

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 02/SRT/2023 (AY: 2015-16)  
(Hearing in Physical Court)

Vinodbhai Rambhai Parmar, E-5, 1 <sup>st</sup> Floor, Abhishek Park, Vesu, Surat. <b>PAN: ATTPP 7898 M</b>	Vs.	I.T.O., Ward-2(3)(4), Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Assessee by	Shri Rajesh C Shah, A.R.
Department by	Shri Vinod Kumar Sr. DR
Date of Institution of Appeal	02/01/2023
Date of hearing	12/07/2023
Date of pronouncement	27/07/2023

**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 (in short, the Id. NFAC)/learned Commissioner of Income Tax, (Appeals) [in short the Id. CIT(A)] dated 16/11/2022 for the Assessment Year (AY) 2015-16 wherein the assessee has raised following grounds of appeal:

- “(1) The learned AO has grossly erred in making addition of Rs. 1,42,03,917/- as stated in statement of facts aforesaid and the same should be reversed and profit derived as per books of accounts of the appellant should be considered.*
- (2) The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal.”*

2. Brief facts of the case are that the assessee is an individual filed his return of income for A.Y. 2015-16 on 30/09/2015 declaring total income of Rs. 3,20,330/-. The case was selected for scrutiny. During the year

assessment, the assessing officer noted that in the computation the assessee has income from business of trading of art silk cloths in the name of M/s Guru Krupa Trading. During the assessment, the Assessing Officer find that besides the bank account disclosed by the assessee, the assessee has two other bank accounts maintained with RBL Bank and Axis bank in the name of M/s Siddhant Textiles. The assessee has neither disclosed the said bank account nor the affair of M/s Siddhant Textiles in the return of income. In order to ascertain the fact, the Assessing Officer issued notice under Section 133(6) of the Income Tax Act, 1961 (in short, the Act). A show cause notice was also issued to the assessee for seeking details with regard to such two accounts. The Assessing Officer recorded that the assessee has not responded to such notices accordingly penalty under Section 271(1)(b) of the Act was levied. The Assessing Officer further noted that the Chartered Accountant of assessee filed certain details in the form of fresh computation of income showing M/s Siddhant Textiles as proprietorship concerned with Zero profit. The Assessing Officer issued summon under Section 131 of the Act for recording the statement of assessee. During recording statement of assessee, the assessee was asked to explain the reason for not showing transaction in the name of M/s Siddhant Textiles and its connected bank accounts. The assessee stated that due to mistake, the bank accounts remained to be added. Ongoing through the audit report,

the Assessing Officer noted that there was gross sales of Rs. 10.39 crores and zero profit. In the RBL bank account, the details of which were not furnished, there was a balance of Rs. 30,18,847/-. The assessee opened the bank account with Axis bank on 21/05/2014 and closed on 22/09/2014, thereafter opened another account with RBL bank on 09/10/2014 and continued to transact through this account in the name of M/s Siddhant Textiles.

3. The Assessing Officer during recording of statement, the assessing officer asked the assessee as to why peak credit theory should not be applied in his case as the business carried out in the name of M/s Siddhant Textiles in the account of Axis bank and RBL bank which was disclosed and kept outside books of account. The assessing officer while issuing such show cause notice noted that the peak balance appearing in Axis bank as on 13/08/2014 was Rs. 1.15 crore. There was total amount of Rs. 9.01 crores as a credit after the peak balance. The Assessing Officer worked out the gross profit @ 2.9% disclosed in Guru Krupa Trading worked out gross profit of Rs. 26,15,658/-. The Assessing Officer added the gross profit with the peak credit and worked out addition of Rs. 1.45 crore (Rs. 1,15,88,259 + 26,15,658).
4. The assessing officer recorded that the assessee sought time to file his reply. The assessee filed his reply vide reply dated 07/12/2017. The contents of show cause notice issued to assessee is recoded in para 5.2

& 5.3 of the assessment order. The assessee in his reply stated that affairs of M/s Siddhant Textiles are duly recorded in his books of account and he has submitted audit report as required by Assessing Officer. On the contention of Assessing Officer that the assessee deliberately kept the affairs of M/s Siddhant Textiles outside the affairs of his business, the assessee stated that he has already stated that it was due to mistake. The assessee also objected about the addition of peak balance and additional gross profit addition. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer made addition of Rs. 1.42 crore in the assessment order passed on 14/12/2017, as per the show cause notice.

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). The appeal of assessee was dismissed by the Id. CIT(A) by taking a view that notices were issued to the assessee for making balance on or before 20/05/2012 but no compliance was made. The assessee was given last opportunity for making compliance by 10/11/2012, however, no compliance was made. The Id. CIT(A) held that action of Assessing Officer in making the impugned addition is sustainable in the facts of the case and law. Further aggrieved, the assessee has filed present appeal before this Tribunal.
6. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee submits and the learned Senior Departmental

Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that the Assessing Officer while making addition, made double addition with regard to two alleged non-disclosed bank accounts firstly on account of peak balance and secondly on account of gross profit addition, thus the same amount reflected in the said bank accounts was added in two folds. The assessee further completed books of account wherein transaction in both the bank accounts were considered. No defects were pointed out in such bank accounts. The Assessing Officer estimated the income without rejecting the books of account. No addition can be made just on the basis of bank statements, thus, the addition is not sustainable.

7. During the hearing, the Id. AR of the assessee was confronted about the fact that the assessee has filed revised computation of income without filing revised return of income. It was also confronted that the Assessing Officer has accepted the revised computation in absence of revised return of income thereby accepted additional claim which is beyond the jurisdiction of Assessing Officer as has been held by Hon'ble Supreme Court in Goetz (India) Limited Vs CIT (2008) 284 ITR 383-SC. The Id. AR of the assessee in response to such fact, submits that even his additional claim can be accepted by appellate authority. The Tribunal is the second appellate authority and have jurisdiction to entertain and adjudicate the plea raised by assessee with regard to alleged

unrecorded/unreported bank accounts. The Id. AR of the assessee submits that only a reasonable profit in respect of transaction of M/s Siddhant Textiles may be added and not the peak credit as well as gross profit addition, otherwise making addition of peak credit as well as gross profit amounts to double addition, which is not permissible.

8. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR submits that the assessee filed revised computation of income without filing revised return and acceptance thereof was not within the jurisdiction of Assessing Officer as has been held by the Hon'ble Supreme Court in Goetz (India) Ltd Vs CIT (supra). The Id. Sr.DR for the revenue submits that the assessee has not filed any submission before the Id. CIT(A), the order of Id. CIT(A) is *ex parte* and the same is not on merit. The Id. Sr.DR for the revenue submits that he supports the order of Id. CIT(A) as the assessee has not furnished any detail despite giving full opportunity and that the assessee at this stage, does not deserve any relief.
9. In alternative and without prejudice submission, the Id. Sr. DR for the revenue submits that even in case the additional claim of assessee is accepted by the Tribunal, in such event, the matter may be restored to the file of Id. CIT(A) to adjudicate such issue on merit.
10. In the rejoinder submission, the Id. AR of the assessee submits that his additional claim/revised computation may be admitted by the Tribunal

by invoking discretionary jurisdiction of appellate authority and matter may be adjudicated here itself. In alternative plea, the Id. AR of the assessee submits that if the Bench is of the view that the Assessing Officer was not empowered to accept such additional claim, the plea of assessee about the additional claim/revised computation may be admitted and matter may be restored to the file of Assessing Officer for passing the order afresh for giving appropriate relief to the assessee.

11. We have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. We find that the Assessing Officer has accepted the revised computation/additional claim of assessee in absence of revised return of income which was beyond jurisdiction of Assessing Officer as has been held by Hon'ble Apex Court in Goetz India (supra). However, to make end of justice, we by invoking discretionary jurisdiction, admitted additional plea of assessee that alleged transaction in both the impugned/disputed bank accounts relates to the business transaction and the issue is restored back to the file of Assessing Officer to adjudicate the additional claim of assessee and to pass the order in accordance with law.

12. The assessee is given liberty to make his submission or additional submission or additional evidence to substantiate his additional plea/claim before the Assessing Officer. Needless to direct that before passing the order afresh, the Assessing Officer shall grant reasonable

and fair opportunity of hearing to the assessee. Similar view was express by Hon'ble jurisdictional High Court in the case of CIT Vs. Mitesh Impex (2014) 367 ITR 85 (Guj) that though, the Assessing Officer is not entitled to admit or entertain additional claim during the assessment proceedings, however the appellate authority has such jurisdiction to admit such additional claim. Thus, keeping in view the plea of Id AR for the assessee to admit the additional claim/ additional commutation of income filed during the assessment.

13. In the result, grounds of appeal raised by the assessee are allowed for statistical purposes.

14. In the result, this appeal of assessee is allowed for statistical purposes only.

Order pronounced on 27/07/2023 in open court.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 27/07/2023

*\*Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat