equity shares, he would have easily called upon the investors. The investors could have come along with all the financial documents and could have clarified about his intention to make investment in the equity shares of the company because every investor wants to earn income from investment in the form of dividend as well as expects appreciation in the valuation of shares with the growth of business. If this has been the situation, then there would have been no doubt on the genuineness of the transactions. On the contrary in the instant case assessee completely fails to prove the same.

In the case of **N. Tarika Property Invest. (P.) Ltd. [2014] 51 taxmann.com 387 (SC)**, the Hon'ble Supreme Court has held that where false evidence had been adduced by assessee to give colour of genuineness to bogus entries through bank accounts and deposits which were mostly by

cash, Assessing Officer was justified in making addition under section 68. In the case of **Maithan International [2015] 56 taxmann.com 283 (Calcutta)**, the Hon'ble Kolkata High Court held that where Assessing Officer while accepting genuineness of loan taken by assessee from various creditors, did not take into consideration creditworthiness of lenders, **mere examination of their bank statements or letter of confirmation was not enough** and, therefore, impugned revisional order passed by Commissioner setting aside assessment was to be upheld. Recently, the Gujarat High Court in the case of **Geetaben Dineshchandra Gupta [2021] 129 taxmann.com 346 (Gujarat)** has held that where from inquiry/investigation by Investigation Wing, some tangible material was found to substantiate fact that assessee was provider of accommodation entries and that income from commission was not disclosed in return, formation of belief by Assessing Officer that income chargeable to tax had escaped assessment due to non-disclosure of full and true facts by assessee, appeared to be plausible and, thus, initiation of reassessment was justified.

5.1 In the light of the facts and circumstances highlighted by us in the preceding paragraphs, we are of the considered view that there was a lack of enquiry by the Id. Assessing officer during the course of assessment proceedings, and therefore the Principal Commissioner of Income Tax has not erred in facts and in law in concluding that the assessment order passed was erroneous and prejudicial to the interests of the Revenue.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 20-07-2022

**Sd/-**  
**(P.M. JAGTAP)**  
**VICE PRESIDENT**  
**Ahmedabad : Dated 20/07/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद