

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC-1” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.378/Ahd/2018
Assessment Year: 2011-12**

Shri Maheshbhai Ishwarbhai Patel vs. The Income Tax Officer,
Prop. of Maheshkumar & Co., Patan, Ward-4, Unjha
9, Yamuna Nagar Society,
Visnagar Road,
Unjha.
[PAN – ABYPP 8492 R]
(Appellant) (Respondent)

Appellant by : None
Respondent by : Shri V.K. Singh, Sr. DR

Date of hearing : 22.07.2022
Date of pronouncement : 26.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Assessee against the order dated 17.11.2017 passed by the CIT(A), Gandhinagar, Ahmedabad for the Assessment Year 2011-12.

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

- “1. *Learned CIT(A) has erred in law and facts in confirming addition of Rs.2,40,995/- made by the AO on the basis of discrepancy in profit in returner of income and profit stated in statement u/s. 131 of IT Act though profit declared in return of income was as per profit & loss account submitted to A.O.*
2. *Learned CIT(A) has erred in law & facts by confirming addition of Rs.53,138/- made by A.O. in respect of disallowance of deduction claimed u/s. 80C of I.T. Act of Rs.53,138/- due to non-production of proof of investment.*

3. *It is therefore prayed that order of learned CIT(A), Gandhinagar, Ahmedabad dated 17.11.2017 be amended to the above extent by deleting the addition confirmed by learned CIT(A).*
4. *Learned CIT(A) had further erred in law by not considering the facts of the case of appellant."*

3. The assessee is engaged in the business of Jeera trading filed return of income on 12.03.2012 declaring total income of Rs.8,20,514/-. The Assessing Officer made addition of Rs.2,40,995/- towards discrepancy of profit and made disallowance of deduction claimed under Section 80C amounting to Rs.53,138/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing, none appeared on behalf of the assessee despite giving notice and there is no fresh address given to the Tribunal. Therefore, we are proceeding on the basis of written submissions made by the assessee before the Assessing Officer as well as before the CIT(A).

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard the Ld. DR and perused all the relevant material available on record. It is pertinent to note that as per the statement recorded under Section 131 of the Income Tax Act, 1961 the assessee disclosed the total net profit of Rs.11,46,021/- for the year under consideration including Rs.6,07,900/- as income from other sources and Rs.5,38,121/- as net profit for the year under consideration. Assessee's plea in respect of addition of Rs.2,40,995/- is that the income declared by the assessee was in two folds i.e. one in respect of unaccounted cash purchases made out of unaccounted income of Rs.6,07,900/- and another in respect of business profit of Rs.5,38,121/- on lump sum book result available with him subject to various adjustments and entry of expenses. The return of income shows that Rs 6,07,900/- is in respect of unaccounted income, so there is no issue on unaccounted income. However, while declaring business income of Rs.5,38,121/- in connection with statement recorded under Section 131, the assessee has not considered various

direct and indirect expenses and only gross profit is considered. While filing the return of income, correct net profit derived from profit and loss account after considering all direct and indirect is shown as income in return as per computation of income. The Assessing Officer has not shown any defect in books of account or in book result. So profit declared as per book result should be considered as income instead of income declared under Section 131 on lump sum basis. Secondly, the difference is in respect of claim of interest expenses of Rs.1,02,940/- from income from other sources is available as deduction under Section 57 of the Act and the Assessing Officer has not pointed out any defects on this claim of interest expenses so there is no issue for disallowance only because of such claim was not made in statement under Section 131 of the Act. These contentions of the assessee were not taken into account by the CIT(A). It appears that the CIT(A) has confirmed the addition solely on the basis of statement under Section 131 for confirming the addition which is not actual case of the assessee. At no point of time assessee's books were rejected and the cash purchases made by the assessee were accepted by the Assessing Officer/Revenue. Therefore, it cannot be termed as discrepancy of Profit & Loss account when the assessee has demonstrated it before the Assessing Officer as well as before the CIT(A). Hence, ground no.1 of the assessee is allowed.

8. As regards ground no.2, the same is related to Insurance Premium paid and Tuition Fees payment. The details were before the Assessing Officer as well as before the CIT(A) but despite that contrary finding that no production of proof of investment was the sole basis to dismiss this claim. Thus, ground no.2 of assessee's appeal is allowed. Appeal of the assessee is thus allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 26th day of August, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 26th day of August, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*