

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.419/RJT/2017
Assessment Year :2013-14**

The ACIT, Cent.Cir.1 Rajkot.	Vs.	M/s.K.K. Enterprise C/o.SADP& Co., CAs. BB House, 5-College Wadi Nr.Kathiyawad Gymkhana Rajkot 360 001. PAN : AAFK 3153 D
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**ITA No.434/RJT/2017
Assessment Year :2013-14**

M/s.K.K. Enterprise C/o.SADP& Co., CAs. BB House, 5-College Wadi Nr.Kathiyawad Gymkhana Rajkot 360 001. PAN : AAFK 3153 D	Vs.	The ACIT, Cent.Cir.1 Rajkot.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assesseeby :	None
Revenue by :	Shri Shramdeep Sinha, ld.CIT-DR

सुनवाई की तारीख/**Date of Hearing** : **28/11/2022**

घोषणा की तारीख /**Date of Pronouncement**: **22/02/2023**

आदेश/O R D E R

PERANNAPURNA GUPTA, ACCOUNTANT MEMBER

These are cross-appeals filed by the Revenue and the assessee against order passed by the ld.lc.Commissioner of Income-Tax (Appeals)-4, Ahmedabad [hereinafter referred to as "ld.CIT(A)"] dated

27.9.2017 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short)pertaining to Asst.Year 2013-14.

2. At the time of hearing, none appeared on behalf of the assessee despite service of notice. It is noted from the order sheet that the appeal was filed on 30.11.2017, thereafter the matter was fixed for hearing on 6.10.2022. However, none appeared on behalf of the assessee, accordingly, the matter was adjourned to 28.11.2022. On this date also none put presence on behalf of the assessee or any application for adjournment was sought. Therefore, due to constant non-appearance by the assessee it was decided to adjudicate the matter *ex parte* assessee-appellant after hearing the ld.DR and considering the material available on record.

3. Brief facts relating to the case are that search action was conducted on the assessee and notice under section 153A of the Act was issued for assessing income of the assessee. However, the assessee did not participate in the assessment proceedings and accordingly AO made addition of the entire cash deposited in the bank account of Rs.3,05,57,669/- as his income, being unexplained . The matter was carried in appeal before the ld.CIT(A) where pleadings were made on behalf of the assessee stating that he was a mere *shroff/angadia* facilitating transfer of cash to and from tile manufacturers, and earning only commission income there from; that therefore entire cash deposits cannotbe treated as income. Alternatively, he had also pleaded that since there were deposits and withdrawals from the bank accounts, only peak cash needed to be added. The ld.CIT(A) agreed that entire cash deposits could not be considered in isolation for making addition and the withdrawals from the accounts also needed to be taken note of. Accordingly, he held the addition of total cash deposits made by the AO as excessive.

Thereafter, he dismissed the assessee's contention that he was mere *shroff/angadia* and further went on to hold that the cash deposits in his bank account represented his business income and admittedly the assessee being associated with tiles manufacturers, the business related to the same. Accordingly he applied gross profit of tile manufacturers to the tune of 25% to the turnover of the assessee for determining his income liable to tax. The Id.CIT(A) directed the AO to apply a rate of 25% to the total cash deposits which he held represented his business receipts.

4. The Revenue is aggrieved by order of the Id.CIT(A) in holding the addition of entire cash deposit as excessive, while the assessee is aggrieved by order of the Id.CIT(A) rejecting the contention of being a *shroff/angadia* and only commission therefore be liable to tax, but on the contrary, treating entire cash deposits as his business income and taxing it at the rate of 25% applying GP rate of the tiles manufacture. The grounds raised by the Revenue and assessee are as under:

By Assessee:

1. *Confirming addition to the extent of Rs. 91,67,301/-*
2. *Contending that the appellant is not a shroff/ angadia but partner in ceramic business without appreciation the facts and evidences available on the records.*
3. *Adopting profit margin @25% of the total turnover arbitrarily without brining any evidence/ basis on record instead of @0.50% (i.e. the commission quantum embedded in the deposits) supported by the evidences in form of finding of DGCEI and seized material.*
4. *Making addition of @5% on account of assumed investment to start business, without any evidence or basis and completely arbitrarily*
5. *Not considering the finding of Directorate General of Central Excise Intelligence, Ahmedabad (DGCEI), which has been considered and upheld by the Commissioner of Central Excise & Custom in appellate matters under the relevant act. Moreover, the finding of the DGCEI has made basis for the purpose of initiating search proceeding/ reopening of assessment proceedings against the Tiles Manufacturers and the appellant like shroffs.*

Further, Hon'ble Gujarat High Court has held re-opening of assessment on the basis of the finding of DGCEI as legal and valid one.

6. Ignoring the fact that in seized material itself the nature of the business of the appellant is revealed as shroff/ angadia along with the quantum of the commission element as well.

7. Not adopting peak balance in the bank account, without assigning any reason thereof.

8. Not giving credit/ benefit of telescopic of intangible additions made (not-adjudicated)

9. Not considering decisions relied upon by the appellant.

10. All the grounds of appeal raised hereunder are without prejudice to one another.”

By Revenue:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and/or on facts in deleting the 70% of the addition of Rs.3,05,57,669/- made on account of unexplained cash deposit.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

3. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.”

4. We have gone through order of the ld.CIT(A) and we have noted the contentions made by the ld.counsel for the assessee before the ld.CIT(A) which are reproduced at page no.3 to 14 of the order of the ld.CIT(A). We have noted there from that the assessee had contended that the search operation was conducted on the assessee on the basis of finding during course of the investigation conducted by the office of the Directorate General of Central Excise Intelligence, Ahmedabad (“DGCEI” for short) in the case of Ceramic Tile manufacturers located at Morbi and other locations of Gujarat. The indepth investigation and search conducted on various tiles manufacturers, their dealers, employees, transporters, mediators, *shroff* and various documents and loose papers etc. revealed that the tile manufacturers had suppressed their sales and the cash

component of the sale was routed back to them through *shroffs/angadias* for a commission. Based on this entire detailed investigation and report of the “DGCEI”, which revealed the name of the assessee also as a facilitator /*shroff* for transferring unaccounted cash sales of tiles manufacturers, search was conducted on the assessee also. The contention of the Id.counsel for the assessee therefore was that as per the case of the Revenue also, the assessee was only a *shroff/angadia*, and therefore, all the cash deposits/ transactions in his bank accounts were on account of dealing as *shroff/angadia* only; that there was no question of treating the entire cash deposits as belonging to him. We have noted that the assessee had made exhaustive pleadings in this regard giving the background and the finding of the investigation conducted by the “DGCEI”,The Intelligence collected by DGCEI which conclusively revealed the name of the assessee also as one of the *shroff/angadia* and the consequence of “DGCEI” Investigation ,all of which are contained at para 2.1 to 2.2 of the CIT(A)’s order as under:

2. Intelligence collected by DGCEI

2.1. Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit [here-in-after referred to as DGCEI for the sake of brevity] collected an intelligence, indicating that the manufacturers of Ceramic Glazed and Vitrified tiles of Morbi and other parts of the State of Gujarat, including M/s Sigma Ceramic Industries are engaged in large-scale evasion of Central Excise duty by adopting the following modus operandii:-

- (i) The manufacturers of such tiles are removing finished goods from their registered factory premises by not declaring the actual MRP of their products in the Central Excise Invoices. They were declaring only a part of actual MRP and consequently evade payment of duty of excise by determining a lower assessable value after availing abatement of 45% on such lower MRP.
- (ii) These manufacturers also mis-declare in the Central Excise invoices the actual ex-factory prices of such tiles, which is recoverable from their buyers. They artificially work out an ex-factory price to match with the lower MRP and manipulated assessable value declared in the aforesaid manner.
- (iii) Tiles are sold in the market at prices which vary according to the quality and grade. Tiles of each size are manufactured in different designs and colours. The sale rates of tiles of different designs and colours are different. The tiles of light colours are cheaper and dark colours are costlier. The rates also depend upon the size of the tiles. The wall tiles of size 12" X 8" and floor tiles of size 12" X 12" are cheaper while the tiles of size 8" X 8", 16" X 16", etc. are costlier. The manufacturers were not declaring size, designs and colours in their invoices and they were declaring same MRP for tiles of a particular grade, irrespective of size, colours and designs.

- (iv) The differential value over and above the value declared in the Central Excise invoices was collected by them in cash from the buyers, and such cash amounts are not accounted for in their statutory records.
- (v) These manufacturers and their dealers and distributors have adopted a fraudulent method to keep the landed cost of tiles at the barest minimum at the destination, so that it does not exceed the artificial MRP declared in the Central Excise invoices. In order to achieve this objective, the manufacturers in connivance with the dealers and transporters were not showing the actual transportation cost of tiles from the factory to such destination. LRs of the transporters and bills of the shipping companies, in case tiles are transported in containers in coastal vessels, contained only less than 50% of the actual freight amount. The dealers paid the freight amounts over and above the declared freight as per documents, in cash to the transporters and shipping companies. Thus they could keep the landed cost below the MRP declared by the manufacturers, avoid VAT on such transportation cost. In most of the cases, freight was kept below Rs.20,000/- to avoid deduction of Tax at Source as well as evade Service Tax.
- (vi) The recipient dealers and distributors were also not showing on records the actual expenses incurred by them towards local transportation, transit insurance, loading and unloading expenses, actual margin of profit etc. These expenses were also meted out by them in cash.
- (vii) The recipient dealers of such tiles were also selling the same to ultimate consumers by not showing the actual MRP or sale value in their sale bills. They have artificially worked out the selling price to match with the landed cost declared by them on records. Differential value over and above the value declared in the sale bills was collected by them from the consumers in cash. Thus the dealers evaded VAT on the tiles sold by them.
- (viii) While part of the cash amounts collected by the dealers and distributors in the aforesaid manner was spent by them towards meeting the undeclared expenses as mentioned above, the remaining cash amounts which formed the actual cost of tiles, over and above the value declared in the Central Excise invoices, were transferred by them to the manufacturers.
- (ix) In order to transfer such cash amounts from dealers to manufacturers, different methods were adopted by them. In case of transfer from within the State of Gujarat, cash amounts were mostly transferred through angadias. In case of transfer from the various locations outside Gujarat, cash amounts were sometimes, collected personally by the authorized representatives of the manufacturers or their sales personnel during their visit to the dealers, or even by angadias.

- (x) The most common method used for collection of cash amounts was through the bank accounts of ICICI, HDFC etc. banks controlled by the shroffs who opened bank accounts in different private banks, mostly ICICI Bank, in the name of a large number fictitious trading firms. The shroffs were communicating the name of such trading firm, bank account number, PAN number, etc. to the manufacturers. The manufacturers were communicating these details to their dealers and marketing personnel either telephonically or through SMS messages. They were also mentioning a fax number in such communications. Accordingly, the dealers were depositing cash amounts into these accounts at multi-locations, and were sending a copy of the relevant pay-in-slip by fax to the number communicated by the manufacturers. The manufacturers on the basis of fax copies of such pay-in-slips received from the dealers were communicating the details of such cash deposits to the shroffs. Thereafter, shroffs were withdrawing the cash amounts from the respective bank account and was either handing over the same to the manufacturers or their dedicated representatives. In order to evade cash transaction tax or to avoid detection by the authorities, these shroffs were sometimes, transferring such cash amounts to some other bank accounts, mostly held in different co-operative banks in Rajkot, before withdrawing the cash amounts in the aforesaid manner.
- (xi) In order to keep the manufacturing cost within the range of artificial value declared in the Central Excise invoices, the manufacturers were also procuring a number of raw materials either on cash payments or by not showing the actual value in the books of accounts. Cash amounts received by the shroffs in the aforesaid manner, were sometimes handed over to such suppliers of raw materials also at the behest of the manufacturers.

Specifically referring to the name of the appellant, in the statement of a dealer, it was stated as under:

Que 12: How you had been paying such cash, over and above invoice value to the tile supplier manufacturers from Morbi?

Ans 12: Sometimes, we had been paying cash, over and above invoice value, to the person as mentioned above personally at the time of my visit to Morbi or sometimes paying to the representatives of the said manufacturers visiting to our premises after confirmation over phone. Mostly, we have been remitting cash amount, over and above the invoice amount, to the tile supplier manufacturers from Morbi by depositing cash amounts in the ICICI Bank accounts of shroff firms namely M/s Shubh Enterprises, M/s Shreeji Enterprises, M/s Shree Maruti Enterprises, M/s Vinayak Enterprises etc.

It was also dealt with that the cash deposited in bank accounts of the appellant actually pertaining to the TMs only (ref: Opwell Ceramic):

16.4 The officers of DGCEI during the searches in the premises of several dealers could find out only 82 Bank accounts of the firms in which cash amounts were being deposited on behalf of the ceramic tile manufacturers. On the basis of the cash deposited in said 82 accounts, as per Bank account statements provided by the respective Banks, a chart has been prepared as follows:

50	Shree Maruti Enterprise	0-15305003505	07.11.05	22.07.06	303254285
67	Akshar Enterprise	624805011069	30.09.06	30.06.08	113232110

16.5 It is evident from the said chart that an amount of Rs.2032.14 Crores was deposited in said accounts in cash by the dealers of ceramic tile manufacturers. There may be several such other accounts which are not known to DGCEI. In addition, the amounts were also being transferred through Angadias, through bearer demand drafts/bearer cheques and through personal visits of the dealers to Morbi or the manufacturers to the dealers. Thus, the total amounts collected through channels other than the official channels shall be much more. Thus the ceramic tile manufacturers were running a parallel economy to evade excise duty, VAT and Income Tax.

All above contention, findings categorically and unambiguously state that the cash deposited in the bank accounts of the appellant are actually pertaining and belonging to the TMs only and the appellant's stake is restricted to commission element embedded therein. In respect of commission element embedded therein the same was referred in para no. 12.1.7 of order of Opwell Ceramic:

12.1.7 On being asked to further explain the above services provided by him, he explained the same as below:-

- i. **Transferring cash from one shroff to another shroff:** Here as per the directions received from the Ceramic Tile manufacturers, he collected the cash from the shroff and handed over the same to another shroff. He got a commission of 50 P per one thousand for doing the same. In this case, the amount which he deposited with the recipient shroff, was minus his commission amount.
- ii. **Collecting cash from shroff and disbursing the same to the various raw material suppliers etc as per the directions from the Ceramic Tile manufacturers:** As already stated by him, certain payments are to be made by the Ceramic Tile manufacturers to their raw material suppliers which are not to be accounted in their statutory books of account. Hence, in such cases, the manufacturers gave him direction from which shroff he had to collect the cash and to which raw material supplier, the said cash has to be handed over. He got a commission of 50 P per one thousand for doing the same. This commission he got from the raw material supplier.

We attach herewith CD containing orders passed by the Commissioner of Central Excise and Custom in various cases viz. Opwell Ceramic, Penguin Ceramic, Shagun Cera, Sigma Ceramic, Sogo Ceramic.



2.2 The evidentiary value and consequential of DGCEI's investigation:

2.2.1.1 Excise duty was recovered from several units under Investigations.

2.2.1.2 Many partners/ directors/ employees and other persons have admitted this fact.

2.2.1.3 Many evidences have been found and seized by the DGCEI and the same have been resorted too.

2.2.1.4 Several directors/ partners/ owners/ employees/ dealers have been arrested

2.2.1.5 Income-tax Department's own search on Tiles Manufacturers and Shroffs was also based pm DGCEI's investigation.

2.2.1.6 VAT department also initiated actions by relying DGCEI's investigation.

2.2.1.7 Income-tax Department re-opened several assessments of Tiles Manufactures, on the basis of DGCEI's investigation, which has been approved as well by Hon'ble Gujarat High Court in the case of Gokul Ceramic and Others (dated 29/06/2016). Copy contained in CD.

2.3 During the course of the pre search and post search also statement of the appellant had been recorded by the Investigation Wing and in the statement also the appellant confirmed the abovestated facts only.

5. The Id.CIT(A) rejected the assessee's contention of being *shroff/angadia* at para 5.4 of his order as under:

"5.4 After the findings, given about the excessiveness of the additions made by the A.O., the contentions of the appellant about determining of income by taking commission at the rate of Rs.300 to 350 per lakh are considered below. The contention of the appellant is that he is engaged in Aagadia/shroff business is not found factually correct To run business of Andadia/shroff, license to that effect is required from the appropriate government authorities. To run business of shroff, license under the Money Lending Act is required from the District Collector. As shroff provides services to clients, he has to register under Central Service Tax Act (now modified as GST); But the appellant could not submit any documentary evidence to show which substantiate his contention that he is engaged in the business of Angadia/shroff. In the business of Angadia, details of person who sends money through angadia can be ascertained, as proper record in maintained but in the case of the appellant, details of the person who deposited cash cannot be ascertained. In the case of shroff, sometime cheques is given by the client to the shroff & cash is taken by the client and sometime, cash is given by the client to shroff & cheque is taken. But in the case of the appellant, deposits & withdrawal, both are only in cash. Therefore, this contention of the appellant that he is angadiaor shroff is dismissed. The appellant's another contention is that he charged commission at the rate of 0.05% to 1% & Rs.300 to Rs,350/- per lakh are contradictory. The rate of commission stated by the appellant is not found harmonious with the rate stated by him during the course of search. This proves that the appellant and group concerns earned income more than the income shown in regular returns filed. Therefore, this contention of the appellant is rejected. The appellant's another contention is that he is merely facilitator and the actual beneficiaries are ceramic manufacturers of Morbt, Thanagadh&wakaner etc. and named some of them in his statement

u/s.132. The appellant is master of facts and he should have told the whole truth. He should have submitted complete details of person wise transactions, so the department could have taken action to assess income related to these transactions in their hands but the appellant failed to do so during assessment proceedings and even during appellate proceedings. These facts show that the appellant is partner with other black money generators/hoarders. Therefore, the contention that the appellant is earning only commission income on these transactions and real beneficiaries are others, is not found acceptable, hence it is dismissed. The appellant also contended that during the search, only cash of Rs.6840/- and jewellery worth Rs.1.10 lakh was found, which shows, he is person of small means but findings of assets during the course of search is not the only criteria to assess the income of the assessee. All relevant material gathered during the search is to be considered. Thus it is dismissed. The appellant cited CBDT, New Delhi circular, in which, it has been instructed that cases of having probability of high pitched assessment should be monitored by the Range Head. This being a search case, the assessment has been approved by the Range Head as per provisions of the Act. Therefore, there is no violation of the CBDT circular by the A.O. This contention of the appellant is also dismissed for the reasons mentioned above. The appellants another argument that opportunity of being heard has not been granted by the AO is factually incorrect, as the AO has given specific show cause notice to the appellant before making the additions. The bank accounts are in the name of the appellant & maintained/operated by the appellants and accepted these facts time & again, then onus is upon the appellant to come forward and explain the true nature of transactions but the appellant failed to do so. Therefore, this contention is also dismissed.

6. The basis for the Id.CIT(A), as transpires from the bare perusal of the order, for rejecting the assessee's contention is very peripheral and technical. He has stated that if the assessee was *shroff/angadia*, he ought to have obtained license under the Money Laundering Act. He has further gone on to state that if the assessee was *shroff/angadia*, then he should have details of all persons from whom money flowed. Thereafter, he has gone to note that the interest of the Revenue has to be taken into consideration that since no details of persons from whom money flowed had been furnished by the assessee, therefore, in the interest of the Revenue, the assessee could not be treated as *shroff/angadia*.

It is clearly evident that the Id.CIT(A) has totally ignored the pleadings of the assessee backed with evidence that search was conducted by the "DGCEI" revealing that the assessee was an

Angadia involved in providing accommodation entries to the tiles manufacturers, facilitating movement of suppressed cash sales to the tiles manufactures. The Id.CIT(A) does not deny this fact which was pointed to him during appellate proceedings. Therefore, undoubtedly, the Revenue had proceeded to search the assessee on the basis that the assessee was facilitator/ *shroff* for the tiles manufacturers; facilitating movement of their unaccounted sales in cash. In this background, the Id.CIT(A) holding that the assessee was not a *shroff/angadia* because he did not have a license under the Money Laundering Act and did not furnish the details of the persons to whom he had lent money, we find is highly frivolous. When the admitted case of the Revenue itself is that the assessee was acting as a facilitator for transferring unaccounted cash sales of tiles manufacturers, the Ld.CIT(A) rejecting the same merely tantamounts to going back and forth by the Revenue on the issue. While on the one hand the case of the Revenue is that the assessee is a mere facilitator of cash being transferred to tile manufacturers, at the same time they are contradicting the same also by saying he cannot be a facilitator since he is not licensed to do so. Why would a person allegedly involved in transferring cash belonging to tile manufacturers get himself registered /licensed under Money laundering act is beyond comprehension. It is an admitted case even of the Revenue that the assessee was only involved in cash transfers, therefore *rejection* of this plea of the assessee that only commission be charged to tax by the Id.CIT(A) is contrary to the findings of the Revenue itself on facts and highly unjustified.

7. In view of the above, we agree with the contention that the assessee be taxed only for commission earned. Now the question arises as to computation of commission income earned. For the

said purpose in the absence of any reliable basis before us ,w restore the issue to the AO to apply a fair and reasonable basis for determining the commission income of the assessee.

8. In view of the above, the appeal of the assessee is allowed to the extent of agreeing to its plea to be treated as *shroff/angadia* for the purpose of subjecting only the commission income earned to tax. The computation of the same is restored to the AO with the above directions. Needless to add the assessee be granted due opportunity of hearing by the AO while determining the correct basis for computing the commission income.

As for the appeal of the Revenue seeking entire cash deposits to be treated as income of the assessee, the same is dismissed.

9. In the result, the appeal of the assessee is allowed; while the appeal of the Revenue is dismissed in above terms.

Order pronounced in the Court on 22nd February, 2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 22/02/2023