

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

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.50/Ahd/2017**  
**Asstt.Year : 2011-12**

ITO, Ward-4(1)(4) Ahmedabad.	Vs	Shri Vaishali Agricom & Mines P.Ltd. (Now Known as Vashistha Industries Ltd.) 1002/A, Pinnacle Bldg. Nr. Hotel Ramada Prahaldnagar Ahmedabad. PAN : AACCV 2498 L
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(Applicant)	(Responent)
Assessee by :	Shri Kalpesh S. Doshi, AR and Vama S. Thakkar
Revenue by :	Shri A.P. Singh, CIT

सुनवाई की तारीख/Date of Hearing : 15/09/2022

घोषणा की तारीख /Date of Pronouncement: 16/09/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the Revenue against order passed by the Commissioner of Income Tax(Appeals)-7, Ahmedabad (in short referred to as Id.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 18.10.2016 pertaining to Asst.Year 2011-12.

2. Sole grievance of the Revenue is the deletion of addition of gross profit of Rs.6,08,10,920/- by the ld.CIT(A) and the ground raised in this regard reads as under:

*"1) "Whether on the facts of the case and in law the Ld. CIT(Appeal) erred in deleting the addition of gross profit of Rs.6,08,10,920/-."*

*2) "Whether on the facts of the case and in law the Ld. CIT(Appeal) erred in ignoring the evidences gathered by the AO in respect of undisclosed turnover resulting in suppressed gross profit."*

3. As transpires from the orders of the authorities below , this gross profit addition made by the Assessing Officer related to the alleged undisclosed turnover of the assessee found by him during assessment proceedings. While the assessee had disclosed turnover in his Books of accounts of Rs. 20,32,72,665/-, the AO found the same to be Rs. 96,34,09,172/-. Applying GP rate of 8% to the undisclosed turnover of Rs. 76,01,36,507/- ,the AO computed the Gross profit addition to be made at Rs. 6,08,10,920/- .

4. This turnover of Rs.96.34 crores was picked up by the AO from the copy of an alleged Audited Balance Sheet of the assessee filed to its bank M/s.AXIS Bank, Gandhidham Branch ,which was called from the bank by the AO by issuing notice under section 133(6) of the Act. The assessee repeatedly stated that the balance sheet provided by the bank was not the correct balance sheet . The auditor of the assessee, who was his authorized representative also, denied having signed the said Balance sheet and stated that the signatures therein were forged and fake. The AO however dismissed all the above contentions of the assessee and held the balance sheet provided by the bank to be genuine one, noting it was signed by the same auditor who was auditor of the assessee since last five years, and noting that the auditor had not made any complaint against any one for forging his signature and using his stamp. The AO also

noted that similar issue had arisen in the Asst.Year 2009-10 and addition made in the case of the assessee.

5. The matter was carried in appeal before the Id.CIT(A) where the assessee contended that he had provided all the possible evidences to the AO to prove that their financial statements reflecting a turnover of Rs.20.32 crores was genuine and correct being duly audited, and also that books of accounts, vouchers, and bills were all provided to the AO, and no anomaly had been found in the same, but the AO had simply relied on another set of financial statements provided by the bank ,which the assessee consistently stated as being fake and fabricated. The Id.counsel for the assessee also pointed out to the Id.CIT(A) that the assessee had communicated with the bank to provide them with the original financial statements filed by the assessee to it duly signed and with the company seal on all pages, which had never been provided by the bank despite 12 letters written to its officials. That the financial statements provided by the Bank to the AO did not carry the signature of the director. He had also pointed out that due to non-co-operation by the bank officials, the assessee was ultimately forced to file FIR against the Bank, and the bank in turn responded by filing a case against the assessee for non repayment of the interest. It was also pointed out that the assessee company had filed a case against the Bank Manager for filing fake affidavit to court of law on oath regarding fake documents and non payment of interest by assessee which was pending before the Hon'ble High Court. The assessee also pointed out to the Id.CIT(A) that while the AO had treated the said financial statement provided by the bank to be correct, he took only the figure of turnover reflected therein, and not other figures of purchases and other expenses. He pointed out to the Id.CIT(A) that even profits reflected in the financial statements

provided by the Bank were the same as that reflected in its original financial statements but the AO had chosen to pick only figure of turnover and by applying GP ratio thereon made the addition.

6. The Id.CIT(A) was convinced with the explanation of the assessee and accordingly deleted the addition by holding at para 4.2 to 4.5 of her order as under:

*“4.2 I have considered the assessment order and the submissions made by the appellant. A perusal of the assessment order shows that the addition has been made in the appellant's total income on the basis of the report submitted by the Axis Bank. The AO found that the sales as per the audit report filed with the bank was Rs.96,34,09,172/- whereas sales as per the return of income was Rs.20,32,72,665/-. Therefore, the undisclosed turnover was Rs.76,01,36,507/- and by applying GP rate of 8% on this turnover, the AO made an addition of Rs.6,08,10,920/- to the assessee's total income. The appellant, on the other hand challenged the genuineness of the report submitted by Axis Bank, Gandhidham to the A.O and stated that all evidences had been given to the A.O to prove the correctness of the audited accounts furnished with the return of income..*

*4.2.1 During the appellate proceedings, the appellant has all along contended that the copy of the appellant's audited report furnished by Axis Bank to the AO was not the genuine document. It is seen from the submission made that the appellant has produced various documentary evidences as under:*

- > Return of income and computation of income*
- > Copy of Tax audit report*
- > Copy of VAT audit report*
- > Copy of excise record.*
- > Purchase register*
- > Sales register*
- > Cashbook*
- > Bankbook*
- > Bank statements*
- > Stock records and stock statements*
- > Break up of sales and purchase along with party wise details along with quantity and foreign exchange rates*
- > Details and evidences of High Sea sales*
- > Bills of lading and evidences*
- > Creditors details with evidences of invoice*
- > Creditors and debtors ledger*
- > VAT returns*
- > Income Tax returns*
- > ROC details*
- > Certificate from C.A. Patel Mehta & Shah proving the genuineness of the audit report, annual returns and forms, VAT audit report, etc and certifying that all the reports containing same figures and that there is no difference in any of the figure of sales, purchase, closing stock and net profit of the company.*
- > Letters requesting the branch head of Axis bank to provide the copy of the tax audit report and sales tax audit report for various financial year provided by the appellant along with certification and dates of submission*

> Copy of FIR filed before police authorities against the bank officials with regard to the report furnished by the bank.

4.2.2 It is also seen from the submissions made that the appellant vide letter dated 31.05.2012 had sent certified copies of its financial reports for the years 2009-10, 2010-11 & 2011-12 to the Branch Head of Axis Bank, Gandhidham. However, the copies which were furnished by Axis Bank to the AO during the assessment proceedings were unsigned copies which were clearly not the original documents submitted by the appellant to the bank. It is also seen that the appellant has sent several reminders to Axis Bank, Gandhidham, asking the bank to submit to the appellant the copies of the documents which were furnished to the AO. It is also seen that the appellant has lodged a FIR with the Gandhidham Police Station against Axis Bank, Gandhidham in respect of forgery and submission of false documents. It is seen that the Police department is also in communication with the Axis Bank in this respect. All these facts cast a doubt on the genuineness of the documents furnished by Axis Bank, Gandhidham to the AO, particularly since the same were not certified documents whereas the appellant had furnished certified documents to Axis Bank, Gandhidham in 2012.

4.2.3 Notwithstanding the above facts, I am of the view that the appellant has submitted all the necessary documents and details to establish the correctness of the turnover during the year under consideration. The AO has simply relied on the bank's report to make a huge addition without first establishing the correctness of the report. Moreover, the AO has not based the estimation on GP on any concrete facts. He has considered the turnover as per the report furnished by Axis Bank and has taken the profit margin as per the appellant's own audited accounts, which is not justified.

4.2.4 Further, a similar addition on identical facts had been made by the Id. CIT(A), Jamnagar in the case of the appellant for Asst. Year 2009-10 and the Id. CIT(A) vide his order No CIT(A)/Jam/90/16-17 dated 27.06.2016 had decided the matter in favour of the appellant after giving a detailed finding, which is reproduced asunder:

"6. I have duly considered the submissions of the appellant and perused the material on record and also gone through the discussion made in the assessment order.

The whole addition has been made on the basis of the report submitted by the Axis Bank. The AO has found that the sales as per audited report filed along with return of income is Rs. 7,42,01,307/, whereas sales as per report submitted by bank is stated to be Rs. 21,60,25,360/. The AO made gross profit addition at the rate of 5 % on the differential turnover and made addition of Rs.70,90,000/.

The appellant has challenged the genuineness of such report submitted by the bank and repeatedly stated at the assessment level to prove the correctness of such accounts. The appellant has also challenged the correctness of such accounts before the banking authorities and also asked to prove that how such report has been received by the bank. The appellant has also requested bank authorities to prove the correctness of such report, however the bank authorities has not given any report on that. The appellant has also challenged the same by filling FIR before police authority.

Further to prove the correctness of the turnover as per audited accounts filed along with return of income, the appellant has submitted various documentary evidences as under:

> Return of income and computation of income  
> Copy of Tax audit report

- > Copy of VAT audit report
- > Copy of excise record.
- ^ Purchase register
- > Sales register
- > Cashbook >
- >>• Bankbook
- > Bank statements
- > Stock records and stock statements
- > Break up of sales and purchase along with party wise details along with quantity and foreign exchange rates
- > Details and evidences of High Sea sales
- > Bills of lading and evidences
- > Creditors details with evidences of invoice
- > Creditors and debtors ledger
- > VAT returns
- > Income Tax returns
- > ROC details
- > Certificate from C.A. Patel Mehta & Shah proving the genuineness of the audit report, annual returns and forms, VAT audit report, etc and certifying that all the reports containing same figures and that there is no difference in any of the figure of sales, purchase, closing stock and net profit of the company.
- > Letters requesting the branch head of Axis bank to provide the copy of the tax audit report and sales tax audit report for various financial year provided by the appellant along with certification and dates of submission
- > Copy of FIR filed before police authorities against the bank officials with regard to the report furnished by the bank.

*The appellant has prima facie discharged the onus on him by the submitting various documentary evidences. The serious onus on the AO is casted to prove the correctness of the turnover as per report filed by the bank. The AO cannot simply rely on the turnover as per the audit report submitted by the bank, without proving the correctness of such report. It is also seen that the accounts provided by the bank to the Assessing officer are not as per Schedule VI of the Companies Act and have been randomly prepared and submitted without any basis. The appellant has also stated that as per the procedure of the Bankers books of evidence, the bank has to provide certified copy of the documents submitted by the appellant along with its date of submission, which is not yet provided by the bank in spite of repetitive applications and reminders. Therefore, the heavy reliance placed by the AO on such unauthenticated audit report by the bank is not justified and bad in law. The prima facie onus is on the AO to prove the evidentiary value of the material found from the third party. As held by the Supreme Court in Commissioner of Income tax v. Daulatram Rawatmull, 53 ITR 574 (SCJ, even if circumstances raise a suspicion, suspicion cannot take the place of evidence. The similar view has been taken by the Hon'ble Gujarat High Court in the case of VIVEK PRAHLADBHAI PATEL (237 taxmann 331). The AO has also not proved that how such huge turnover has been carried out, when there is no Sales or purchases proved outside books of accounts, no other evidences are also collected^ as to sales made to whom, what are the items sold, how the payments are received and similar findings as regards to purchases etc. It is also argued that if the other report is considered as valid turnover then In that case the profit as per the said report is to be taken up and the profit In both the reports are same and therefore the AO cannot prefer cherry picking to take turnover of one report and profit margin as per another report and simply make computation without finding any other corroborative evidences against the assessee. Therefore, in my considered view the AO has failed to bring any reliable material to prove that the sales is higher than shown in the audited*

*accounts filed along with the return of income and merely on the basis of unauthenticated piece of evidence such huge turnover cannot be presumed and therefore addition of gross profit of Rs.70,90,000/ is not justified. It is therefore directed to delete the addition."*

*4.2.5 In view of the discussion above, it is evident that the impugned addition was made by the AO only on the basis of the report submitted by Axis Bank which is under doubt since the same was an uncertified copy of appellant's financial statements. Considering all the facts, the addition of Rs.6,08,10,920/- made by the Assessing Officer is deleted."*

7. Before us, the ld.counsel for the assessee reiterated contentions made before the Ld.CIT(A), while ld.DR relied on the order of the AO.

8. We have gone through orders of the authorities below and also carefully considered the contentions of both the parties. We do not find any infirmity in the order of the ld.CIT(A). The Ld. CIT(A) has deleted the addition of Gross profit of Rs.6,30,84,306/-on alleged undisclosed turnover, which was based on financial statements of the assessee provided by the Bank to the AO, finding that the said financial statements were not free from doubt as to their genuineness while the assessee had submitted all possible documents to substantiate its Book results and no anomaly had been pointed out by the AO in the same.

9. The ld.CIT(A) found that the assessee had submitted to the Bank copies of its audited financial statements, duly signed on each page and with the company seal affixed thereto. And despite the assessee's repeated persuasion, the Bank did not provide the same to it. She noted that the financial statements provided by the Bank to the AO was unsigned. The ld.CIT(A) also noted that the assessee had filed an FIR against the bank officials in respect of forgery and submission of false documents and the Police department was in communication with the Bank in this respect.

10. The Id.CIT(A) has given a categorical finding of fact that the assessee had produced all possible documents evidencing its audited results to the AO, including the return of income, computation of income, copy of books audited, sales register, sales invoices, VAT audit report, purchase registers, Bank Books, Stock records VAT returns etc. and all possible details relating to the facts and figures mentioned in the audited balance sheet and the AO has not pointed out any anomaly in the Books of the assessee.

11. The Id.CIT(A), we find has further noted a very vital fact that while the AO picked up only the figure of turnover from the financial statement provided by the bank to the AO, he conveniently ignored the profits reflected in this financial statement, which were the same as reflected in the audited financial statement claimed to be genuine by the assessee.

12. The Ld.DR was unable to controvert the above facts noted by the Ld.CIT(A).

13 The findings of the Ld.CIT(A), derived from the above facts, is but logical and reasonable, that the financial statements relied upon by the AO were not free from doubt and could not be relied upon for deriving any figure, be it that of turnover. And also that there was no reason to dismiss the Book results of the assessee.

Moreover we agree with the Ld.CIT(A) that the AO has acted in a highly arbitrary manner while picking up only the figure of turnover from the financial statements provided by the Bank, while the profits shown therein were the same as shown by the assessee in his financial results. Having treated the financial results of the assessee provided by the Bank to be true and correct, there is absolutely no justification in picking only those figures which suit

the AO's purpose of making addition in the present case. No justification has been given by the AO in his order for this pick and choose policy adopted by him.

14. In view of the above, we see no reason to interfere in the order of the ld.CIT(A) deleting the addition of Gross Profit of Rs.6,08,10,920/-.

Grounds of appeal raised by the Revenue are dismissed.

15. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the Court on 16<sup>th</sup> September, 2022 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**

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

Ahmedabad, dated 16/9/2022