

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

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

**ITA No.282/RJT/2017
Assessment Year: 2011-12**

Shri Nikhil Harkishor Sanghvi, vs. The Income Tax Officer,
C/o. Sarada & Sarada, Ward – 2(1)(4), Rajkot.
Chartered Accountants,
1st Floor, “Sakar”
Opp. Rajkumar College,
Dr. Radhakrishnan Road,
Rajkot – 360 001.
[PAN – AGBPS 6813 N]
(Appellant) (Respondent)

Appellant by : Shri Vimal Desai, Ld. AR
Respondent by : Shri B.D. Gupta, Ld. Sr. D.R.

Date of hearing : 26.07.2022
Date of pronouncement : 26.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 18.07.2017 passed by the CIT(A)-2, Rajkot for the Assessment Year 2011-12.

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

“The grounds of appeal mentioned herein below are without prejudice to one another.

1. *The re-assessment order u/s.143(3) r.w.s. 147 is bad in law.*
2. *The reopening of the assessment is bad in law. The learned CIT(A) has erred in upholding the same.*
3. *The learned Assessing Officer has erred in law as well as on facts in invoking the provisions of Section 145(3) of the Act and thereby rejecting*

the books of accounts of the appellant. The learned CIT(A) has erred in confirming the same.

4. *The learned Assessing Officer has erred in law as well as on facts in estimating the GP at the Rate of 8% of the turnover and thereby making the addition of Rs.45,34,628/-. The learned CIT(A) has erred in confirming the same.”*

3. The Revenue Authorities received information that the assessee made transactions of cash credit in his account with ICICI Bank, Ahmedabad of Rs.5,66,82,856/- and the assessee did not furnish the return of income as specified in Section 139(1) of the Income Tax Act, 1961. The Assessing Officer observed that the source of cash credit remained unexplained and unverified, the Assessing Officer further observed that the assessee is into the business of trading of Memory Card, Pen Drive and other related articles through his proprietary concern M/s. Mahavir Impex and the cash deposit made in the account were not in commensuration of the business activity. During the assessment proceedings, summons were issued to the assessee and his statement on oath was recorded. Necessary approval for reopening the assessment was obtained from appropriate authority after recoding reasons for reopening the case on 19.06.2015. The Assessing Officer made addition of Rs.45,34,628/- as estimation of gross profit at 8% of the total turnover.

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. As regards ground nos.1, 2 & 3, the Ld. AR submitted that the reasons recorded by the Assessing Officer for reopening was very brief and only speaking of some information available with the Assessing Officer. The details of which were not forming part of the reasons. Thus, the Ld. AR submitted that the Assessing Officer has reopened the case merely to verify the transactions of the assessee in ICICI Bank. It is settled position of law that reopening for the purpose of verification of certain transactions is not permissible in law. The Ld. AR relied upon the following decisions:-

- i) Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha & Others (79 ITR 603)

- ii) Gujarat High Court in case of Inductotherm (India) Pvt. Ltd. vs. DCIT – 356 ITR 0481
- iii) Ahmedabad ITAT in case of Sonal Arpit Doshi vs. ITO – decision dated 21.10.2015 in ITA No.366/Ahd/2015
- iv) Ahmedabad ITAT in case of ACIT vs. M/s. Shakun Polymers Limited – ITA No.756/Ahd/2013

6. The Ld. AR further submitted that the Revenue Authorities as well as the Appellate Authority has totally ignored the judicial pronouncement. Therefore, the assessment itself is bad in law.

7. As regards ground no.4 which is on merit, the Ld. AR submitted that in the course of reassessment proceedings the assessee stated that he was working as salaried employee for his cousin Shri Pradipbhai Doshi for Rs.20,000 per month and that the concern M/s. Mahavir Impex was opened by Shri Pradipbhai Doshi in assessee's name. It was also stated that his ICICI Bank account was opened by Shri Pradipbhai Doshi and it was also operated by him after taking pre-signed cheques from the assessee. The Ld AR further submitted that being an employee he has followed instructions of Shri Pradipbhai Doshi and put his signatures wherever required. Shri Pradipbhai Doshi imported mobiles/memory cards and sold them in India through his concern M/s. Mahavir Impex. The Ld. AR further submitted that the assessee earned only Rs.20,000/- per month as salary from Shri Pradipbhai Doshi and the same was offered for tax by him in the return of income filed in response to notice under Section 148 of the Act. The assessee clarified in his statement recorded by the ADIT (Inv.)-I, Rajkot on 24.06.2011 that Shri Pradipbhai Doshi was the real owner of M/s. Mahavir Impex and he was just an owner on the paper. The assessee also executed an affidavit dated 25.06.2011 in support of the above facts. Ld. AR submitted that the Assessing Officer did not make any enquiry to Shri Pradipbhai Doshi and contended that survey was carried out at the registered office of M/s. Kingstar Communication Private Limited wherein Shri Pradipbhai Doshi was a Director and that Shri Pradipbhai Doshi filed an affidavit stating that he did not have any connection or business interest with the assessee or his proprietary concern. The finding of survey in case of Shri Pradipbhai Doshi or his affidavit was not placed before the assessee for rebuttal. The Assessing Officer blindly relied upon the

affidavit of Shri Pradipbhai Doshi and completely ignored the affidavit of the assessee without any justifiable reason. The Ld. AR submitted that the Assessing Officer failed to appreciate that the assessee was victimised and the real earner of the income has escaped the tax. The Ld. AR further submitted that estimate of 8% by taking reference of Section 44AD of the Act made by the Assessing Officer is erroneous in law. Section 44AD of the Act was applicable to turnover not exceeding Rs.60 Lakhs in the relevant year. Hence, the reference thereof to the turnover in the assessee's case, i.e. Rs.5,66,82,856/-, was misplaced. The Ld. AR relied upon the decision of the Hon'ble Rajasthan High Court in the case of Shri Ram Jhanwarlal, 321 ITR 400 and decision of the Hon'ble Delhi High Court in the case of Sobti Construction (India), 307 ITR 374. The Ld. AR submitted that the import and sale of mobile/memory card was made on wholesale basis and not on retail basis and, therefore, the estimation of income at 8% is unfair and high-pitched. The submission of the estimation of 8% under Section 44AD of the Act in respect of gross profit was without prejudice to the contention of the Ld. AR.

8. The Ld. DR submitted that the assessee is running proxy business but the assessee is doing business as the licence is in his name. The Assessing Officer has rightly estimated the 8% gross profit under Section 44AD of the Act as the purchases were made and there were unexplained cash credit transactions in assessee's account. The Ld. DR further submitted that in respect of ground nos.1, 2 & 3 the reasons recorded for reopening the assessment was properly framed on the very issue on which the reopening took place has been stated in the reasons. Therefore, the Ld. DR prayed that the appeal may be dismissed.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reasons recorded were duly framed on the very same basis the reassessment under Section 148 of the Act has been framed by the Revenue. Therefore, ground nos.1 2 & 3 are dismissed.

10. As regards ground no.4 related to merit, the assessee's books of account were never rejected and all the purchases were properly done which were never doubted by the Assessing Officer. But the assessee has contemplated that he is salaried employee of Shri Pradipbhai Doshi which appears to be the actual fact and, therefore,

the estimation of gross profit at 8% is not plausible on the part of the Assessing Officer. If any addition has to be made, the same has to be made in the hands of Shri Pradipbhai Doshi as the assessee is a salaried employee. Though the licence is in the name of the assessee, the transactions and the business dealings were done by Shri Pradipbhai Doshi which is a matter of record. Merely on the statement of Shri Pradipbhai Doshi without rebuttal to the assessee cannot be stated that the assessee has dealt with the transactions amounting to Rs.5,66,82,856/-. Hence, ground no.4 is allowed.

11. In the result, appeal of the assessee is partly 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
Rajkot Bench, Rajkot