

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

*(Conducted Through Virtual Court)*

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.1057/Ahd/2018**

**Assessment Year : 2013-14**

Shri Chimanlal Bhudardas Patel Prop: Patel Chimanlal B. & Co. 46, Market Yard Kukarwada 382 830 Tal. Vijapur, Dist: Mehsana. PAN : ABJPP 9445 J	Vs	The ITO, Ward-1 Mehsana.
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(Applicant)	(Responent)
Assessee by :	Shri M.K. Patel, Advocate
Revenue by :	Shri Alpesh Parmar, Sr.DR

मुनवाई की तारीख/Date of Hearing : 04/04/2022

घोषणा की तारीख /Date of Pronouncement: 30/06/2022

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

This appeal is filed by the assessee against order dated 5.2.2018 passed by the Commissioner of Income-tax (Appeals), Gandhinagar relating to the same Asst.Year 2013-14.

2. The grounds raised in this appeal read as follow:

*"(1) That the learned CIT(A) has grievously erred in law, and on facts, in confirming the addition of Rs.6,60,000/- in respect of unsecured loan of Patel Dinesh Ambalal.*

*(2) That the learned CIT(A) has grievously erred in law, and on facts, in confirming the rejection of books of accounts u/s 145 of the Act.*

*3) That the learned CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.11,87,465/- made on account of estimation of gross profit."*

3. Brief facts of the case is that the assessee is an individual and proprietor of Patel Chimanlal B & Co. He is engaged in trading of Agro products. For the assessment year 2013-14, the assessee filed his return of income on 17.7.2013 declaring total income at Rs.3,13,400/-. The same was processed under section 143(1) Income Tax Act, 1961 ("the Act" for short). Thereafter the case was selected for scrutiny assessment through CASS and issued notices under section 143(2) and also 142(1) of the Act. During the assessment proceedings, on perusal of books of accounts, the ld.AO noticed that the assessee has shown amounts of Rs.2,90,000/- from Smt.Mitalben B.Patel and Rs.6,60,000/- from Dineshbhai Ambalal. To prove genuineness of the transactions, the assessee filed bank statements of Smt.Mitalben B. Patel and one Shri Patel Arvind Ambalal (*instead of Dineshbhai Ambalal from whom the assessee has taken loan of Rs.6,60,000/-*). On verification of bank statement of Smt.Mitalben Patel, the AO noticed that just before the loan transaction, there was cash deposit in her bank account, and that income of the said Mitalben did not justify the loan given nor justify the source of loan. The ld.AO summoned Smt.Mitalben to his office in this regard but she did not appear. The ld.AO noted that the said Smt.Mitalben was daughter-in-law of the assessee and resided at the same residential address. For want of details, explanation and evidence to prove genuineness of the loan, the ld.AO made addition of Rs.2,90,000/- to the income of the assessee. Similarly, there was no detail furnished by the assessee to prove genuineness of the loan taken from Dineshbhai Ambal. Even the assessee has not provided address, bank statement or any other documentary evidence of the

impugned loan of Rs.6,60,000/-. Assessee only provided bank statement of some other person, which was not at all related to the impugned loan transaction. Therefore, the ld.AO added a sum of Rs.6,60,000/- being unexplained cash credits. Against these two additions, the assessee filed an appeal before the ld.CIT(A).

4. Before the Appellate Proceedings, as against loan taken from Smt.Mitalben Patel, the assessee has filed certain details and given explanation. Based on this, the ld.CIT(A) has satisfied with explanation of the assessee, that the loan taken from him was duly reflected in the bank statements, and also filed confirmation and Return of Income. Accordingly, the ld.CIT(A) deleted loan amount of Rs.2,90,000/- taken from Smt.Mitalben Patel.

5. As far as loan taken from Shri Dinesh Ambalal, the only evidence produced by the assessee was copy of bank statement of some other person viz. Patel Arvindbhai Ambalal which was not relevant to the loan taken from Dinesh Ambalal Patel. Therefore, in the absence of any details and explanation to establish genuineness of the loan taken from Dinesh Ambalal Patel, the ld.CIT(A) confirmed addition of Rs.6,60,000/-. Aggrieved by the confirmation of addition by the ld.CIT(A), assessee is in appeal before the Tribunal.

6. Before us, the ld.counsel for the assessee reiterated submissions made before the Revenue authorities. He also drew our attention page no.10 of the written submissions filed in the paper book. In this the explanation given by the assessee are as under:

*“B. Regarding unsecured loan from Dineshbhai Ambalal Patel Rs.6,60,000*

*In Rebutter, The reply of the appellant is as under*

1. During the course of Assessment proceeding, the AO has issued notice U/s 142(1) with annexure dated 03-08-2015. (Page No. 46 to 48) The appellant appeared and filed details and submissions as called for on dated 19-08-2015. (Page No. 49 to 50) and on dated 14-09-2015. (Page No. 51) Then after, the AO has issued letter dated 18-01-2016 calling to appear on 22-12-2016. (Page No. 52) which was attended and filed details and submission as called for by Appellant on dated 22-01-2016. (Page No. 53)

2. As per Copy of Account submitted before assessing officer during Assessment proceeding regarding unsecured loan from Dineshbhai Ambalal Patel, it shows that there was opening credit balance being credit of earlier years as on dated 01-04-2012 of Rs.9,60,000. (Page No. 146) Out of that, the appellant has paid on dated 12-04-2012 Rs.5,00,000 to Dineshbhai Ambalal Patel as per chq no. 411983 which was deposited in the Mehsana Dist central Co Op Bank by Dineshbhai Ambalal Patel in the Account of Dineshbhai Ambalal Patel. (Page No. 147 to 148)

Then after Dineshbhai Ambalal Patel has withdrawn Cash from his bank account.

3. Again the appellant has received new and fresh amount of Rs. 2,00,000 on dated 30-03-2013 from Dineshbhai Ambalal Patel as per chq no. 154636 which is received from Kukanvada Nagarik Sahakari Bank Ltd having account of the name Arvindbhai Ambalal Patel who also known alias as Dineshbhai Ambalal (Page No. 149 to 150)

4. Patel Dineshbhai Ambalal (also known alias as Patel Arvindbhai Ambalal) has also submitted his bank account statement and return of income and confirmation letter. (Page No. 146 to 154) The confirmation on the letter head from Bank stating both the persons are one and same is appended with this submission. The Ld AO has merely rejected the bank statement which represents the said entry in bonafide manner and nothing contrary is placed on record. (Page No. 151 to 152)

5. The appellant has received fresh unsecured loan from Dineshbhai Ambalal Patel of Rs. 2,00,000 during the year under appeal but not Rs. 6,60,000 as stated by AO.

6. The Appellant has proved the identity persons, genuineness of transaction and credit worthiness of deposit taken from Dineshbhai Ambalal Patel.

Accordingly, the ld.counsel for the assessee submitted that the addition made on account of loan taken from Dineshbhai Ambalal Patel may be deleted. On the other hand, the ld.DR supported the orders of the Revenue authorities.

7. We have considered rival submissions and gone through the orders of the Revenues. We find that before the Revenue authorities necessary details required for proving genuineness of the loan transaction of Rs.6,60,000/- have not been provided or explained by the assessee, and therefore, the Id.CIT(A) confirmed the addition, particularly, when there is discrepancy in the name of lender in the bank statement. Before us the Id.counsel for the assessee has given certain explanation supported by certain details filed in the paper book. We find that these explanation and details seem to be not before the Id.Revenue authorities while considering the issue. We are of the view that the details provided by the assessee require verification. Therefore, we are of the view that the assessee shall be given one more opportunity to the prove his case of cash credit/loan taken from the said Dinesh Ambalal Patel of Rs.6,60,000/-. Thus, we set aside the issue back to the file of the AO to decide the same afresh on the basis of explanation and details furnished by the assessee. Needless to say, the Id.AO shall provide reasonable opportunity of hearing to the assessee and shall cooperate with the AO to adjudicate the issue on merit. Accordingly, this ground is allowed for statistical purpose.

8. Ground no.2 and 3 are interconnected. The assessee has aggrieved by the action of the Revenue authorities in rejecting books of accounts under section 145 of the Act and addition of Rs.11,87,465/- made on account of estimation of gross profit.

9. On verification of the books of accounts of the assessee, it was revealed to the AO that the assessee has shown sales to Patel Natvarlal Natthudas of Rs.4,45,940/- and to Patel Bhagabhai Revabhai for Rs.4,28,110/-. Since the sales were made in cash, in the absence of necessary proof, the genuineness thereof was

doubted, thus the ld.AO summoned the above two purchasers of the assessee. Patel Baghabhai Revabhai in his statement dated 16.9.2015 stated that he did not purchase any goods from the assessee, and in fact he sold Kapas to the assessee for approximately Rs.5 lakhs and other transactions were made between them. This was further confirmed by his son and manager of the assessee, Shri Bhavesh Chimanlal Patel in his recorded statement on 22.11.2016 and further stated that the assessee has in fact purchased from them kapas, wheat, guvar, etc. The second party viz. Patel Natvarlal Naththudas however did not appear. The advances given to the parties and shown in the books of accounts, therefore did not reflect true picture and could not be justified. In response to the show cause notice also, assessee did not appear before the AO. Further, the ld.AO also noticed certain discrepancies regarding the correctness of the books of accounts in respect of the following expenses:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (In Rs.)</i>
1	<i>Kharajat-Majury Expenses</i>	<i>Rs. 6,73,237/-</i>
2	<i>Outward Goods Expense</i>	<i>Rs. 8,88,160/-</i>
3	<i>Kasar-Vatav Expense</i>	<i>Rs. 2,49,730/-</i>
4	<i>Debit note A/c</i>	<i>Rs. 74,534/-</i>

10. From the above, the ld.AO noticed that Kharajat-majury expenses were made in cash and did not match with the day register. Similarly, outwards goods expenses are made through hand-made vouchers, and the assessee could not be explain whether these expenses were incurred for selling of goods. The AO also noticed that the assessee did not maintain transport register or bills

in support of his claim. As far as claim of Kasar-Vatav Expenses of Rs.2,49,730/- and Debit note A/c of Rs.74,534/- was concerned, the same are similar in nature and the assessee has only produced bills of Debit note of Rs.74,534/- and for other expenses, they were not supported by any proof. To the show cause notice, the assessee has accepted that no proper records and documentary evidences were available in this behalf. Therefore, the AO has believed that accounts of the assessee were not true and not correct reflection of the business. Accordingly, the AO proposed to estimate gross profit by issuing notice. However, the assessee did not furnish any details or reply, accordingly, the ld.AO estimated gross profit of Rs.22,5,167/- being 2% of total turnover. Since the assessee has already shown GP of Rs.10,66,702/- difference of Rs.11,87,465/- was added to the total income of the assessee. Against this addition, the assessee filed appeal before the ld.CIT(A).

11. Before the ld.CIT(A) assessee reiterated submissions made before the AO. He further submitted that the AO has not pointed out any specific defects in the books of accounts of the assessee; that the assessee was dealing in agriculture produce, where commission rate was 1%. The assessee has maintained all the ledger accounts in respect of the expenses, which were also audited under section 44AB of the Act; that there was no material with the AO which established that books of accounts maintained by the assessee were not correct and true. The assessee has reasonable increase in GP i.e. in the Asst.Year 2012-13, the GP was 0.53% whereas in the present assessment year GP rate was 0.95%, and therefore, there was no reason to make further addition to the GP. The assessee also relied upon various cases laws to support his case. However, the ld.CIT(A) did not accept the explanation of the assessee. He confirmed the finding of the AO more so relying upon

the admission of the assessee during the assessment proceedings that no proper records and documentary evidences were available in this behalf. Aggrieved, assessee is now before the Tribunal.

12. Before us, the ld.counsel for the assessee advanced the submissions as were made before the Revenue authorities. He further submitted that GP rate of 2% of turnover is absolutely baseless and not commensurate with the level of business undertaken by the assessee. Therefore, estimation of GP at 2% is without any justification and reasonableness, and the same deserves to be deleted. On the other hand, the ld.DR supported the orders of the Revenue authorities.

13. We have given our thoughtful consideration to the facts of the case; and also gone through the orders of the Revenue. The main contentions of the assessee was that books of accounts are audited under section 44AB of the Act and no specific defect has been found by the AO, and therefore, rejection of books of accounts and estimation of GP at 2% of turnover was not valid and not in accordance with law. We find that the AO found the books of accounts of the assessee are not true and correct reflection of the business of the assessee, and trade results did not reflect true income. The reasons assigned by the AO were that there are examples of discrepancies in accounting of sales and purchases made by the assessee. These discrepancies were not properly explained by the assessee. The AO also pointed out discrepancies in expenses incurred by the assessee; that the expenses were made through hand-made vouchers and they were not recorded on daily basis. The assessee also not maintained transport register or bills in support of his claim. Even during the assessment proceedings, the assessee's representative has accepted the fact that no proper records

and documentary evidences were available in this behalf. Both the authorities below concurrently recorded these facts. Therefore, he made an estimation of gross profit at 2% of turnover. However, we are of the view that though there are flaws in the books of accounts maintained by the assessee as noticed by the Revenue, the estimation of gross profit at 2% of turnover is on higher side considering the GP rate declared for the earlier year i.e. 0.53% for the Asst.Year 2012-13 and 0.95% in present assessment year. Therefore, to meet ends of justice, and fairness of justice, we restrict estimation of GP rate to 1.25% instead of 2% estimated by the AO. We direct the AO to calculate addition on account of GP estimation accordingly. Thus, ground of appeal of the assessee is partly allowed.

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

**Order pronounced in the Court on 30<sup>th</sup> June, 2022 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 30/06/2022  
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