

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 126/AHD/2022
निर्धारण वर्ष/Asstt. Year: 2017-2018

Sureshbhai Vihabhai Patel, Patel Kamleshkumar Sureshkumar N Co., Market Yard, Visnagar, Mahesana-384315. PAN: ALCPP9165E	Vs.	I.T.O, Ward-2, Patan.
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(Applicant)		(Respondent)
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Assessee by :	Shri Sunil Talati, A.R
Revenue by :	Shri Ramesh Kumar, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **02/11/2022**
घोषणा की तारीख /**Date of Pronouncement**: **14/12/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Gandhinagar, dated 24/03/2022 arising in the matter of assessment order passed under s. 250 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

Your appellant being aggrieved by the Order passed by the Learned Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi, u/s 250 of the Income Tax Act presents this appeal against the same on the following amongst other grounds.

1 . The Ld. CIT {Appeal} has erred in confirming the addition of Rs. 7,05,000/- on the ground that the assessee has made an unexplained investment in the purchase of a vehicle. The Ld. CIT(A) has erred in not appreciating the fact of the case and details filed during the course of appellate proceedings. It is submitted that, the complete details including sources of purchase of such vehicle of Rs. 11,56,2007- which is dully reflected in assessee's bank account as well as in books of accounts filed. On the facts and circumstances of the case, the addition so confirmed of Rs 7,05,000/- is incorrect and illegal both on facts and on law, and the same be deleted.

2. The Ld, CIT (Appeal) has erred in confirming the addition of Rs. 1 3,48,259/- on the grounds that the gross profit disclosed by the assessee is not correct and thus estimated the gross profit. The Ld. CIT(A) has erred in confirming the estimation of the gross profit at 8.69% as against the correct gross profit shown and discloses at 4,41 %. It is submitted that such addition so confirmed of Rs. 13,48,259/- is totally hypothetical baseless and without any merits. It is submitted that the addition confirmed be deleted.

3. The order passed by the Ld. CIT(Appeal) is bad in law and contrary to the provisions of Jaw and facts. It is submitted that the same be held so now.

4. Your appellant craves leave to add, alter, and/or to amend all or any of the grounds before the final hearing of the appeal. The 1st issue raised by the assessee in ground No. 1 is that the learned CIT erred in confirming the addition made by the AO for ₹7,05,000 on account of unexplained investment.

2.1 The first issue raised by the assessee is that the Ld. CIT-A erred in confirming the order of the AO by treating the difference between the cost of vehicle and valued declared in the books of Rs. 7,05,000.00 as unexplained investments of the assessee.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the business of trading of agricultural produce like jowar, bajra etc. The AO during the assessment proceedings found that the assessee has shown the value of the car in the books of accounts amounting to Rs. 4,62,766 whereas the actual value of the car stands at Rs. 11,67,766 leading to a difference of ₹7,05,000.00 only. On question by the AO about such difference, the assessee failed to make any satisfactory reply except filing the copy of the invoice for the purchase of the vehicle. Thus the AO, in the absence of necessary documents, treated the difference in the value of the car as discussed above as an unexplained investment and added to the total income of the assessee.

4. Aggrieved assessee carried the matter before the learned CIT (A).

5. The assessee before the learned CIT (A) submitted that the payment for the purchase of the vehicle was made through the banking channel only. However, the learned CIT (A) disregarded the contention of the assessee by observing that the assessee failed to make any reconciliation between the bank statement and the books of accounts maintained by the assessee. Thus, the learned CIT (A) upheld the order of the AO.

6. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 92 and submitted that the difference in the value of the vehicle as observed by the authorities below for ₹7,05,000 is on account of the reasons as detailed below:

- i. There was withdrawal of cash from the personal bank account amounting to ₹50,000 which was utilized for making the payment for the purchase of the vehicle.
- ii. Vehicle Loan was taken in personal account for the purchase of the vehicle for ₹6,00,000.

7.1 The learned AR further submitted that the above two entries were not recorded by the accountant in the books of accounts. But these two entries were very much reflecting in the personal account of the assessee. The learned AR in support of contention has also filed reconciliation for the payment made towards the purchase of the vehicle which is placed on pages 10 of the paper book. The learned AR has also filed the copy of the invoice, bank statement, ledger copies which are placed on pages 11 to 22 of the paper book.

8. On the other hand the learned DR contended that the details filed by the assessee in the paper book has not been referred by the authorities below which can be verified from

the respective findings of the AO and the learned CIT (A). Thus, the learned DR prayed to set aside the issue to the file of the AO for fresh adjudication.

9. In rejoinder, the learned AR fairly accepted to restore the issue to the file of the AO for fresh adjudication as per the provisions of law and after considering the documents filed in the paper book.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case revolves whether the assessee has made any unaccounted investment in the purchase of Vehicle as alleged by the authorities below. In this regard, we note that the learned AR has filed ledgers documents in support of the payment made for the purchase of vehicle. However, the accountant has not accounted for certain payments transactions carried out by the assessee through his personal account. Accordingly, there was a mismatch in the facts as observed by the authorities below in the value of vehicle shown by the assessee viz a viz the actual value of the vehicle. It is the trite law that the entries shown in the books of accounts cannot be used to draw any adverse inference in the event the assessee failed to make complete disclosure. In the case on hand, the assessee was able to produce the necessary documents in support of his contention that payment for the purchase of Vehicle was made through the personal account. However, we find that there was no finding given by the authorities below on the papers available in the paper book on pages 10 to 22. Therefore, in the interest of justice and fair play we are inclined to set aside the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the documents available in the paper book. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

11. The next issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 13,48,259 on account of low gross profit declared by it (the assessee).

12. The AO during the assessment proceedings found that there was drastic downfall in the gross profit declared by the assessee in the year under consideration despite the fact that the turnover of it (the assessee) has gone many folds high. Furthermore, the assessee has not furnished the necessary details such as purchases, sales, stock along with the reasons to justify the fall in the gross profit ratio. Thus, the AO has taken the average gross profit of the last 3 years which is arising at 8.69% as standard GP ratio whereas the assessee has shown GP ratio only 4.41% leading the difference on account of shortfall in the GP at 4.28%. Thus, the AO worked out the amount of profit attributable on account of such reduction in the gross profit at Rs. 13,48,259 and added the same to the total income of the assessee.

13. Aggrieved assessee preferred an appeal to the learned CIT (A).

14. The assessee before the learned CIT (A) submitted that the gross profit has further fallen in the subsequent assessment year 2018 -19 but the same was accepted by the revenue. The assessee further submitted that the gross profit for a particular year depends upon various factors such as government policies, monsoon, market competition, increase in the purchase cost and decrease in the sales value. As such, the assessee has maintained the books of accounts which were audited and no defect of whatsoever in the amount of purchases, sales and the expenses were pointed out. As per the assessee, all the purchases and the sales and the expenses are supported by the documentary evidence which can be verified from the records. All the transaction were carried out through the banking channel. There was no discrepancy pointed out by the AO in the stock register maintained by the assessee. The books of accounts were duly accepted by the revenue and therefore there cannot be any adjustment on account of fall in the gross profit ratio.

15. However the learner CIT (A) rejected the contention of the assessee by observing that there was no valid reason furnished by the assessee for the fall in the gross profit ratio based on the documentary evidence. Thus, the learned CIT (A) upheld the order of the AO.

16. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

17. The learned AR before us has filed a chart showing gross profit ratio declared by the assessee over a period of time which is fluctuating in different assessment years. As per the learned AR the gross profit ratio declared by the assessee in the different assessment year have been duly accepted by the revenue. The learned AR in support of his contention drew attention on page 23 of the paper book where the analysis of the gross profit and net profit ratio was placed.

17.1 The learned AR further submitted that there was increase in the purchase cost of certain items but there was no corresponding increase in the sale price which resulted in the fall of the gross profit ratio declared by the assessee. To this effect, the learned AR has filed a comparison chart for the year under consideration viz a viz the immediate preceding previous year which is placed on page 53 of the paper book. Likewise, the assessee has filed the chart showing the reduction in the sale price of certain items which is placed on pages 49 of the paper book.

18. On the other hand, The learned DR before us submitted that the learned CIT (A) has given a categorical finding that the assessee has not furnished the necessary justification on account of fall in the gross profit ratio. Accordingly, the learned DR also submitted that details filed by the learned AR in the paper book have not been verified by the authorities below and therefore he prayed to restore the issue to the file of the AO for fresh adjudication as per the provisions of law.

19. The learned AR in his rejoinder did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

20. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that there is a downfall in the gross profit

ratio declared by the assessee in the year under consideration in comparison to the earlier years. But the controversy arises whether the downfall in the gross profit ratio gives the authority to the revenue to make any addition without pointing out any defect in the amount of purchases, sales stock shown in the books of accounts. The answers stands in negative. However, from the preceding discussion, we find that it has been alleged by the authorities below that the assessee has not furnished the necessary details whereas on perusal of the details available in the paper book it is transpired that the assessee has furnished all the necessary details. Thus, it seems to us that the necessary details furnished by the assessee during the respective proceedings have not been appreciated in the right perspective by the lower authorities and therefore in the interest of justice and fair play we are inclined to restore this issue to the file of the AO for fresh adjudication in the light of the documents available in the paper book and in accordance with the provisions of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

21. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Court on 14/12/2022 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated **(True Copy)**
14/12/2022
Manish