

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.23/RJT/2016, 74/RJT/2018, 81/RJT/2017 & 75/RJT/2018  
Assessment Years: 2006-07, 2006-07, 2007-08, 2008-09 respectively**

Income Tax Officer,  
Ward – 2(1)(1), Rajkot.

vs. Shri Dhanji L Chikaliya,  
Prop. of M/s. Shiva Enterprise,  
401, Shivdhara Apartment,  
Near Athithi Apartment,  
Panchvati Main Road,  
Rajkot.  
[PAN – AFJPC 9780 K]

**ITA No.212/RJT/2016  
Assessment Year: 2006-07**

Income Tax Officer,  
Ward – 1(2)(5), Rajkot.

vs. Shri Ashokbhai Kishorbhai Parmar,  
Prop. of M/s. A.K. Enterprise,  
5, Manhar Plot,  
Rajkot.  
[PAN – AKLPP 5659 H]

**ITA No.24/RJT/2016  
Assessment Year: 2008-09**

Income Tax Officer,  
Ward – 2(1)(1), Rajkot.

vs. Shri Paresh Dhanjibhai Patel,  
401, Shivdhara Apartment,  
Panchvati Main Road,  
Rajkot.  
[PAN – AQAPP 4202 R]  
(Respondents)

(Appellants)

Assessee by : Shri Rajendra Singhal, AR  
Revenue by : Shri Shramdeep Sinha, CIT (DR)

Date of hearing : 14.11.2022  
Date of pronouncement : 10.02.2023

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

All these six appeals by the Revenue, involving identical issues, are filed against different orders, passed by the CIT(A)-1 & 2, Rajkot, for assessment years 2006-07, 2006-07, 2007-08, 2008-09, 2006-07 & 2008-09. All these appeals were heard together and, therefore, as a matter of convenience, all these six appeals are being disposed of by way of this consolidated order.

2. First we take up the appeal filed by the Revenue for the Assessment Year 2006-07 i.e. ITA No.23/RJT/2016 and the grounds raised in this appeal are reproduced as under :-

- “(1) The learned CIT(A), has erred in law and on facts of the case in deleting the addition of Rs.10,05,23,637/- made u/s.68 of the Income Tax Act, 1961 not appreciating the facts that during the assessment proceedings, the assessee failed to comply with all the terms of notices issued under sub-section (1) of section 142 and the AO has assessed the total income to the best of his judgement u/s.144 r.w.s. 147 of the Income Tax Act.*
- (2) During the appellate proceeding the assessee furnished copy of statement of account of ICICI Bank which was not remanded to the AO for verification. The Ld. CIT(A) has not justified in not giving fair opportunity to the AO to scrutinize the ICICI bank statement.*
- (3) It is, therefore, prayed that the order of the learned CIT(A)-1, Rajkot may be set-a-side and that of the Assessing Officer may kindly be restored back.”*

3. The assessee did not file his return of income for the Assessment Year (A.Y.) 2006-07. The Assessing Officer observed that during the year under consideration, the assessee had deposited aggregate cash of Rs.10,05,23,637/- in his bank account maintained with ICICI Bank. As the assessee did not file his return of income, the source of the said cash deposit remained unexplained and therefore the case was reopened under Section 147 of the Income Tax Act, 1961 after recording reasons thereof. Despite giving several notices, none responded to the said notices. The

Assessing Officer observed that the DGCEI Zonal Unit, Ahmedabad had investigated under-valuation and clandestine clearance of ceramic glaze mixture (Frit) by manufacturers of Frit in Gujarat. During the course of investigation the DGCEI came across certain bank accounts operated by shroffs in which huge cash was deposited. The assessee did not produce any evidence or explanation regarding source of these cash deposits and, therefore, the Assessing Officer made addition of Rs.10,05,23,637/- under Section 68 of the Act as unexplained cash credit.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessee did not file any evidences or any submissions before the Assessing Officer at the time of assessment proceedings. The cash deposit of Rs.10,05,23,637/- were deposited in ICICI Bank Limited account on different dates. There was no explanation offered by the assessee during the assessment proceedings and order under Section 144 read with Section 147 of the Act was passed. After going through the submissions made before the CIT(A), the gist of the same was that since the DGCEI /Excise Department recovered Excise Duty which was also to be treated as sales of the Ceramic Unit and accordingly made addition applying Gross Profit Percentage. Therefore, considering all this, the assessee prayed that the addition may be deleted but at no point of time the assessee has given any details related to shroffs business except few investments annexed to the Paper Book. Therefore, the Assessing Officer has rightly made the addition under unexplained cash credit. The CIT(A) has not taken any cognisance of the conduct of the assessee and simplicitor deleted the amount thereby taking the peak balance of Rs.19,98,287/- after verification of bank account. Thus, the Ld. DR submitted that the addition made by the Assessing Officer be confirmed.

6. The Ld. AR submitted that it is not disputed fact that the assessee is into the shroffs business. As the assessee did not substantiate his claim of commission income, the best option was to tax the peak balance which was rightly done by the CIT(A). Ld. AR relied upon the decision of M/s. Shri Sidhnath Enterprise vs. ACIT, ITA No.374/RJT/2017 for AY 2012-13, order dated 29.06.2022. The Ld. AR further relied upon the decision of Hon'ble Ahmedabad High Court in case of Sidhnath

Enterprise vs. ACIT, judgement dated 28.03.2016, Special Civil Application No.19694/2015 in case of Shri Sidhnath Enterprise vs. ACIT.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has assumed the business of the assessee as shroffs business and from the various documents and evidences presented before us the assessee could not establish that the investment in respect of cash was related to the business of the assessee. The assessee has not appeared before the Assessing Officer and has not filed any details. The Ld. AR at the time of hearing filed application under Rule 27 thereby supporting the order of the CIT(A) but the CIT(A) has not given detailed finding as to why the said unexplained cash credit should be taken into account when the evidences before the Assessing Officer as well as before the CIT(A) lacks the genuineness & creditworthiness of the transactions. Therefore, the CIT(A) was not right in deleting the addition. In fact all the case laws cited by the Ld. AR at the time of hearing has been taken into consideration, but each of the case is distinguishable on the factual aspect with the present assessee's case. Hence appeal of the Revenue being ITA No.23/RJT/2016 for A.Y. 2006-07 is allowed.

8. As regards ITA No.74/RJT/2018 for A.Y. 2006-07 which is in respect of order under Section 144 read with Section 263 of the Act, the CIT(A) has also taken the similar view as that of in the reopening proceedings under Section 147 of the Act and hence ITA No.74/RJT/2018 is allowed.

9. ITA No.81/RJT/2017 for A.Y. 2007-08 is similar to ITA No.23/RJT/2016 for A.Y. 2006-07 and hence the same is allowed.

10. ITA No.75/RJT/2018 for A.Y. 2008-09 is also similar to A.Y. 2006-07 and hence allowed.

11. As regards ITA No.24/RJT/2016 in case of Paresh Dhanjibhai Patel, the facts are similar and hence the same is allowed and ITA No.212/RJT/2016 in case of

Ashokbhai Kishorbhai Parmar, the facts are identical and hence the same is also allowed.

12. In the result, all the appeals filed by the Revenue are allowed.

Order pronounced in the open Court on this 10<sup>th</sup> day of February, 2023.

*Sd/-*  
**(WASEEM AHMED)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 10<sup>th</sup> day of February, 2023**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Rajkot Bench, Rajkot*