

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**“SMC BENCH”**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. 1/SRT/2022 (AY: 2011-12)**

*(Physical Court hearing)*

Vasudev Ramprasad Bhattar (HUF), 2010-11, Vaibhav Apartment, Bhatar Road, Surat-395007.  <b>PAN : AAFHV9911C</b>	Vs	The Principal Commissioner of Income Tax -1, Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Deepak Bhatia, AR
Respondent by	Shri Ashok B. Koli, CIT-DR
Date of hearing	19/10/2022
Date of pronouncement	27/10/2022

**Order under section 254(1) of the Income Tax Act**

**Per Pawan Singh, Judicial Member:**

1. This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [in short ‘NFAC’ or CIT(A)], dated 12/11/2021 for the Assessment Year (AY) 2011-12, which in turn arises against assessment order passed by the Central Processing Centre (CPC), Bangalore under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’], dated 08/12/2018. The assessee has raised the following grounds:

*“1. That on the facts and in the circumstances of the case as well as in law, ld. CIT(A), NFAC, has erred in upholding the validity of reopening of the case of appellant u/s 147/148 of the Act and the assessment order passed u/s 143(3) r.w.s. 147 of the Act.*

*2. That on the facts and in the circumstances of the case as well as in law, the ld. CIT(A), NFAC, has erred in upholding the addition of Rs.3,96,370/- u/s 68 of the Act on account of bogus profit from bogus trading in commodities through the broker Jet Air Agencies Pvt. Ltd., whereas no transactions have been done by the appellant with or through the said broker and no such profit was ever received credited or claimed by the appellant.*

*3. That the ld. CIT(A), NFAC, has grossly erred in law in taking the view that onus is on the appellant to prove the negative i.e. that the appellant has not done any transactions with or through the said broker, whereas, as per settled law, this onus is on AO, who has claimed the existence of these facts by making proper inquiry and calling for relevant evidences from the broker. The view so taken by ld. CIT(A) is contrary to the settled law and is unsustainable in law.*

*4. The appellant craves leave to add, alter, delete or modify any grounds of appeal.”*

2. At the outset of hearing, the Learned Authorized Representative (ld. AR) for the assessee submits that he is not pressing ground no.1 which relates to validity of reopening under section 147/148. Considering the submission of ld. AR for the assessee, the ground no.1 of the appeal is dismissed as not pressed. Now, I shall advert to adjudication of remaining grounds of appeals.

3. Facts of the case are that the case of the assessee for year 2011-12 was reopened by the Assessing Officer on the basis of information received from DGIT, Ahmedabad that assessee received entry of bogus

profit of commodity transaction by doing commodity transaction with National Multi Commodities Exchange (NMCE) platform. On such information, it was recorded that assessee obtained bogus profit of Rs.3,96,370/- by making bogus commodity trading of Rs.1,37,79,200/- at National Multi Commodities Exchange. On the basis of such information, the Assessing Officer made his belief that income of assessee to that extent has escaped assessment. The notice under section 148, dated 31.03.2018 was issued to the assessee. The Assessing Officer recorded that despite services of notice under section 148, the assessee has not filed any details. Again in para 3 of assessment order, the Assessing Officer recorded the assessee filed return of income on 23.11.2018, declaring total income of Rs.1,77,900/-. The reasons recorded were also provided to the assessee. The Assessing Officer after serving notice under section 143(2) and 142(1) called certain information, wherein the assessee was asked to furnish copy of return of income, bank account statement, and balance sheet as on 31.03.2011. The assessee in his reply submitted that he has not done any commodity transaction during the year under consideration. The Assessing Officer was of the view that details available on record, and as per the information from DGIT, Ahmedabad, the assessee was engaged in commodity transaction. The Assessing Officer by referring the *modus operandi* of such commodity that transaction held that M/s. Jet Air Agencies Private Limited, which is one of the broker, through which assessee entered into commodity transaction. The Assessing Officer on the basis of aforesaid observation made addition of Rs.3,96,370/- by

taking view that assessee failed to furnish details in respect of transaction made with Multi National Commodity Exchange.

4. Aggrieved by the additions in the assessment order, the assessee failed the appeal before the ld. CIT(A). Before ld. CIT(A), the assessee filed detailed written submissions and stated that Assessing Officer made addition of Rs.3,96,370/- on account of bogus profit from commodity transaction through Jet Air Agencies Private Limited. The assessee submitted that he never done any commodity transaction through any or such broker nor any amount of profit of Rs.3,96,370/-, was credited in his account. When no such profit was credited in the books of account, hence, there is no question of addition under Section 68. The addition under Section 68 can be made only when assessee credited any sum of his books of account. The addition is made without any basis and beyond the scope of Section 68. The assessee specifically stated that the said broker had misused his name and PAN Number for trading such transaction. The Assessing Officer has not collected any details or evidences or account opening papers or Know Your Customer (KYC) papers or evidence or details of impugned transaction and the ultimate payments to the assessee. The Assessing Officer instead of making any investigation or inquiries to find out that truth, find it convenient to make wrong and unjustified addition. The assessee specifically submitted that he has not done any such of transaction or received any such profit. No amounts were received in the books of account of assessee from the said concern. To support his submission, the assessee relied on the

decision of Hon'ble Gujarat High Court in the case of Krishna Textile vs. Commissioner of Income Tax, [2008] 174 Taxman 372 (Gujarat).

5. The ld. CIT(A) after considering the submission of assessee and contents of assessment order held that Assessing Officer was informed by DGIT Ahmedabad that assessee made transaction through Jet Air Agencies Private Limited, name of the assessee is clearly recorded with his complete details. The assessee has not discharged his onus for his non-involvement in the said transaction which clearly matches with his name and address. The assessee sought to resort to deny and nothing more. The assessee was obliged to discharge the burden cast upon him by furnishing evidence of his non-involvement in the transaction. The assessee was under obligation to prove that entries appearing against his name do not in fact pertain to him and he is not liable for such consequence. Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. I have heard the submission of ld. AR of the assessee and the Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue and have gone through the order of lower authorities below. The ld. AR of the assessee submits that during the assessment proceeding, the Assessing Officer asked to furnish copy of bank account statement, balance sheet and return of income. The assessee furnished all such complete details vide his reply dated 23.11.2018. The assessee specifically stated that he has not done commodity transaction during the assessment year. The assessee again vide his reply dated 07.12.2018, contended that assessee has not dealt with Jet Air Agencies

Private Limited as well as Anand Prakash in AY.2011-12 to earn commodity profit of Rs.3,96,370/-. The assessee has no financial transaction with broker. No documents were executed by assessee and broker/sub-broker. In his view, the total bogus profit is created by broker. The ld. AR of the assessee submits that Assessing Officer without making any investigation by calling details of accounts with the brokers/sub-brokers, KYC Form or any other evidence on mere information from DGIT, Ahmedabad, made addition against the assessee. The Assessing Officer as well as ld. CIT(A) in his finding, asked the assessee to prove in negative. Once the assessee has denied his involvement of transaction with said sub-broker or having received any such profit in his books of account or in bank account, the onus was shifted for the Assessing Officer to prove that assessee is beneficiary of any such bogus entry. The ld. AR submits that he has already placed on record, the passbook of bank account with UCO Bank for relevant financial year right from August, 2009 to December, 2011 and there is no such transaction reflected in the books of account.

7. The ld. AR of the assessee submits that burden to prove that the assessee received bogus entry was on the Revenue and the Assessing Officer failed to discharge his onus. To support his submission, the ld. AR of the assessee relied upon the decision of Hon'ble Gujarat High Court in the case of Krishna Textiles [2008] 174 Taxman 372 (Gujarat), and the decision of Division Bench of this Tribunal in the case of Dr. Swati Mahesh Vinchurkar vs DCIT, in ITA No.43/SRT/2021 for AY.2017-18), dated 28.06.2021.

8. On the other hand, ld. Sr. DR for the Revenue supported the order of lower authorities. The ld. Sr. DR for the Revenue submits that in the investigation conducted by DGIT, Ahmedabad, the name, PAN Number and particulars of assessee was discovered. All the particulars of bogus transaction conducted through Jet Air Agencies Private Limited were found. The assessee on the basis of investigation, conducted by DGIT, Ahmedabad, the assessee is one of the beneficiaries of bogus profit of a Rs.3,96,370/-.

9. I have considered the both the parties and also deliberated on the case laws relied by ld. AR of the assessee. I find that the Assessing Officer has made an inconsistent finding in the assessment order. In para no. 2.2, the Assessing Officer recorded that the notice under section 148 was not complied or the assessee has not furnished the require details. On the other hand, in para no.3, the Assessing Officer recorded that return in response to notice under section 148 was filed on 23.11.2018, declaring total income of Rs.1,77,900/-. The Assessing Officer further recorded that assessee furnished return of income from bank account statement and balance sheet as on 31.03.2011. the Assessing Officer nowhere recorded that what else, was required from the assessee, which was not furnished/filed before him. I noted that in para no.4 of the assessment order, the Assessing Officer recorded general information regarding the *modus operandi* of tax evasion made by misuse of Multi National Commodity Exchange, in para no.5, the Assessing Officer mentioned apparently the fact in other cases, the bogus profit of Rs.7,22,450/- by bogus commodity trading of Rs.2,54,17,100/- is

recorded. Ultimately in para no.6.1 of assessment order, the Assessing Officer held that in absence of explanation/details, the profit of Rs.3,96,370/- was added as unexplained cash credit. The Assessing Officer nowhere recorded that any investigation was carried out or any enquiry was made from the investigation conducted by official of DGIT, Ahmedabad. I further find that before the ld. CIT(A), the assessee again reiterated that he has not conducted any transaction in commodity transaction with Jet Air Agencies Private Limited. The ld. CIT(A) without seeking remand report of Assessing Officer of making any investigation through Assessing Officer observed that assessee has not furnished evidence of his non-involvement in the said transaction. In my view, the ld. CIT(A) was wrong in expecting to prove the fact in negative. I have perused the copy of bank statement of assessee with UCO Bank for relevant financial year wherein there is no such credit in the bank statement.

10. At the cost of repetition, I may retreat that neither the Assessing Officer nor ld. CIT(A) given any finding on the fact and the evidences furnished by assessee. The Assessing Officer has not calculated evidence either from Jet Air Agencies Private Limited or from Multi National Commodity Exchange about account of information, KYC paper and any evidence regarding the said transaction. No trail of such benefit was traced if such benefit was derived in the name of assessee was in fact ever received by the assessee. In my view, once the assessee denied the transaction through Jet Air Agencies Private Limited and furnished bank account and books of account of assessee that he has not earned any

such income, the onus shifted on the Assessing Officer to prove the fact that assessee has in fact earned such profit, or to bring such evidence which may primary show that assessee earned any such income.

11. The Hon'ble Gujarat High Court in the case of Krishna Textiles vs CIT (supra) held that when assessee's stand was that instead of asking the assessee to prove the source of alleged income, the Assessing Officer could have collected further details to justify the addition made by him. The Assessing Officer was of the view that onus to prove the source of income was on the assessee, and hence he had not made any further inquiry and it was sought to be justified on the ground that Section 8, read with Section 106 of the Indian Evidence Act, 1872 that when the fact is substantially within the knowledge of any person, burden of providing that fact is upon him. Such stand of Revenue is contrary to the decision of Kishanchand Chellaram vs CIT [1980] 125 ITR 713/4 Taxman 29 (SC). The Hon'ble High Court further held that in view of said decision, the burden was on the department to show that the amount of demand drafts found to be credited in the assessee's account in the books of account of GMDC belonged to the assessee by bringing proper evidence on record and the assessee could not be expected to explain the source of income or to call responsible officers of the GMDC or bank to discharge the burden that laid upon the department.

12. I further find that in case Dr. Swati Mahesh Vinchurkar vs DCIT (supra), the Division Bench of Surat Tribunal also took view that once assessee denied that she has not earned income as reflected in her form 26-AS, the onus shifts of the Revenue authorities to prove such income

of such assessee. The addition solely cannot be made by ignoring the submission of assessee.

13. In view of the aforesaid factual and legal position, I am of the view that Assessing Officer was not justified in absence of bringing any cogent evidence to make such addition of alleged profit, when the assessee specifically denied his involvement in the transaction of Multi National Commodity Exchange and has furnished his bank statement showing that there is no such credit in his books. Hence, I direct the Assessing Officer to delete the addition of alleged bogus profit of Rs.3,96,370/-.

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

Order pronounced in open court on 27/10/2022.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 27/10/2022

SAMANTA

**Copy to:**

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

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By order

Asstt. Registrar, ITAT, Surat