

**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. No.192/Rjt/2022  
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Central Circle-1, Rajkot	Vs.	Sh. Atul Shivdas Ganatra, 104, Kaveri Apartment, Neelkanth Valley, Rajawadi Road, Ghatkopar(East), Mumbai-400077
[PAN No.AABPG2055L]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Mehul Ranpura, A.R.
<b>Respondent by:</b>	Shri K. L. Solanki, Sr. DR

<b>Date of Hearing</b>	30.10.2023
<b>Date of Pronouncement</b>	15.12.2023

**ORDER**

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-11, (in short “Ld. CIT(A)”), Ahmedabad in Appeal No. CIT(A)-25, Mumbai/1038/2019-20 vide order dated 31.05.2022 passed for Assessment Year 2017-18.

2. The Revenue has taken the following grounds of appeals:-

*“1. On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting the addition of Rs. 2,21,50,509/- on account of unexplained cash credit u/s 68 of the I.T. Act without appreciating the facts that assessee failed to prove the genuineness, identity as well as creditworthiness of the suppliers.*

*2. The appellant prays that the order of the learned Commissioner (Appeals) on the above ground be set aside and the addition made in the Assessment order may kindly be restored.”*

3. The Revenue has also raised the additional grounds of appeal:-

*“2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in considering the evidence produced by the assessee appellant during the appellate proceedings by holding the same as supporting/clarificatory documents and not additional evidence as per Rule 46A of Income Tax Rules and allowing the assessee’s appeal on the basis of the same, without giving a reasonable opportunity to the AO to produce to any evidence or documents or any witness in rebuttal of such additional evidence produced by the appellant, despite the provisions of Rule 46A(3) of the IT Rules, 1962.*

*3. The Revenue craves leave to add/alter/amend and/or substitute any or all of the grounds of appeal.”*

4. The brief facts of the case are that the assessee filed return of income for the impugned Assessment Year declaring total income of Rs. 32,69,810/-. The assessee is in the business of trading in cotton bales and generation of power. During the course of assessment, the Assessing Officer observed that in the Balance Sheet, the assessee had shown balance under the head “suppliers refundable deposit” amounting to Rs. 2,21,50,509/-. Accordingly, the Assessing Officer asked the assessee to provide details of suppliers, the figure of advances as on 31.03.2016, the amounts received as advances during the year and the balance as on 31.03.2017. Further, the Assessing Officer also called for “confirmation” of the parties. However, the Assessing Officer observed that the assessee did not make compliance in the requisite format on the appointed date. Accordingly, in absence of any information of the supplier parties alongwith PAN numbers, it would not be possible to carryout cross verification by issuing notices under Section 133(6) of the Act, since details of parties was not available on record. Further, the Assessing Officer issued notices dated 27.11.2019 and another notice dated 06.12.2019 to show-cause as to why the balance under the head “supplier refundable deposit” should not be

treated as unexplained income and why the same should not be added by treating the same as income of the assessee. However, the assessee did not file any response to the notices issued by the Assessing Officer and the Assessing Officer was of the view that assessee had failed to discharge the onus cast on him to prove the identity, creditworthiness and genuineness of the suppliers against whom balances are appearing in the Balance Sheet of the assessee. Accordingly, the Assessing Officer held that the amounts credited as “suppliers refundable deposit” in the books of accounts of the assessee remained unexplained and the Assessing Officer added the sum of Rs. 2,21,50,509/- as unexplained income of the assessee under Section 68 of the Act r.w.s. 115BBE of the Act as unexplained cash credit.

5. In appeal, Ld. CIT(A) allowed the appeal of the assessee by holding that the aforesaid amount which comes under the head “suppliers refundable deposit” is the amount retained / withheld being 1.96% of the purchases made by the assessee with a view to ensure that suppliers have made payment of CST/MVAT as the case may be, at the time of supplying goods to the assessee. The aforesaid amount retained by the assessee was to ensure compliance of CST/MVAT by the suppliers / vendors which is transferred to a separate ledger account “Refundable Security Deposit”. Further, on receipt of intimation from the supplier / vendor regarding payment of tax and filing of return under CST/MVAT, the assessee has also subsequently refunded / released the deposit to concerned supplier. This is a common practice of maintenance of deposit account in the assessee’s line of business so as to ensure that supplier had made payment of CST/MVAT as the case may be and to avail set off against the purchases. While

allowing relief to the assessee, Ld. CIT(A) made the following observations:-

“6.4 The appellant had contended that he is engaged in the business of trading in cotton bales and he used to make purchase of cotton from various suppliers & vendors across the India. Such purchase of cotton carries VAT, which is collected by the suppliers from the appellant on the purchase value All the payments of purchases are made through banking channels However, the appellant used to retain portion of VAT charged by the suppliers/vendors on the bill as security deposit to ensure the VAT compliances by the counter parties/ suppliers After getting the confirmation of tax payment and submission of forms from the suppliers, the appellant refunds the withheld sum The total amount of outstanding withheld sum was appearing in the balance sheet under the head ‘Suppliers Refundable Deposit’. In support of this argument, the appellant has filed complete details of all the parties with name, address, bill of purchase, payments made during the year after withholding 1.96% portion of the purchase value and bank statement supporting such payments It is also seen from the chart that after the vendor had made compliances of VAT, the appellant refunded the withheld portion The appellant's refund of the withheld deposit amount in the subsequent year is also reflected in the chart and relevant supporting evidences filed with the paper book. Further, it is also seen that, this procedure is followed by the appellant year after year This is gauged from the fact that, out of the sum of Rs 2,21,50,509/-, the sum of Rs 58,31,890/- is the opening balance This is verifiable from the chart as well as the balance sheet of the previous year

6.5 I also find that the AO on one hand had accepted the entire purchases as genuine and not doubted the same When the purchases are genuine then the amount withheld from these parties to the extent of 1.96%, cannot be treated as unexplained I further find that when the chart (showing details of persons from whom such 1.96% has been withheld) is compared with the chart of purchases, it is clear that the names appearing under the head Suppliers refundable deposits were the same parties from whom the appellant had made the purchases This clearly vindicates the stand of the appellant that, this is not unexplained transactions as alleged by the AO.

6.6 From the above discussion and from the facts and circumstances of the case, it is very clear that these cannot be treated as unexplained credit entries within the meaning of section 68 Section 68 is primarily applicable where the appellant is routing his own funds in his books in the guise of loan or other credit entry However, in the instant case, the appellant was withholding the payments made on the purchases to the extent of VAT This fact has been proved from the fact that the list of persons appearing in this head were only those parties from whom the appellant had made the purchases It is further seen that, such withheld amount is returned upon clearance of VAT compliances All the transactions were routed through bank and the individual ledgers reflects this fact. **For illustration, ledger account of supplier namely M/s Shivkrupa Trading Co-Shevgaon is reproduced as under:**

- 5 -

SRI BALAJI & CO. (BOM) 103, KAVERI BUILDING, NEELKANT VALLEY GHATKOPAR (E) MUMBAI-400 077					
SHIVKRUPA TRADING CO - Shevgaon Ledger Account Gat No.1601 & 1602, Shevgaon -Post-Ahmednagar Dist :- Aurangabad (MAHARASHTRA)					
1-Apr-2015 to 31-Mar-2017					
Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
22-2-2017	To HDFC BANK-C/C A/C-1899	Payment	3199	23,00,000.00	
	By PURCHASE @ 2% VAT	Purchase	FBU-SHIVKRUPA		24,42,093.00
	To SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	3261	47,884.00	
23-2-2017	By PURCHASE @ 2% VAT	Purchase	FBU-SHIVKRUPA		24,09,141.00
	To SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	3252	47,238.00	
27-2-2017	To HDFC BANK-C/C A/C-1899	Payment	3233	20,00,000.00	
28-2-2017	To HDFC BANK- C. A/C-1900	Payment	3254	94,087.00	
3-3-2017	To HDFC BANK-C/C A/C-1899	Payment	3300	3,61,781.00	
5-3-2017	By PURCHASE @ 2% VAT	Purchase	FB-50		18,21,350.00
6-3-2017	To HDFC BANK- C. A/C-1900	Payment	3329	15,00,000.00	
18-3-2017	To SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	3282	35,713.00	
	To BANK CHARGES	Journal	3282	365.00	
23-3-2017	To HDFC BANK- C. A/C-1900	Payment	3525	2,85,516.00	
				66,72,584.00	86,72,584.00
1-Apr-17 to 31-Mar-18					
Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
13-Sep-17	Dr SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	614/2017-18		47,238.00
	Dr SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	615/2017-18		35,713.00
	Dr SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	616/2017-18		47,884.00
	Cr HDFC BANK- C. A/C-1900	Payment	1592	47,884.00	
	Cr HDFC BANK- C. A/C-1900	Payment	1593	47,238.00	
	Cr HDFC BANK- C. A/C-1900	Payment	1594	35,713.00	
				1,30,835.00	1,30,835.00

6.7 From the above ledger of the supplier, it is apparent that the appellant has made purchases of Rs.24,42,093/-, Rs. 24,09,141/- and Rs. 18,21,350/- from the supplier in F.Y.2016-17 and on such purchases, he retained the portion of 1.96%, 1.0. Rs.47,884/-, Rs.47,238/- and Rs.35,713/-respectively an suppliers refundable deposit. Further, in the subsequent year, all such retained amount is paid to the supplier through banking channel only Therefore, when the sale of cotton and corresponding purchase from the supplier had been accepted, there should not have been any doubt about the retention amount out of such purchase especially when such amount had already been refunded to supplier in subsequent year.

6.8 In view of the above discussions and factual matrix of the case and the decisions of the court. I find that the addition made by the AO was not warranted Therefore, the AO in directed to delete the addition of Rs.2.21.50.509/-. **Thus, grounds of appeal no. 1 to 5 are allowed.**"

6. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) allowing relief to the assessee.

7. Before us, the Ld. D.R. submitted that the order passed by Ld. CIT(A) is in violation of Rule 46A of the Act. This is for the reason that the Ld. CIT(A) took on record additional evidence filed by the assessee, without calling for any remand report from the Assessing Officer. The Ld. D.R. submitted that Ld. CIT(A) afforded relief to the assessee on the basis of additional evidence taken on record during the course of appellate proceedings, without calling for the comments of the Assessing Officer by way of remand report, which is a mandatory requirement under Rule 46A of the Income Tax Rules. The Ld. D.R. drew our attention to Page 19 at Para 6.6. of the appellate order wherein the Ld. CIT(A) placed reliance on the ledger account of one supplier namely M/s. Shivkrupa Trading Company, which is an additional evidence taken on record by the Ld. CIT(A) on the basis of which relief was given to the assessee. The Ld. CIT(A) did not send the same for perusal and comments of the Assessing Officer. Further, Ld. D.R. submitted that despite repeated opportunities, the assessee did not file the relevant details on the ITBA portal and the Assessing Officer had no option but to complete assessment under Section 143(3) on 14.12.2019 on the basis of details available on record. Further, it was submitted that so far as details filed by the assessee on 13.12.2019 are concerned on the ITBA portal, the assessee only furnished a table giving details of some parties like their names, address, PAN number etc. but no cogent evidence like certified copy of ledger and contra ledger, copy of bank statement, invoice or bills etc. were furnished to prove the genuineness of the said transactions. Accordingly, it was submitted that looking into the instant facts, since the Ld. CIT(A) gave relief to the assessee on the basis of additional evidences filed by the assessee during the course of appellate proceedings, Ld. CIT(A)

should have sent the additional evidences for the perusal and comments of the Assessing Officer and hence the order passed by Ld. CIT(A) is in violation of Rule 46A(3) of the Act.

8. In response, Ld. Counsel for the assessee submitted that complete details had been filed before the Assessing Officer. Further, it was submitted that the “suppliers refundable deposit” is a running account of the vendors and the same has been paid to the suppliers / vendors in the subsequent years on receipt of relevant forms evidencing payment of CST/MVAT. Accordingly, it was submitted that there is no infirmity in the order passed by Ld. CIT(A) allowing the appeal of the assessee.

9. We have heard the rival contentions and perused the material on record. On perusal of the Paper Book filed by the assessee we observe that detailed list of suppliers deposits containing Name of Supplier, PAN, Address of suppliers etc. were filed before the Assessing Officer on 13.12.2019. In appeal before Ld. CIT(A), the assessee has taken the contention that the assessee purchased cotton bales from various suppliers situated at Maharashtra as well as outside of Maharashtra. As per the policy of the assessee with its suppliers / vendors, the assessee used to retain a certain negligible portion of around 2% of the total invoice amount of the suppliers as “refundable security deposit” so as to track the compliance of CST / MVAT by the suppliers / vendors. In order to put a check on the actual payment made by such suppliers before concerned department, filing of relevant statutory returns by the suppliers and further to avoid hurdle in claiming tax credit by the assessee, the assessee had retained a small portion of such tax (precisely 1.96%) from the purchase consideration payable to

the suppliers and such portion is transferred to the separate ledger account “Refundable Security Deposit”. Further, it was submitted before Ld. CIT(A) that on receipt of intimation from suppliers / vendors regarding payment of tax and filing of return under CST / MVAT, the assessee has refunded / released the amount to retained to the concerned suppliers. The assessee further submitted that this is a common and consistent practice of maintenance of security deposit account in this line of business so as to ensure that suppliers have made payment of CST / MVAT as the case may be and to avail set off against the purchases. It was with a view to explain the modus operandi to the Ld. CIT(A) that the assessee furnished copy of ledger account of M/s. Om Namah Shivay Trading Co. for the period 01.04.2015 to 31.03.2017 in order to demonstrate that in the subsequent year the assessee had returned / refunded deposits to the aforesaid vendor in respect of five transactions of purchases made in the earlier year. The assessee had further submitted one more account of M/s. Hira Cotton Fibers in which similarly, the “Refundable Security Deposit” had been refunded back to the vendor / supplier in the subsequent year upon receipt of the intimation that the relevant CST / MVAT had been deposited with the statutory authorities. It was submitted that the deposits are in the nature of retention amount and have a direct nexus with the purchase of cotton bales from the suppliers. In our considered view the aforesaid documents which were placed for consideration before Ld. CIT(A) for his consideration were only the running ledger accounts of the vendors / suppliers on sample basis to demonstrate that firstly, the Refundable Security Deposit is only a negligible portion of the purchase consideration which has been retained by the assessee in order to ensure CST / MVAT compliance by the vendor and

that the aforesaid amount is returned / refunded back to the vendors in the subsequent year upon receipt of intimation from such vendors and secondly, it is a consistent and normal trade practice in the assessee's line of business and further the Assessing Officer has also accepted that all the purchases / sales / quantitative details of the commodity as reported in the Tax Audit Report are genuine and therefore, question of Trading Security Deposit / retention amount as unexplained income does not arise in the instant facts. Accordingly, looking into the instant facts, we are of the considered view that firstly, no additional evidence have been filed by the assessee before the Commissioner (Appeals) during appellate proceedings and the assessee had only filed the running ledger account of the parties, (the names and other details of which parties had been earlier furnished to the Assessing Officer during the assessment proceedings) on sample basis to demonstrate the nature of such "Refundable Security Deposit". On the basis of facts placed before us, in our considered view, the Ld. CIT(A) has correctly observed that the assessee had retained portion of 1.96% as suppliers refundable deposit with a view to ensure CST / MVAT compliance by the vendors / suppliers, which is a normal trade practice. Further, in the subsequent years, all such retained amount has been paid back to the suppliers through banking channels. Therefore, when the sale of cotton and corresponding purchases from the suppliers have been accepted as genuine, there is no reason to doubt the retained amount out of such purchase as unexplained income, especially when such amount has already been refunded to the suppliers in the subsequent years. It would be apt to reproduce the relevant extract of the Ld. CIT(A) for ready reference:-

“In support of this argument, the appellant has filed complete details of all the parties with name, address, bill of purchase, payments made during the year after withholding 1.96% portion of the purchase value and bank statement supporting such payments. It is also seen from the chart that after the vendor had made compliances of VAT, the appellant refunded the withheld portion. The appellant's refund of the withheld deposit amount in the subsequent year is also reflected in the chart and relevant supporting evidences filed with the paper book.

For illustration, ledger account of supplier namely M/s Shivkrupa Trading Co-Shevgaon is reproduced as under:

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	To SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	3261	47,884.00	
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	Dr SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	815/2017-18		35,713.00
	Dr SUPPLIERS REFUNDABLE DEPOSITS (VAT)-F.Y-16-17	Journal	816/2017-18		47,884.00
	Cr HDFC BANK- C. A/C-1900	Payment	1592	47,884.00	
	Cr HDFC BANK- C. A/C-1900	Payment	1593	47,238.00	
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				<b>1,30,835.00</b>	<b>1,30,835.00</b>

From the above ledger of the supplier, it is apparent that the appellant has made purchases of Rs.24,42,093/-, Rs. 24,09,141/- and Rs. 18,21,350/- from the supplier in F.Y.2016-17 and on such purchases, he retained the portion of 1.96%, i.e. Rs.47,884/-, Rs.47,238/- and Rs.35,713/-respectively as suppliers refundable deposit. Further, in the subsequent year, all such retained amount is paid to the supplier through banking channel only”

10. Accordingly, looking into the instant facts, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

11. In the result, the appeal of the Department is dismissed.

**This Order pronounced in Open Court on**

**15/12/2023**

**Sd/-**

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 15/12/2023

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**