

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.371/Ahd/2020  
(Assessment Year: 2010-11)

Dineshkumar Chunilal Shah (HUF) D-501, Shilalekh, Opp. Police Stadium, Shahubaug Road, Ahmedabad-380004	Vs.	ITO Ward-1(2)(1), Ahmedabad
[PAN No.AAFHD5413F]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Hardik Vora, A.R.
<b>Respondent by:</b>	Shri Mukesh Sharma
<b>Date of Hearing</b>	21.09.2022
<b>Date of Pronouncement</b>	31.10.2022

**ORDER**

This appeal is filed by the assessee against the order dated 12.09.2018 passed by the Ld. CIT(Appeals)-10, Ahmedabad for A.Y. 2010-11.

2. The grounds of appeal raised by the assessee read as under:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in upholding the reassessment proceedings u/s 147 of the Act.
2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming addition of Rs. 14,77,937/- being 25% of total purchase of Rs.59,11,749/- made by Assessing Officer as unverifiable purchase.
3. It is therefore prayed that the above addition/disallowance made by the assessee officer may please be deleted.
4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. The assessee is engaged in the business of trading in Ferrous and non-ferrous metals. The assessee filed its original return of income for A.Y. 2010-11 on 30.09.2009 declaring total income of Rs. 1,94,820/-. The assessment for the year under consideration was made u/s 147 r.w.s. 143(3) on 26.08.2014. The case was selected for scrutiny u/s 148 of the Income Tax Act, 1961. The Assessing Officer observed that information was

received from Maharashtra Sales Tax Department relating to bogus purchases made by the assessee from hawala biller aggregating to Rs. 59,11,749/-. The assessee submitted the details of books of accounts and related invoices as well as the bank statement for purchase and after considering the submissions of the assessee, the Assessing Officer made disallowance @ 25% amounting to Rs. 14,77,937/- as unverifiable purchase and thereby assessed total income at Rs. 16,72,757/-.

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. The Ld. AR submitted that there is delay of 593 days delay in filing the present appeal. The Ld. AR submitted that due to an inadvertent mistake of the assessee, the assessee only forwarded the order for A.Y. 2009-10 for filing the appeal and did not forward the order for A.Y. 2010-11. Therefore, the Ld. AR submitted that this is a bonafide mistake for which the delay may be condoned. The Ld. AR also filed the affidavit of the assessee explaining therein the reason for delay.

6. The Ld. DR vehemently objected the condonation of delay.

7. Heard both the parties. From the perusal of the affidavit filed by the assessee, it appears to be genuine reason that the assessee could not file the appeal for A.Y. 2010-11 within the stipulated time. Thus, delay in filing the appeal is condoned.

8. The Ld. AR submitted that during the first reassessment proceedings u/s 147 r.w.s. 143(3) of the Act, on query by the assessee, then Assessing Officer already provided details of so called hawala entries to assessee. Meaning thereby the details regarding alleged hawala transactions of purchases from the parties stated in the reasons recorded are already on

record with the Assessing Officer at the time of completing first assessment proceedings u/s 147 r.w.s. 143(3) of the Act. The Ld. AR pointed out the letter dated 04.06.2014 of the then Assessing Officer wherein the reasons for first reassessment was for alleged hawala entries only. Thus, the Ld. AR submitted that there is change of opinion when the notice u/s 148 was again issued which is not just and proper in light of the decision of the Hon'ble Apex Court in case of CIT vs. Kelvinator of India Ltd. 320 ITR 561. The Ld. AR also relied upon the decisions of the Hon'ble Gujarat High Court in case of Metal Alloys Corporation vs. ACIT (2012) 77 DTR 87, Gujarat Power Corporation Ltd. vs. ACIT (2012) 26 taxmann.com 51. The Ld. AR further submitted that no new material is found on the basis of which assessment was reopened in the assessee's case. The reasons recorded by the Assessing Officer are totally unfounded as the Assessing Officer received information from Maharashtra Sales Tax Department for reopening, but while recording reasons, the Assessing Officer stated about receiving of accommodation entries from various parties. The Ld. AR further submitted that the reassessment is beyond four years, but the Assessing Officer never pointed out that the failure was on part of the assessee about full and proper disclosure of the alleged accommodation entries/ hawala entries. On merit, the Ld. AR submitted that payment for the purchases were made by the assessee by account payee cheques and the relevant ledger accounts were also maintained by the assessee. The purchases and sales as well as closing stock were duly reflected in books of account and no discrepancy pointed out by the Assessing Officer. If the sales have been affected out of purchases made, then it could not be said that the purchases were bogus and the sales were accepted by the Assessing Officer. The books of assessee have been audited u/s 44AB of the Act and the auditor has not given any negative remarks regarding books of account of the assessee. Besides this, the Ld. AR submitted that in A.Y. 2009-10,

the Tribunal in Assessee's own case has partly allowed the appeal thereby making addition of 8% of the total sales amount. The Ld. AR relied upon the decision of the Hon'ble Gujarat High Court in case of Gujarat Ambuja Export 2014-TIOL-370-HC-AHM-IT.

9. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR submitted that the reasons recorded for reopening are justifiable and the reassessment is properly done. The Ld. DR further submitted that the purchases made by the assessee clearly shows that there are certain unverifiable purchases as the assessee has not filed copy of bills, payment receipts, confirmation accounts, delivery challans for goods purchased, list of parties to whom sales made of such purchases, etc. Therefore, the Ld. DR submitted that the Assessing Officer rightly made addition at 25% of the total purchases made by the assessee.

10. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reopening was valid on the ground that the reasons were in respect of the unverifiable purchases for which the assessee could not brought on record any evidences. Therefore, Ground No. 1 is dismissed. As regards to Ground No. 2, the assessee could not produce the copy of bills, payment receipts, confirmation accounts, delivery challans for goods purchased, list of parties to whom sales made of such purchases. But the Revenue authorities has not doubted the sales made by the assessee, but the addition to the extent of 25% of the purchases is much more higher. In earlier year for A.Y. 2009-10, the Tribunal restricted it to 8% of the sales in assessee's own case. Therefore, in light of the decision of the Hon'ble jurisdictional High Court in case of Gujarat Ambuja Export Ltd. (supra) and as per the GP rate and net profit rate of the year under consideration which are more than the previous year duly reflected in the stock register, it will be appropriate to restrict the addition to 8% of the total sales amount. Thus,

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we direct the Assessing Officer to restrict the addition to 8% of the total sales amount. Ground No. 2 is partly allowed.

11. As regards to Ground No. 3, the same is general in nature hence dismissed.

12. In result, appeal of the assessee is partly allowed.

<b>This Order pronounced in Open Court on</b>	<b>31/10/2022</b>
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Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 31/10/2022

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad