

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपीलसं./ITA No.128/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Virtual Court Hearing)

Kantilal Khemjibhai Chheda Shop No.1, Sannary Nx. Old Veg. Market, Valsad-396001.	Vs.	Commissioner of Income-tax, Valsad Circle, Income Tax Office, Palak Arcade, Pali Hill, Santi Nagar, Tithal Road, Valsad- 396001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABMPC 1833 G		
(Appellant)		(Respondent)

Assessee by	Shri Surji D Chheda, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	12/07/2022
Date of Pronouncement	24/08/2022

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-Valsad (in short “ld. CIT(A)”], dated 23.01.2018, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 29.12.2006.

2. Grounds of appeal raised by the assessee are as follows:

“1. The learned CIT(A) has erred in law and on facts to hold that genuineness of purchase bills are questionable only on the ground that the appellant had not brought out this fact during survey and no finding by survey team and failed to appreciate that all purchase are duly supported by purchase bills as well as payment by account payee cheque before date of survey.

2. The learned CIT(A) has erred in law and on facts to consider corroborative evidence for purchases and just rejected claim without any adverse findings whatsoever.

3. The learned CIT(A) has erred in law and on facts to hold the claim of purchases as not a genuine claim as nothing was shown from account books to

substantiate the claim and failed to appreciate that purchases were duly shown in account books and audited accounts and even payment thereof was duly reflected before the date of survey.

4. The learned CIT(A) has erred in law and on facts to disallow claim of purchases even when the claim of additional sales and other details has been accepted by the learned CIT(A) on some set of facts.

5. The learned CIT(A) has erred in law and on facts to confirm the action of the learned A.O. to make other addition even when the addition has been made on estimation basis on the basis of G.P.”

3. Succinct facts are that assessee is an individual, a proprietor of “Sannari Nx” and engaged in business of trading of sarees, dress material and ready-made garments. The assessee filed his return of income for assessment year 2014-15 on 27.11.2014 declaring total income of Rs.43,65,770/- along with return of income. The audited report u/s 44AB of the Act in Form No.3CA & 3CD and Balance sheet and Profit and loss account etc, were also filed. The case was manually selected under compulsory criteria for scrutiny and notice u/s 143(2) of the Act was issued on 23.09.2015 which was duly served upon the assessee on 24.09.2015. Subsequently notice u/s 142(1) of the Act with questionnaire was issued on 04.08.016 seeking details. The Assessing Officer noted that during the course of survey proceedings, statement of assessee was recorded on oath u/s 131 on 26.11.2013. The assessee has given his declaration in answer to Q. No.11 to 13 wherein he admitted difference in stock of Rs.47,65,992/- and income of Rs.8,40,500/- as his unaccounted income for the current year and made total voluntarily disclosure of Rs.56,06,492/- (Rs.47,65,992 + Rs.8,40,500). He has also signed certificate of giving voluntary statement without any pressure after reading and understanding it.

4. Later on the net profit shown by the assessee was Rs.44,79,428/- which includes the disclosure of Rs.41,93,332/- only as against the disclosure made by the assessee of Rs.56,06,492/-. Therefore, in view of the facts of the case and discussion made as above, the net profit was worked out by Assessing Officer at Rs.60,74,688/- instead of Rs.44,79,428/- as shown by the assessee, thus, difference of Rs.15,95,260/- (Rs.60,74,688 -Rs.44,79,428) was worked out by Assessing Officer. The component of this difference was Rs.14,13,160/-

(Rs.56,06,492 – Rs.41,93,332) out of disclosure made voluntarily at the time of survey and fall in gross profit at Rs.1,82,097/-. This way total addition made by Assessing Officer was to the tune of Rs.15,95,260 (Rs.14,13,160 + Rs.1,82,097).

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved, the assessee is in further appeal before us.

5. We have heard both the parties. We note that assessee made voluntarily disclosure of Rs.56,06,492/-. However, later on, when the assessee filed return of income then he has disclosed Rs.41,93,332/- on account of voluntarily disclosure. Therefore, assessee made partly compliance so far voluntarily disclosure is concerned. We note that assessee has challenged the addition of Rs.15,95,260/- related to disclosure made in the survey u/s 133A of the Act (Rs.14,13,160/- on account of retraction of disclosed stock and Rs.1,82,000/- on account of fall in gross profit. Learned DR for the Revenue submitted that assessee declared Rs.47,65,992/- as unaccounted investment in stock on the basis of excess stock found at the time of survey proceedings, hence findings of the assessing officer should be confirmed. On the other hand, Id Counsel for the assessee submitted that purchase of Rs.1,79,74,977/- shown till the date of survey was incorrect as actual purchases was Rs.1,96,51,829/-, thus, the assessee claimed that there was purchases worth Rs.16,76,852/- which could not be considered and shown to the survey team leading to excess disclosure of income under the unaccounted stock, hence Id Counsel prays that addition made by the assessing officer should be confirmed. We note that Assessing Officer has controverted this contention in the assessment order vide para-5.6 to 5.8 wherein the claim of the assessee for genuine purchase was rebutted. The Assessing Officer has stressed that the assessee could have stated in the statement recorded during the survey that some purchase bills were not available and reconciliation could have been filed after survey proceedings. However, the assessee made the new claim of purchases only at the time of assessment proceedings. During the

course of survey proceedings, the survey team did not find any such purchase bills neither the assessee brought forth any evidences or made any statements supporting such claim of purchases. The Ld. Counsel further contended that the claim for purchases are duly supported by purchase bills and pertains to pre-survey period. The Id Counsel also relied on the decision of Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan Son (2012) 25 taxmann.com 413 (SC), wherein it was held that the admission on the date of survey cannot be conclusive and the assessee has the right to prove that such admission was incorrect. The Ld Counsel also referred to the CBDT Circular No.286 dated 10.03.2003 on the issue of declaration taken in survey u/s 133A of the Act and stated that department had no corroborative evidence to substantiate the impugned undisclosed income.

6 We note that Id CIT(A), based on these facts, sustained the addition of Rs.14,13,160/-. With regard to addition of Rs.1,82,097/- on account of fall in gross profit, the Assessing Officer has not given specific reason for such changed percentage of gross profit and hence the addition of Rs.1,82,079/- was deleted by Id CIT(A).

7. Thus, we note that total voluntarily disclosure was at Rs.56,06,492/- however while filing return of income, the assessee accepted voluntarily disclosed amount to the extent of Rs.41,93,332/- and hence denied the balance amount of Rs.14,13,160/- (Rs.56,06,492 -Rs.41,93,332). The assessee did not submit any valid explanation that how and why he did not accept Rs.14,13,160/- and why it is not a part of total disclosure. Once the substantial amount of Rs.41,93,332/- was accepted by assessee then for balance amount of Rs.14,13,160/- (Rs.56,06,492 -Rs.41,93,332), the assessee should not make any excuse. That is, for balance amount of Rs.14,13,160/-, the assessee argued that as per decision of Hon'ble Supreme Court in the case of S.Khader Khan Son (supra), admission on the date of survey cannot be conclusive evidence. Before us, the assessee did not explain with cogent evidence, that why he has accepted Rs.41,93,332/- and how

and why he is not accepting balance amount of Rs.14,13,160/-, whereas nature of both the amounts are same. We are of the view that Judgment cited by Id Counsel in case of S.Khader khan Son(supra) does not help the assessee to delete part addition of Rs.14,13,160/-, as the said amount is part of total disclosure made by the assessee and the assessee accepted the same and paid the taxes thereon. We note that total disclosure made by assessee was to the tune of Rs. Rs.56,06,492/- and out of that substantial amount of Rs.41,93,332/- was accepted by assessee then for balance amount of Rs.14,13,160/-(Rs.56,06,492 - Rs.41,93,332), the assessee should not make any excuse. Besides, the assessee has not distinguished the said amount of Rs.14,13,160/- with cogent evidence that it is different from total disclosure. Since, the nature of voluntarily disclosure in respect of both the amounts are same, hence Id CIT(A) has rightly confirmed the addition. That being so, we decline to interfere with the order of Id. CIT(A) and his order on this addition is, therefore, upheld and the grounds of appeal of the assessee is dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order is pronounced in the open court on 24/08/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत / Surat दिनांक/ Date: 24/08/2022

DKP (Sr. PS Outsourcing)

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat