

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT  
&  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1004/Ahd/2018  
(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Income Tax Officer</b> Ward-3(3)(1), Ahmedabad	<b>बनाम/</b> Vs.	<b>Shri Ashesh Sidharth</b> <b>Agarwal</b> D-804, Awari Flats, B/h Karnavati Bunglow, S. G. Highway, Satellite, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFWPA2415A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri V. K. Mangla, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, A.R.

सुनवाई की तारीख / Date of Hearing	07/09/2022
घोषणा की तारीख /Date of Pronouncement	31/10/2022

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the Revenue is directed against the order dated 27.02.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-3, Ahmedabad arising out of the order dated 30.03.2015 passed by the Income

Tax Officer, Ward-3(3)(1), Ahmedabad, under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2012-13.

2. The matter relates to deletion of addition of Rs.5,10,00,700/- on account of unexplained cash deposits.

3. On the basis of AIR information that the appellant has deposited cash amounting to Rs.5,10,00,700/- in bank accounts, a notice under Section 143(2) of the Act dated 23.09.2013 followed by notice under Section 142(1) of the Act alongwith questionnaire dated 05.05.2014 was served upon the assessee. It appears that the AIR details consist of 107 entries for deposit of amount into the bank and entry for sale of immovable property whereupon assessee was directed to furnish the details, particularly, in regard to the long term capital gain earned on sale of immovable property situated at Paldi, Ahmedabad, for a consideration of Rs.62,00,000/-. However, no document has been filed by the assessee. On the other hand, AIR details reveals deposit of Rs.5,10,00,70/- in the ICICI Bank and in Sardar Vallabhbhai Sahkari bank Ltd. Further, deposit of Rs.6,13,000/- by the assessee in ING Vaisya Bank Ltd. and Rs.33,19,000/- in Axis Bank also revealed from the said AIR information. In the absence of any detail submitted by the assessee neither capital gain earned by the assessee could be worked out. Having no other alternative, the addition was made by the Ld.AO on the basis of the figures furnished by the department as per AIR/CIB, which was, in turn, deleted by the First Appellate Authority. Hence, the instant appeal before us.

4. During the course of appellate proceedings, the assessee submitted as follows:

*"The Appellant carried out the business of trading of fabrics through 3 proprietorship firms namely M/s Innotex Solution, M/s Inspiration & M/s Lotus Trading. The appellant booked loss under three of its concerns, the details of which are as under*

<i>Particulars of Proprietorship Concern</i>	<i>Loss (Rs.)</i>	<i>Pg.</i>
<i>M/s Innotex Solution</i>	<i>423098</i>	<i>10</i>
<i>M/s Inspiration</i>	<i>4754032</i>	<i>11</i>
<i>M/s Lotus Trading</i>	<i>297607</i>	<i>12</i>
<i>Total</i>	<i>5474737</i>	

*And after transferring the said loss to the individual balance sheet of the appellant the loss was worked out at Rs.52,74.176/-. However inadvertently, the return preparer uploaded wrong information and declared profit at Rs.2,09.504/- which was the job work income in the individual account of the appellant. (Please refer page no. 32 vis a vis 13 of the P/B.). And after claiming deduction u/s 80C of the Act, the income was declared at Rs. 1,79,504/-.*

*Learned AO vide AIR information received information that the appellant has deposited Rs.5,10,00,700/- in its bank accounts. The learned AO thereby asked the appellant to explain the source of such cash deposit. In response the appellant vide letter dated 30/03/2015 explained to learned AO that the said receipts were its business receipts. In connection to this, he placed the following details :-*

- > Axis Bank Account Statement, Bank Book & Cash Book of the appellant. (Please refer page No. 34 to 40 of the P/B.)*
- > SardarVallabhaiSahkari Bank Ltd. Statement, Bank Book & Cash Book of M/s Lotus Trading. (Please refer page no. 41 to 61 of the P/B.)*
- > SardarVallabhaiSahkari Bank Ltd. Statement, Bank Book & Cash Book of M/s Innotex Solution (Please refer page no. 62 to 88 of the P/B.)*
- > ICICI Bank Account Statement, Bank Book & Cash book of M/s Inspiration. (Please refer page no. 89 to 136 of the P/B.)*

*However learned AO without verifying the evidences placed by the appellant, made an addition of Rs. 5,10,00,700/- in the hands of the appellant after holding it to be income of the appellant. In this connection, the appellant most respectfully submits that the appellant has provided enough evidences in the form of Bank Account Statements, Bank Books of such Bank Accounts along with the cash book of the Assessee. All these evidences goes to the root of the issues and proves that the above said receipts were business receipts and in no stretch it can be considered as unexplained income of the assessee. The appellant has duly recorded such receipts in its books of accounts. Moreover, such books of accounts have been audited and thereafter overall loss has been determined at Rs.52,74,176/-. (Please refer page no.9 , Part-C of Annexure-1 to Form BCD.) Accordingly, it is kindly*

*requested Your Honours to delete the addition made by learned AO. Alternatively and without prejudice to the above, the appellant most respectfully submits that the bank statement of the appellant reveals that there were credit entries and subsequently there were debit entries. Please refer page no.34,35, 47 to 54, 62 to69, 89 to112 of the P/B. Accordingly, It is therefore requested Your Honors to kindly provide the benefit of Telescoping to the appellant and addition to the extent of peak shall be sustained.”*

5. In support of the contention made by the assessee, reliance was placed on the judgment passed by the Hon’ble Apex Court in the matter of Anantharam Veerasinghaiah & Co. vs. CIT, reported in (1980) 123 ITR 457 (SC) & Hon’ble High Courts in CIT vs. K. S. M. Guruswamy Nadar & Sons., reported in (1984) 149 ITR 127 (MAD), CIT vs. Ram Sanehi Gian Chand (1972) 86 ITR 7224 (P&H), Pioneer Publicity Corpn. & Ors. DCIT, reported in (2000) 67 TTJ 471 (Delhi).

6. A remand report dated 05.05.2017 was sought for by the Ld.CIT(A) on the basis of the evidences placed before the First Appellate Authority. Finally, the Ld.CIT(A) deleted the addition of Rs.5,10,00,700/- with the following observations:

*“2.3. **Decision:** I have considered the facts of the case, remand report and the submissions of the appellant. On verification of AIR/GIB information, cash deposits totaling to Rs.5,10,00,700/-, in as much as 107 entries, were found in the bank account of the appellant. During the course of assessment proceedings, the appellant was asked to explain such entries. The appellant vide letter dated 30/03/2015 filed a reply along with relevant documents claiming such receipts as business receipts from\_4\_of\_jtr> proprietorship concern wherein he suffered a net loss out of its business activity. However, as the submissions were filed at the fag-end, the order was passed on the same date, without verifying such claim by the appellant. In order to check the veracity of claim, the submissions of the appellant along with the evidences, were sent to the AO for remand report. AO vide his remand report dated 05/05/2017, raised objections that the appellant did not produce the necessary evidences for verification during the assessment proceedings therefore the same may not be accepted at this stage. Further it was submitted that the appellant did not produce the subsidiary books such as purchase/sales register for verification.*

*I find that the books of accounts have been subjected to tax audit u/s.44AB and Auditor has certified the books of accounts to be in order. All the basic books viz. Bank and Cash Book, Sales & Purchase Registers, basic vouchers and Sales and purchases invoices have been verified and certified to be correct by the Chartered Accountant in point 9 of the Tax Audit Report placed at page no. 3 of the Paper book. I further find that the appellant also produced these documents before the AO during the course of assessment proceedings and also during the remand proceedings. The contention raised by the appellant appears to be correct as per information on record. As regards objection with respect to non-production of transportation and delivery proof, I find that as per the tradition in the cloth business, all the deliveries have been ex-godown i.e. goods have been delivered by the supplier of the appellant directly to the purchaser and the price does not reflect transportation component separately. As regards separately delivery challans, I find that all the sales bills have recipient's signature as a proof of having received the delivery of the goods. The appellant has corroborated his explanation that certain important documents were called at very fag end of assessment proceedings and the same remained to be considered during original assessment proceedings, therefore, the additional evidences are logically required to be admitted in interest of natural justice. During the assessment proceedings there was death of uncle of the appellant (page 31/PB) and hand written letter has been acknowledged by the AO to adjourn the matter to 17.02.2015. Appellant has tried to explain the cash deposited with bank account statement for proprietary concerns such as Lotus Trading, Innotex Solutions & Inspiration as per letter filed on 30.03.2015 (Pages 29-136/PB). The appellant has explained his business at PP 137-139/PB which indicates his urge to do business at large scale from the beginning of his life as entrepreneur. The perusal of this document enclosed with the letter dated 30.03.2015 shows candid confession on the part of young entrepreneur about the tax implications therefore, intention of the appellant cannot be doubted. The enclosures to the letter dated. 30.03.2015 have not been appreciated in the order dated 30.03.2015. After considering all the facts including remand report dated 05.05.2017 both on technical and merits and circumstances of the case, the additional evidence submitted by the appellant is admitted as there was a reasonable cause for not producing the evidences before the AO and the same is considered necessary to go to the root of the controversy involved. Therefore, same are admitted for adjudication to provide natural justice to appellant and such admission is supported by following case laws:*

- *Kamlaben S Bhatti 44 Taxman.com 459 (Guj.)*
- *Dharmamdev Finance Pvt Limited 43 taxman.com 395 (Guj):.*
- *ACIT VS Jogindersingh (ITA No. 2942/DELHI/2011) ITAT, Delhi*
- *Anmol Colour India Pvt. Ltd. Vs. ITO 31 SOT 18 (JP) 121 ITJ 269: ITAT, Jaipur.*
- *CIT Vs.. Khanpur Cool Synthicate (1964) 53 ITR 225 (SC):*

*The ratio laid down in the case of Jute Corporation of India Ltd. - 187 ITR 688 is applied. Under the circumstances, I hold that the appellant has carried on business activities for the year under consideration and all the receipts having duly accounted for in the cash book, are treated as business receipts. All the cash found to have been deposited in the bank account are also duly reflected in the cash book. The perusal of letter dated 30.03.2015 filed with ITO, Wd.3(3)(1) under the stamp dated 30.03.2015 clearly vouch the contention raised by the appellant. The audit report clearly indicates three different proprietary concerns such as*

*M/s. Innotex Solution,  
M/s. Inspiration &  
M/s. Lotus Trading.*

*Therefore, the genesis of cash deposit cannot be said to have been unexplained. Therefore, in my opinion, no separate addition of the same can be made u/s 68 of the Act as the conditions to invoke the provisions of Section 68 are non-existent in instant case. Hence, addition of Rs.5,10,00,700/- is hereby **deleted.***”

7. We have heard the parties and perused the materials available on record.

7.1 It appears from the evidence adduced by the assessee, which is also placed on record before us by way of filing of paper book and the orders passed by the authorities below that the assessee has been stated to be carried out business of trading of fabrics through proprietary firm, namely, M/s. Innotex Solutions, M/s. Inspiration and M/s. Lotus Trading and booked loss under all the concerns, which was also transferred to the individual balance sheet of the appellant. The assessee worked out loss at Rs.52,74,176/-. Inadvertently, the return prepared uploaded with wrong information declaring profit at Rs.2,09,504/-, which was the job work income in the individual account of the assessee and after claiming deduction under Section 80C of the Act, the income was declared at Rs.1,79,504/-. So far as the bank deposit is concerned, it was assessee's case that the said receipts were its business receipts. The bank account statement, bank book and cash book of the appellant in respect of each bank account were duly furnished before the Ld. CIT(A) which is also appearing before us being part of the paper book alongwith bank statements. The audit report was also placed on record on 30.03.2015 which has been noted by the Ld.AO at Page No.3 of the order passed by him. The individual balance sheet as well as P&L Account of the

assessee and three above referred concerns at page Nos. 34 & 35 in respect of the assessee, page Nos. 47 to 54 in respect of Lotus Trading, page Nos. 62 to 69 in respect of M/s. Innotex Solution and page Nos. 89 to 112 in respect of M/s. Inspiration of the paper book filed before us, reveal that there is several credit and job entries from time-to-time which has sought to be claimed to be approved of carrying out the business during the year under consideration of the assessee.

7.2 We have also perused the remand report. The Ld. AO in its remand report objected mainly on four counts: (i) The appellant has not maintained sales/purchase registers; (ii) The appellant has not purchase/sales invoice; (iii) The appellant had no transportation details/delivery challan; & (iv) The appellant did not file suits instituted against him by the creditors. On the other hand, it is the case of the assessee that the details were furnished before the Ld.AO during the course of assessment proceedings and since the data being voluminous in nature, the same has not been placed before the Ld.CIT(A). Enough evidence including bank account statement, bank book and cash book of the appellant's business were duly furnished before the authorities below. The Ld.CIT(A), as it appears from the order impugned came to a finding that the books of account has been subjected to tax audit under Section 44AB of the Act and Auditor had certified the books of accounts to be in order. The entire set of documents as discussed above have been verified and certified correct by the Chartered Accountant and thus, documents were duly placed before the Ld. AO and also during remand proceedings as of the view of the Ld. CIT(A). It is clearly evident from the reply of the remand report

submitted by the assessee that these documents had not been duly verified by the Ld.AO. On the other hand, the same has not been placed before the First Appellate Authority because of the data being voluminous in nature. Therefore, fact remained that neither these documents were verified by the Ld.AO nor by the Ld. CIT(A).

7.3 We further note that the Ld. CIT(A) himself noted in his order that the statement made by the assessee at the time of fag end and the order was passed on the same date without verifying such claim by the appellant. The Ld. CIT(A) had not doubted the contention made by the assessee as the books of accounts have been audited under Section 44AB of the Act. The Ld. CIT(A) further proceeded on the basis of delivery challan and the sale bills having recipient's signature as a proof of having received the delivery of the goods. It was further observed by him that the document letter dated 30.03.2015 shows candid confession of the entrepreneur about the tax implications, therefore, intention of the appellant cannot be doubted. We fail to follow as to whether the Ld. CIT(A) can grant relief on the basis of the documents, which has not been verified by the Ld. AO neither been placed before the Ld. CIT(A) as per the statement made by the appellant in their submissions itself against the remand report filed by the Ld.AO. Now, merely because the books of accounts have been subjected to tax audit under Section 44AB of the Act and the Auditor had certified the books of accounts to be in order, the contention made by the assessee cannot be stated to be full proof. In that view of the matter, we do not find the impugned order deleting addition made by the Ld.AO to be justified. However, for the ends of justice, as we

have already discussed above that the issue has not been verified by the Ld.AO properly, the same is required to be verified afresh by the Ld.AO on the basis of the documents as mentioned by him in its remand report dated 05.05.2017. We set aside the order passed by the Ld. CIT(A) and remitting the issue to the file of the Ld.AO to consider the same afresh upon taking into consideration the evidence to be adduced by the assessee as mentioned hereinabove and upon giving an opportunity of being heard to the assessee. The Ld.AO is directed to pass a reasoned order strictly in accordance with law.

8. In the result, Revenue's appeal is allowed for statistical purpose.

**This Order pronounced on 31/10/2022**

Sd/-  
(P. M. JAGTAP)  
**VICE PRESIDENT**  
Ahmedabad; Dated 31/10/2022

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रेषित/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