

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 288/Rjt/2019
Assessment Year: 2010-11**

Smt. Sumariben R. Odedra Opp Vipul Transport Panjrapol Road, Khak Chowk, Porbandar PAN AAHPO3345H (Appellant)	Vs	The Income Tax Officer, Ward-2(3), Porbandar (Respondent)
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**Assessee Represented: Shri Chetan Agarwal, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 17-11-2022
Date of pronouncement : 18-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Appellate order dated 27.09.2019 passed by the Commissioner of Income Tax (Appeals), Jamnagar, arising out of the Assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The Registry has noted that the appeal is time barred by 02 days. Ld. Sr. D.R. has no serious objection in condoning the delay of 02 days. Therefore we hereby condone the delay of 02 days in filing this appeal by the assessee and the appeal is taken up for hearing.

2.1. The brief facts of the case is that the assessee is an individual, engaged in the business of trading of brass product and supplied goods to various parts of India. Further the assessee is an illiterate person. As per information with the department, it is noticed that the assessee has deposited Rs. 18,09,100/- in her State Bank of India saving account at Porbandar Branch during the Financial Year 2009-10. Therefore the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment and issued a notice u/s. 148 of the Act on 31.03.2017. In response, the assessee filed her Return of Income on 11.11.2017 declaring total income at Rs. 1,55,830/-.

2.1. During the re-assessment proceedings, the assessee submitted that as per Section 44AF of the Act, the assessee is not required to maintain regular books of accounts. However to prove cash deposits made in State Bank of India account, the assessee could not produce evidences for cash sales made by her. Therefore the Assessing Officer made addition of Rs. 16,53,270/- as unexplained money and added as the income of the assessee and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Jamnagar. The assessee submitted that she filed Return of Income declaring 8% of Rs. 18,09,100/-, as the profit u/s. 44AD of the Act. The assessee being a small trader and illiterate, the assessee has not maintained books of accounts. Thus the cash deposited in the bank account was out of the sales on which profit @ 8% was declared in the return. Since the reassessment proceedings initiated in March, 2017, the assessee could not preserve the details, bills after lapse of six years and unorganized culture of small businessmen. The assessee also submitted similar reopening of assessment made in the same area relating to the various parties wherein Ld. CIT(A) and ITAT confirmed the additions @ 5% are as follows:

Sr. No.	Name of Assessee	Ward	Amount deposited in undisclosed bank account treated as unaccounted	Rate of profit estimated by assessing officer	Addition made	Addition sustained Hon'ble CIT(A) and ITAT
1	Dipesh C. Haria	1(3), Jamnagar	48,49,422/-	22.14%	10,73,662/-	5%
2	Bhagwan O. Katodia	1(3), Jamnagar	23,04,000/-	34.57%	7,96,792/-	5%
3	Pravin L. Busha	1(3), Jamnagar	17,25,000/-	22.34%	3,85,365/-	5%
4	Nitinkumar N.	2(2), Jamnagar	32,15,895/-	8.33%	2,67,884/-	5%
5	Rashik R. Kapuria	2(2), Jamnagar	27,25,195/-	19.28%	5,25,417/-	5%
6	Hardik K. Nadhava	2(1), Jamnagar	16,92,250/-	100%	16,92,250/-	5%

3.1. Similarly, Rajkot Bench of ITAT in the case of Balkrishna Dwarkadas Vs. ITO in ITA No. 923/RJT/2010 dated 01.01.2010; in the case of Shri Rakesh S. Chhaparwal (HUF) Vs. ITO in ITA No. 502 & 503/RJT/2008 dated 28.08.2009 and in the case of Pushkar Raj 3 Kabra Vs. ITO in ITA No. 867/RJT/2009 dated 23.08.2020. The assessee further relied upon various case laws in support of its case before the Ld. CIT(A).

3.2. The Ld. CIT(A) after considering the above submissions held that the assessee himself has admitted that the assessee has not maintained books of accounts and in the absence of any proof of evidence and mere submission of the assessee that the amount of deposit of Rs. 18,09,100/- in her bank account as sale of goods cannot be accepted. The assessee has not maintained the dates of withdrawal of the amount and the date of the deposits of the cash, which were again re-deposited. The assessee has not explained that the time gap between the deposition of the above amount and withdrawals of the amount. In the absence of the same, the A.O. has correctly made addition of Rs. 16,53,270/- u/s. 69A of the Act as unexplained money and such addition of the A.O. is confirmed and thereby dismissing the appeal filed by the assessee.

4. Aggrieved against the same, the assessee filed an appeal before us raising the following grounds of appeal:

- 1. Learned CIT(A), Jamnagar has erred in law as well as on facts in confirming addition of Rs. 16,53,270/- u/s. 69A in respect of cash deposits made by an appellant treating it as unexplained money.*

4.1. Ld. Counsel for the assessee Mr. Chetan Agarwal reiterated the same arguments made before Ld. CIT(A) and pleaded that the assessee had offered 8% on the cash deposits made before in her bank account. Similar transactions carried out by the other vendors namely Dipesh C. Haria , Bhagwan O. Kotadia, Pravin L. Busha, Nitinkumar N., Rashik R. Kapuria and Hardik K. Nakhava wherein their respective Assessing Officers namely ITO Ward 1(3), 2(2) and 2(1) made higher estimations which has been restricted to 5% by CIT(A) or ITAT. The Assessee herein had done trading of brass products and supplied goods to various parts of India, from where cash was deposited in their respective bank account which is admittedly unaccounted sales and not undisclosed investments and thereby to allow the assessee appeal.

5. Per contra, the Ld. Sr. D.R. Mr. B.D. Gupta appearing for the Revenue supported the order of the Lower Authorities and held that no documents are produced before Ld. NFAC Authorities. Therefore the addition made by the Assessing Officer does not require any interference and pleaded to uphold the same.

6. We have given our thoughtful consideration and perused the materials available on record. We find that considerable force in the arguments made by the assessee counsel as the assessee filed her Return of Income declaring profit u/s. 44AD of the Act. The assessee has not maintained proper books of accounts and the assessment also being a reassessment for the assessment year 2010-11 completed in 2017, the assessee could not maintain proper

records. Further on the various case laws relied by the assessee namely Balkrishna Dwarkadas, Shri Rakesh S. Chhapparwal (HUF) and Pushkar Raj 3 Kabra (cited supra) were consistently held that addition by estimating for profit @5% on sale of unregistered dealers/purchases which has been reduced to 1.25% by Ld. CIT(A), Jamnagar which were being upheld by Co-ordinate Bench of this Tribunal. It is demonstrated by the assessee before us in various six other assessee's cases, the additions made by the Assessing Officer were reduced to 5% by the Ld. CIT(A). In the present case, the assessee has offered 8% on the cash deposits made in her bank account, which we found a reasonable declaration made by the assessee u/s. 44AD of the Act. Thus the grounds raised by the assessee is hereby allowed and the additions made by the lower authorities are deleted.

7. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 18-01-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 18/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट