

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

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

I.T.A. Nos. 202 & 203/Rjt/2023
(Assessment Years: 2010-11 & 2011-12)

M/s. Parag Oil Mill, B-105, Shreeji Bunglow, Porbandar, Gujarat-360575 [PAN No.AAGFP8363B]	Vs.	Income Tax Officer, Ward-2(4), Porbandar
(Appellant)	..	(Respondent)

Appellant by :	Shri Chetan Agarwal, A.R.
Respondent by:	Shri Sanjeev Ranjan, Sr. DR
Date of Hearing	25.07.2023
Date of Pronouncement	04.08.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

Both the appeals have been filed by the same assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short Ld. CIT(A)), National Faceless Appeal Centre (in short "NFAC"), Delhi in Order No. ITBA/NFAC/2/250/2023-24/1053606132(1) and Order No. ITBA/NFAC/2/250/2023-24/1053606285(1) vide order dated 08.06.2023 passed for Assessment Years 2010-11 and 2011-12.

2. The assessee has taken the following grounds of appeal:-

Assessment Year 2010-11:-

"1) Ld. CIT(A) erred in law as well as on facts in enhancing income at Rs. 1036,55,000 from addition of Rs. 51,82,750 made by ld. AO being

5% of transactions with M/s. Siddhnath Enterprise (Shroff) and in confirming addition made by ld. AO.

2) Ld. CIT(A) erred in law as well as on facts in enhancing income though adjournment was sought on 07.06.2023 in response to notice u/s. 251(2) dated 01.06.2023 fixing date of hearing on 07.06.2023.

3) Ld. CIT(A) erred in laws as well as on facts in confirming disallowance of Rs.17,508 being shroff commission paid to M/s. Siddhnath Enterprise.”

3. We shall first discuss the facts for A.Y. 2010-11 and since similar issues are involved for both the years under consideration, both the years are being disposed of by way of a common order.

Assessment Year 2010-11:-

4. The brief facts of the case are that in the assessment order, the Assessing Officer made an addition of Rs. 51,82,750/- on account of bogus sale transaction and Rs. 17,508/- on account of shroff expenses with Siddhnath Enterprises. During the assessment proceedings, the Assessing Officer observed that the assessee was having transaction for a sum of Rs. 10,36,55,000/- with Siddhnath Enterprises and on carrying out further verification, the Assessing Officer treated 5% of such transaction as not genuine, in absence of any documentary evidence having being submitted by the assessee. In appeal Ld. CIT(A) enhanced the addition to Rs. 10,36,55,000/- as unexplained cash credit with the following observations:-

“6.3 During the appellate proceedings the appellant submitted ledger extract of Sidhnath Enterprise and cash book which was also filed before learned AO. Apart from this appellant has not filed any other thing to substantiate the genuineness of transactions with Sidhnath Enterprise. Overall, the approach of appellant once again it is found to be casual in justifying the genuineness of the transaction contested by learned AO.

6.4 In absence of whole trial of the document such as purchase register, sale register, inventory register, bank statements VAT returns details, copy of invoices, proof of actual movement of goods, ledger confirmation of counterpart to the transaction, etc. it cannot be concluded that the transaction is genuine. It is also observed that the appellant has failed to discharge the primary onus of submitting basic documents and at the same time findings of investigation department Rajkot during the survey cannot be overlooked.

6.5 In view of the above I am of the considerate view that the entire transaction of Rs. 10,36,55,000/- with Sidhnath Enterprise is not found to be genuine and liable to total income instead of merely 5% of such transaction as contended by learned AO. Therefore, the addition made by learned AO is **enhanced** to Rs. 10,36,55,000/- as unexplained cash credit.”

5. Before us, the Counsel for the assessee submitted that originally the appeals were filed on 23.10.2018, which were heard physically, but the final order was not passed. Subsequently, the appeals were migrated to New Faceless Scheme in which notice fixing the date of hearing on 28.12.2020

was issued in which submissions were uploaded on 27.01.2021. On 01.06.2023, notice for enhancement was issued fixing the date of hearing on 07.06.2023. The assessee filed adjournment request on 07.06.2023 requesting for 15 days time and to fix the hearing on 21.06.2023. However, the CIT(A) did not consider the request for adjournment and passed the appellate order on 08.06.2023, by enhancing the income to Rs. 10,36,55,000/- as unexplained cash credit. The Counsel for the assessee submitted that the Ld. CIT(A) has made a substantial enhancement without giving adequate opportunity of hearing to the assessee and also ignoring the request for adjournment. He further submitted that Ld. CIT(A) while passing the order at Para 6.4 has observed that the assessee has not submitted the whole trail of documents such as purchase register, sale register, inventory register, bank statements etc. and therefore, the transaction cannot be held to be genuine. However, the Counsel for the assessee submitted that the assessee had already filed various details in the previous hearings and the Ld. CIT(A) never asked the assessee to submit the aforesaid details on the basis of which enhancement was made by him. Accordingly, the Counsel for the assessee submitted that since substantial enhancement has been made in absence of proper opportunity of hearing to the assessee, the matter may be restored back to the file of the Ld. CIT(A) for denovo consideration after giving due opportunity of hearing to the assessee to produce the necessary documents in support of its case.

6. We have gone through the case records and observed that the Counsel for the assessee has placed on record before us adjournment application which was filed on 07.06.2023 in which the assessee had sought

adjournment till 21.06.2023. However, while passing the order, Ld. CIT(A) has not made any mention of the aforesaid request made by the assessee. Further, we observe that Ld. CIT(A) has made a huge enhancement to assessee's income from Rs. 51.82 lakhs to Rs. 10.36 crores, without giving adequate opportunity to cause appearance. Accordingly, looking into the facts of the instant case, in the interest of justice, the matter is being restored to the file of Ld. CIT(A) for denovo consideration after giving the opportunity of hearing to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes for A.Y. 2010-11.

Assessment Year 2011-12:-

8. The assessee has taken the following grounds of appeal:-

“1. Ld. CIT(A) erred in law as well as on facts in enhancing income at Rs. 57,22,569 from addition of Rs. 2,86,128 made by ld. AO being 5% of transactions with M/s. Siddhnath Enterprise (Shroff) and in confirming addition made by ld.AO.

2. Ld. CIT(A) erred in law as well as on facts in enhancing income though adjournment was sought on 07.06.2023 in response to notice u/s. 251(2) dated 01.06.2023 fixing date of hearing on 07.06.2023”

9. We observe that similar facts are involved for A.Y. 2011-12 as well, wherein the Assessing Officer had made addition of Rs. 2,86,128/- on account of bogus transaction with Siddhnath Enterprise, which was enhanced by Ld. CIT(A) to Rs. 57,22,569/- as unexplained cash credit. For

this year as well, the Counsel for the assessee submitted that the appellate order was passed without considering request for adjournment and substantial enhancement was made without giving due opportunity of hearing to the assessee to present the facts of his case on merits.

10. Accordingly, since identical facts and issued for consideration are involved for A.Y. 2011-12 as well, the matter is being restored to the file of the Ld. CIT(A) for denovo consideration after giving due opportunity of hearing to the assessee to present his case on merits.

11. In the result, both the appeals of the assessee are allowed for statistical purpose for both the Assessment Years i.e. A.Y. 2010-11 and A.Y. 2011-12.

This Order pronounced in Open Court on	04/08/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 04/08/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot