

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.301/Ahd/2020

Asstt.Year : 2011-12

Shri Dineshbhai Umedbhai Patel 45-B, Ashwamegh Industrial Estate, Sarkhej Balva Highway, Changodar Ahmedabad. PAN : AFSPP 5434 Q	Vs	ITO, Ward-7(1)(3) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri S.N. Divatia, AR for Shri Samir Vora, AR
Revenue by :	Shri Mukesh Thawani

सुनवाई की तारीख/Date of Hearing : 08/09/2022

घोषणा की तारीख /Date of Pronouncement: 12/09/2022

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-3, Ahmedabad (in short referred to as ld.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 21.2.2020 pertaining to Asst.Year 2011-12.

2. The Registry has marked the appeal as being time barred by 35 days. In the condonation application, the assessee has *interalia* pleaded that impugned order of the ld.CIT(A) was passed on 21.2.2020, and the appeal was to be filed within 60 days. Incidentally, in this period of filing of appeal there was surge of COVID and consequent lockdowns restricting mobility. Due to these reasons, which were beyond the control of the assessee, delay

in filing of the appeal before the Tribunal was caused, which deserves to be condoned, and the appeal may be adjudicated on merit.

3. I have noted that the assessee has explained the reason for the delay in filing present appeal before the Tribunal. I further note that due to the pandemic of Covid-19, the limitation prescribed for filing appeals was extended till further order by the Hon'ble Supreme Court vide its order dated 23/03/2020 in Suo Moto Writ Petition (Civil) No.(s) 3/2020. And the same was ultimately extended upto 28th February 2022 in M.A No.21 of 2022 dated 10th January 2022. Therefore, there is no delay as such in the filing of the present appeal.

4. Sole issue in the present appeal is against the addition made on account of unaccounted income which the AO had made of Rs.4,46,090/- while the ld.CIT(A) restricted the same to Rs.3,87,708/-.

5. Brief facts of the case are that the assessee's case had been reopened on the basis of information that he had received payments from the account of M/s.Sonam Traders, proprietorship concern of Paras Ram Lalwani who was engaged in providing accommodation entries, and accordingly addition of Rs.4,46,090/- was made to the income of the assessee. This fact has found mention in para-1 of the assessment order as under:

"...The information has been received that during the year under consideration, the assessee has taken entry of Rs.15,18,500 from M/s.Sonam Traders, Prop. Paras Ram Lalwani's Bank account IDBI Bank No.056102000044031 to assessee's SBI A/c.

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No.10057476988. *The facts and modus operandi is briefly mentioned as under:*

<i>Sr. No.</i>	<i>Bank Account No.</i>	<i>Name of the Bank</i>
1	05602000044031	IDBI Bank
2	0291002100003448	Punjab National Bank
3	0290002100058649	Punjab National Bank
4	0123K26810060	Indus Ind Bank
5	910020018708907	Axis Bank Ltd.

Shri Paras Ram Lalwani has deposited huge cash in these bank accounts and transfer the amount to various parties through Cheque. RTGS/NEFT. The assessee's account has been credited amount of Rs.4,46,090/- as mentioned in para-3 below, and therefore the assessment was reopened."

6. During the assessment proceedings, the assessee stated that he had nothing to do with Paras Lalwani and the said amount had been received against sales bills raised by the assessee in the name of M/s Sai Baba Industries and M/s Jay Baba Industries, both parties having made NEFT transfer in the assessee's bank account against sale bills for which the assessee has credited their ledger in his books of accounts. Copies of the ledger accounts of both the parties were enclosed as evidence. The AO ,however, did not accept the contention of the assessee since no confirmation was filed from these parties nor sale bills, delivery challan evidencing transportation of goods etc. were provided. He further noted that information was called from both the parties under section 133(6) of the Act, but notices served upon them were not complied with. Accordingly, he held that amount of Rs.4,46,090/- was received by the assessee from M/s.Sonam Traders and was his unaccounted money routed through digital bank channel, and added the same to the total income of the assessee.

7. Before the Id.CIT(A), the assessee submitted certain additional evidences which were sent to the AO for his report, which included

invoices of M/s Jai Baba and M/s Sai Baba Industries and bank statements of the said parties. The Id.CIT(A) held that since the sales bills of Jai Baba Industries had been submitted by the assessee amounting to Rs.58,382/-, he deleted the addition made with respect to the same, and the balance addition was upheld by him. His findings at para 3.2 of the order is as under:

“3.2 I have carefully considered the facts of the case, assessment order and submission of the appellant. The elective ground of appeal is against addition of Rs.4,46,090/~ as unaccounted money. The AO has reopened the assessment on the basis of information that the appellant has received payments from the account of M/s. Sonam Traders. Prop. Paras Ram Lalwani who was engaged in providing accommodation entries and made the additions of Rs.4,46,090/-. The appellant has contended that he has made sales to Sai Baba Industries and Jay Baba Industries who has made payments which has been credited in his bank account. The AO did not accepted the explanation of the appellant as the appellant could not submit contra account from this parties, sales bills, delivery Challan etc. The appellant during remand proceedings has submitted bank statement of Sai Baba Industries and retail invoice which was submitted before the AO. The appellant in the written submission has submitted that the he has submitted all the details called for by the AO and the additions have been made without giving proper opportunity of being herd. On perusal of sales bills it is seen that the appellant has submitted copy of 3 sales bills to Jaybaba Industries dated 18.5.2010 of Rs.19074, dated 1.6.2010 of Rs.20,234/- and dated 25.09.2010 of Rs.19,074/-. As the appellant has submitted only sales bills of Rs.58,382/-, the remaining credit of Rs.3,87,708/- cannot be said to be for sale proceeds. In view of the above, the addition to the extent of Rs.58,382/- is deleted and balance amount of Rs.3,87,708/- is confirmed. The ground of appeal is partly allowed.”

8. Before me, the Id.counsel for the assessee contended that he had submitted all possible evidences before the AO, and also before the Id.CIT(A). He stated that not only sales invoice of M/sJai Baba Industries, but also sales invoices of M/s Sai Baba Industries were also filed,besides the ledger accounts of both the parties, as also confirmation received from them, had also been filed alongwith copies of bank statements. He stated that both the parties have also responded to the notice issued by the AO under section 133(6)

confirming these balances. Our attention was drawn to all these documents placed before us at page no.13 to 46 of the paper book as under:

7. Reply dt 27.09.2018 to AO PB Page No.13
8. Ledger a/c of Saibaba Industries , from our books for FY 20 10-11 A/c of Jaybaba Industries PB Page No.14-15, 24-25, 16-17
9. Retail invoices of sale to Jaybab Industries PB Page No.18-20
10. Letter dtd.27.9.2018 u/s.133(6) from to Sai Baba Industries with reply dt 9.12.2018 and contra a/c from their books
11. Retail invoices of Sai Baba Industries PB Page No.21-29
12. Retail invoices of jay Baba Industries with chart. PB Page No.43-46

9. The ld.counsel for the assessee stated that since the ld.CIT(A) had deleted the addition with respect to the sale invoice of M/sJai Baba Industries submitted, and since it has been demonstrated that even the invoice of M/s Sai Baba Industries had been submitted by the assessee, the remaining disallowance also needed to be deleted.

The ld.DR however relied on the order of the ld.CIT(A).

10. I have heard both the parties. Undoubtedly, addition of unaccounted money of Rs.4,46,090/- made by the AO has been deleted to the extent of Rs.58,382/- by the ld.CIT(A) accepting the assessee's explanation that money to this extent was received on account of sales made to M/s Jai Baba Industries to the assessee, and for the said purpose, the Ld.CIT(A) was convinced with the bills of M/s Jai Baba Industries submitted by the assessee before him. The ld.counsel for the assessee has pointed out that even the bills of the other party i.e. M/s Sai Baba Industries was also submitted, that too not only before the ld.CIT(A), but even before the AO.

Further, confirmations sought for by the AO from these two parties were also filed to the AO. The copies of the ledger accounts of these parties along with bank statement was also filed showing that amounts in relation to unaccounted money of Rs.4,46,090/- related to the payment made by the said parties against sale bills raised on them. In view of the voluminous evidences submitted by the assessee, which the ld.DR unable to controvert before me, and considering fact that the additions made to the extent of Rs.58,382/- has been deleted on the basis of mere evidence of sale bill of Jay Baba Industries, I see no reason to uphold addition related to the balance addition of Rs.3,87,708/-, in view of the fact that not only the bills pertaining to this amount of M/s Sai Baba Industries had been filed by the assessee, but also other evidences as noted above was filed to substantiate his explanation.

In view of the above, the addition of Rs.3,87,708/-is directed to be deleted.

11. Appeal of the assessee is allowed.

Order pronounced in the Court on 12th September, 2022 at Ahmedabad.

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

Ahmedabad, dated 12/9/2022

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