

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 299/Srt/2022 (Assessment Year 2008-09)

(Physical hearing)

Smt. Jyotsnaben N. Rami, D-1 L H Road, Panchsutra Garden Apartment, Opp.-Bombay Market, Surat-395006 (Gujarat) PAN No. ACAPR 0313 F	Vs.	I.T.O., Ward-3(3)(1) Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Mehul Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	23/03/2023
Date of pronouncement	07/06/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 07/10/2022 for the Assessment Year (AY) 2008-09. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) has erred in sustaining the addition of Rs. 6,11,272/- out of Rs. 9,50,000/- made by assessing officer u/s 69A of the Act.*
- 2. It is therefore prayed that assessment framed u/s 143(3) of the Act may kindly be quashed and/or addition made by assessing officer may please be deleted.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Facts in brief as extracted from the orders of lower authorities are that the assessee is an individual, engaged in the business of sale/purchase

of dress material and cut pieces, filed her return of income for the A.Y. 2008-09 on 10/10/2008 declaring total income of Rs. 1,41,807/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown turnover of Rs. 7,06,322/- and gross profit of Rs. 1,50,522/- and net profit of Rs. 1,41,807/-. The Assessing Officer further asked the assessee to furnish month wise details of sales and purchase. In response to such show cause notice, the assessee furnished required details. On perusal of such detail, the Assessing Officer noted that the assessee has shown opening stock of Rs. 2,05,100/- and purchase of Rs. 3,50,700/-, thus the total stock was of Rs. 5,55,800/- which was sold at Rs. 7,06,322/-. The Assessing Officer noted that there was no closing stock at the end of Financial Year 2007-08. The Assessing Officer further noted that the assessee has made cash deposit of Rs. 5.00 lacs on 12/06/2007 and Rs. 4.50 lacs on 13/06/2007 in her bank account maintained in Bank of Baroda. The assessee was asked to explain the source of such cash deposit, the assessee explained that she deposited cash in her bank account as per cash available in cash book. The assessee explained that there was an opening cash balance of Rs, 3,38,728/- in her cash book and cash sales was made to Shri Vipul R Shah of Rs. 5,00,332/- and cash sales to Dharmesh J. Lathiya of Rs. 1,86,312/- which was deposited on various dates. The assessee issued a cheque to Rushi A. Popat and furnished

his confirmation. The Assessing Officer on verification of cash book found that the assessee has shown sales to two persons namely Shri Vipul R Shah and Dharmesh J. Lathiya, all sales were below Rs. 20,000/- from 01/04/2007 to 25/05/2007. The confirmation of Rushi A Popat was dated 12/06/2007 of cheque No. 156674 drawn on Bank of Baroda of Rs. 9,50,000/-. On the said date, there was bank balance of only Rs. 5,03,368/-. As per cash book, the assessee has shown sale of goods from 01/04/2007 to 31/05/2007 to Shri Vipul R Shah to Rs. 5,00,332/- and Dharmesh J. Lathiya to Rs. 1,86,312/- and assessee has purchased goods from Kakaldas A Doshi of Rs. 3,50,700/-. On verification of confirmation by Kakaldas A Doshi, it was noted that the assessee has purchased goods of Rs. 1,76,780/- only on 09/04/2007 and Rs. 1,73,920/- on 18/04/2007 and assessee has made payment of Rs. 54,900/- and remaining of Rs. 2,95,800/- as shown as creditors.

3. The Assessing Officer doubted the genuineness of sale and purchase. On the basis of his observation, that sale and purchase of assessee are doubtful, the Assessing Officer issued summon under Section 131 of the Income Tax Act, 1961 (in short, the Act) for appearance of assessee on 04/11/2010. Despite service of notice, the assessee not attended the hearing. The assessee furnished month wise details of sale and purchase and sales during April to June and July to March. On perusal of such details, the Assessing Officer find that the assessee has

shown sales in the month of April and May, 2007 only likewise in the purchase site, purchases were made from April to September. The assessee furnished cash book on 12/10/2010 in response to seeking of information of cash deposits. The Assessing Officer further recorded that there was contradiction in the sales and purchases of the assessee and the assessee has not attended in response to summon issued to her, thus the source of cash deposit was not accepted by Assessing Officer and added Rs. 9,50,000/- as unexplained cash deposit under Section 69A of the Act in the assessment order dated 24/12/2010.

4. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed his written submission. In the submission, the assessee stated that the cash deposited in the bank is duly recorded in the books of account and no addition can be made. If amount of cash deposit of sale proceed of goods is accepted, no addition can be made. The assessee also furnished gross profit and net profit for three years and submitted that major cash was received from Shri Vipul R Shah and Dharmesh J. Lathiya. Cash was received against the sales made to them. The assessee furnished copy of ledger and invoices. The assessee submitted that, if due date of payment of purchase of goods is considered, instead of date of purchase, there will be no difference or deficiency. The assessee submitted that the earlier submissions were

based on some clerical mistake. The assessee furnished correct position vis a vis sale and purchase after rectifying clerical mistake in the following manner:

Purchase			Sale		
Bill Date	Payment Due date	Amt. Rs.	Bill Date	Payment Due date	Amt. Rs.
09.04.2007	30.04.2007	44,220/-	10.04.2007	30.09.2007	1,16,498/-
09.04.2007	30.05.2007	19,830/-	10.04.2007	31.08.2007	29,592/-
09.04.2007	30.07.2007	44,580/-	10.04.2007	31.07.2007	92,890/-
09.04.2007	30.06.2007	68,150/-	20.04.2007	30.09.2007	62,200/-
18.04.2007	30.09.2007	97,900/-	20.04.2007	30.10.2007	93,700/-
18.04.2007	30.08.2007	30,100/-	20.04.2007	29.09.2007	18,702/-
18.04.2007	30.07.2007	45,920/-	20.04.2007	30.12.2007	31,388/-
			04.05.2007	26.03.2007	45,360/-
			04.05.2007	31.12.2007	73,512/-
			04.05.2007	31.01.2008	69,550/-
			04.05.2007	26.02.2007	72,930/-
		3,50,700/-			7,06,322/-

- The assessee furnished purchase and sale register to support her submission. The assessee further submitted that the mistake was committed by her Accountant while preparing reply to the Assessing Officer, he considered the date of payment instead of purchase date. If such clerical mistake is accepted/rectified, there will be no difference as alleged by Assessing Officer.
- On the cash deposit, the assessee submitted that he is maintaining regular books of account and furnished cash book, the assessee

submitted that there was an opening cash balance of Rs. 3,38,728/-, she received cash from Shri Vipul R Shah and Dharmesh J. Lathiya against the sales made to them on various dates. Copy of accounts of both the parties were furnished alongwith invoices and sales bills and submitted that the amount of cash deposit was reflected in the cash book and source of cash from opening cash balance and out of sale proceed of goods. The assessee further submitted that she has declared more profit than the profit required to show under Section 44AD of the Act. The assessee has shown 22% net profit on the sales. Her books of account is not rejected. The cash in hand and deposits were duly substantiated. Cash deposit was out of cash available as per cash book. The assessee furnished cash book showing the balance of Rs. 10,38,940/- on 12/06/2007 out of cash available the assessee deposited Rs. 9.50 lacs in her bank account. The assessee submitted that no addition under Section 68 can be made if the amount of cash deposit is sale proceed traded then the Assessing Officer should estimate some profit as on amount of cash deposit in Section 44AD of the Act. Since the assessee has already shown profit @ 22.17% so there is no question of further estimating the profit. The assessee specifically mentioned that even if estimate of 2 to 3% in her income is added, she will not object.

7. The Id. CIT(A) after considering the submission of assessee held that the Assessing Officer added Rs. 9.50 lacs as unexplained deposits. Before the Assessing Officer, the assessee claimed that source of cash deposit is out of opening cash balance of Rs. 3,38,728/- and cash sales made to Shri Vipul R Shah and Dharmesh J. Lathiya of Rs. 5.00 lacs and 1.86 lacs (Approximate) respectively. Such contention of assessee was not accepted by Assessing Officer. The assessee further claimed that month wise figure of sales were given on the basis of due date of payment. The assessee contended that sales were made on 10/04/2007, 20/04/2007 and 04/05/2007 but were recorded in the month wise sales which on the basis of due date of payment on 26/02/2007, 26/03/2007, 31/07/2007, 31/08/2007, 30/09/2007, 31/12/2007 and 31/01/2008. Such submission of assessee is not acceptable as the sale bills dated 10/04/2007 on the same date are reflected as per payment due on 31/07/2007, 31/08/2007 and 30/09/2007. Similar bills were shown on different dates. Due dates were already passed. Due dates were shown to be three to eleven months from the date of sale and sale consideration is less than Rs. 20,000/-. Such explanation is not genuine. The Assessing Officer found defect in the books of account and the books are not reliable. The case law relied by assessee was considered to be deferred on facts.

8. However, the Id. CIT(A) specifically noted that the Assessing Officer has not given any reason as to why opening of cash balance cannot be source of cash deposit. On such observation Id CIT(A) granted a benefit of opening cash balance and sustained remaining amount of Rs. 6,11,272/- (Rs. 9,50,000 – 3,38,728) thereby granted partial relief. Further aggrieved, the assessee has filed present appeal before this Tribunal.
9. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have perused the orders of lower authorities carefully. The Id. AR of the assessee submits that the Assessing Officer made addition of cash deposit of Rs. 9.50 lacs by pointing out certain discrepancies in the sale and purchase *vis a vis* their dues and payments thereof. Such discrepancies were clarified by filing correct position of sale/purchase after rectification/correcting mistakes and submitted that sale register tallied with the purchase and sale invoices and mistake was committed by Accountant while preparing the reply to the Assessing officer. The Id. AR of the assessee submits that as per cash book, cash balance of Rs. 10,38,940/- as on 12/06/2007 was available and the assessee has deposited only Rs. 9.50 lacs in her bank account. The Id. AR of the assessee submits that the assessee has shown very goods gross profit

and net profit, therefore, no addition be sustained on the basis of minor discrepancy, which was explained before the Id. CIT(A). The assessee has also placed on record various submissions filed before the lower authorities i.e. copy of cash book, copy of bank passbook and copy of books of assessee. To support his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Jurisdictional High Court in CIT Vs Shailesh Rasiklal Mehta (2009) 176 Taxman 270 (Guj).

10. On the other hand, the Id. Sr. DR for the revenue submits that the story of assessee that Accountant committed mistake is a self-serving statement. There is no change in the figure of sales and purchase of material. The Id. Sr. DR for revenue submits that he supports the order of Id. CIT(A).

11. I have considered the submissions of both the parties and perused the orders of the lower authorities carefully. I find that the Assessing Officer made addition of cash deposit of Rs. 9.50 lacs by pointing out certain discrepancies in the sales and purchase and their invoices. The assessing officer doubted the source of cash deposits. I find that such explanation of assessee about the clerical mistake committed by her Accountant, not accepted such explanation. However, the Id. CIT(A) granted benefit of opening cash balance in cash book of Rs. 3,38,728/- and upheld the remaining of Rs. 6,11,272/-. Before me, the Id. AR of the assessee vehemently submitted that the purchase register and sale

register registers dates exactly tallied with purchase and sale invoices, only mistake was committed by her Accountant while preparing reply before the Assessing Officer. On perusal of such details, I find merit in the submission of Id. AR of the assessee. Even otherwise, for the sake of presumption that certain dates *vis a vis* bill and due date of payments are varied, such minor discrepancies cannot be a ground for rejecting the entire sale and purchase, particularly her business activities were not doubted. Considering the fact of cash book of assessee was neither rejected by Assessing Officer nor by Id. CIT(A) rather the Id. CIT(A) accepted the opening cash balance, therefore, considering my observation in the earlier paras that a minor discrepancy which is otherwise matches with the books of assessee cannot be a ground for rejecting entire sale and purchase, when business activities of the assessee is not doubted. The Hon'ble Jurisdictional High Court in CIT Vs Shailesh Rasiklal Mehta (supra) also held that when there was no evidence to disbelieve the fact that sufficient cash was available in the cash book on relevant dates for making deposits, there was no reason to disbelieve the books of account maintained by assessee. Thus, considering all the factual and legal position, I do not find any justification in sustaining the addition of Rs. 6,11,272/-, therefore, I direct the Assessing Officer to delete the

entire addition. In the result, grounds of appeal raised by the assessee are allowed.

12. In the result, this appeal of assessee is allowed.

Order announced in open court on 07th June, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 07/06/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat