

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.520/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

The ITO, Ward – 1(3)(1), Surat	Vs.	Sunil Mittal HUF, 101, Mahadev Park, Kailash Nagar, Ghod Dod Road, Surat – 395007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAMHS7185Q		
(Appellant)		(Respondent)

Appellant by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Kiran K. Shah, CA
Date of Hearing	15/12/2023
Date of Pronouncement	21/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), dated 02.06.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 18.12.2019.

2. The grounds of appeal raised by the Revenue are as follows:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made by the assessing officer of Rs.75,10,503/- to 13.05% of the same without appreciating the facts that the assessee had failed to prove the genuineness of the transaction made with M/s Dhaval gems and; M/s Veer Corporation which were identified as bogus entry providers, completely run by Shri Chetan Kantilal Shah.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in partly deleting the addition without considering that Shri Chetan Kantilal Shah has admitted in his statement u/s.131(1A) given in

the course of survey u/s.133A of the Act that he is involved in providing accommodation entries in the guise of loans, purchases and sales on commission basis.

3. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.80,00,000/- made on account of section 69A of the Act as the assessee neither in the assessment proceedings nor in the appeal proceedings produced any cogent evidences to prove that the deposits made in the Bank account represent the business receipts.

4. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition made by the Assessing officer u/s.69A of the Act as the onus is on the assessee and not on the Assessing Officer to prove the source of the credits in the Bank account with corroborative evidences.

5. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

6. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

7. The assessee craves leave to add, alter, amend and/ or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

3. Ground nos.1 and 2 raised by the Revenue relate to addition made by the Assessing Officer at Rs.75,10,503/-, which the Id CIT(A) restricted @ 13.05% (13.05% of Rs.75,10,503).

4. The facts necessary for disposal of the appeal are stated in brief. The assessee before us is a HUF. The assessee under consideration has booked purchases totalling to Rs.75,10,503/- from M/s Veer Corporation and M/s Dhaval Gems. During the assessment proceedings, the assessing officer has issued a show cause notice to the assessee to submit PAN Number, address, confirmation and bank statements to prove the genuineness of purchases, in response to such notice, the assessee submitted the same. However, the assessing officer rejected the contention of the assessee and noted that on the basis of the information available with the Department and as per the

facts of the case it is clear and apparent that the Assessee has availed accommodation entries totalling Rs.75,10,503/- from M/s Veer Corporation and M/s Dhaval Gems for the period under consideration in the guise of purchases as claimed in its books. Further, the Assessee has shown the parties as creditors for goods amounting to Rs.60,10,490/- in its Audit Report, as submitted in course of the assessment proceedings. The assessee was again requested to submit details, vide notice dated 27.07.2019 and a show cause notice dated 28.11.2019, to show cause as to why expenses should not be disallowed, as assessee failed to submit details with respect to genuineness and correctness of purchase expenses. In response to such notice the assessee submitted bills of the alleged entry providers. However, the assessing officer rejected the same and held that assessee is only a paper concerns which are not engaged in actual business and therefore made the addition of Rs.75,10,503/- u/s section 69C of the Act. The assessing officer also held that income assessed u/s 69C of the Act is taxed u/s 115BBE of the Act, at the rate of 60%.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has partly allowed the appeal of the assessee. The Id CIT(A) noted that entire purchases cannot be added to the total income of the assessee and only profit element embedded in the purchases can be disallowed. Therefore, Id CIT(A), by relying on jurisdictional High Court's judgment and various other judicial pronouncements by Honorable High courts and ITATs, has restricted the addition to 13.05% of amount disallowed by assessing officer, that is, 13.05% of Rs.75,10,503/-.

6. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

7. The Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue, argued that Ld. CIT(A) has failed to appreciate the fact that the assessing officer has already accepted the plea of the assessee that Rs.1,10,00,000/- was disclosed under PMGKY Scheme, 2016 and hence no addition was made with regard to disclosure amount. With respect to the other addition, assessing officer has observed that Shri Chetan K. Shah, in his oath, duly admitted that he was involved in providing accommodation entries in the guise of loan/purchase/ sales on commission base. In this case, assessee has availed the accommodation entries and booked purchases totaling to Rs.75,10,503/- from M/s Veer corporation and M/s Dhaval Gems. Accordingly, assessing officer has rightly made the addition, and the addition made by the assessing officer may be sustained.

8. On the other hand, Ld. Counsel for the assessee, pleaded that amount has been repaid by an account payee cheque. The assessee's books of accounts were not rejected. The assessing officer has wrongly made addition u/s.69A and 69C invoking section 115BBE of the Act. The assessee was doing business from residence address for several years which was not doubted by the assessing officer, the said address is still reflecting the I.T. records, hence it is assessee's business income and therefore section 115BBE cannot be applied to the assessee under consideration. Most of the sales made in cash and there is no need to give details of parties with whom sales were made. In the case of jewellery sales, most of the sales happening in cash and hence the receipt and accumulation of cash on hand ought to be

accepted by assessing officer when books of accounts were not rejected. Demonetization announced at 9 pm on 08.11.2016 and people rushed to buy gold ornaments on the same day before midnight and hence the turnover of the business increased enormously. In addition to all above facts, to avoid litigation, assessee disclosed 1.10 Crores under PMGKY Scheme, 2016.

9. Learned Counsel further stated that stock has been reduced proportionality to the cash sales. Further, assessing officer has accepted the profit and reduction of stock without rejection of books. Books of accounts are audited. The assessing officer erred in not confronting the statement of Shri Chetan k. Shah and erred in not allowing the cross examination of the parties whose statement were relied upon. All payments were made by account payee cheques and included in the audit report. No addition is justified unless material evidence is confronted and cross examinations is allowed. Addition made on the base of third- party statement is not justified and bad in law. There is no evidence for the assessee that he has paid cash against payment of bills. The transactions with regard to purchases were confirmed by the parties in response to the notice u/s.133(6) of the Act. The Id Counsel stated that against purchases of diamond corresponding sales of diamond also shown and duly taxed as sales, therefore if the purchases are supported by bills and there is payment by account payee cheques, no addition is called for as per Hon'ble Gujarat High Court decision in the case of M.K Brothers (1967) 163 ITR 249(Guj). Alternatively, Id Counsel argued that addition may be restricted up to 5% of purchases.

10. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In our considered view, it was wholly erroneous on the part of the assessing officer to make addition of 100% of purchases. Only a profit element embedded in the purchases may be added in the hands of the assessee. Based on information received from Investigation wing the learned assessing officer contested that these two parties viz. Veer Corporation and Dhaval Gems, are engaged in business of providing accommodation entries and thus the underlined purchases are not genuine. The assessing officer disallowed the entire purchases claiming them to be bogus. Before, Id CIT(A), the assessee filed supporting documents containing ledger extracts of parties, vat returns, excise returns, Payment details, bank statement reflecting such payment details, copy of invoices, purchase register, stock register, bank statements, audited books of accounts etc. The learned assessing officer has not questioned the sales made by the assessee and has accepted the sales amount as appearing in the financial statements. The assessing officer has also not provided any adverse finding on inventory appearing in the books of account of the assessee. However, Id CIT(A) noted that in absence of visibility on correctness of the amount paid/ payable to creditors, the possibility of purchasing the goods from grey market at lower rates and recording the same at inflated price in books of accounts cannot be ruled out. However, if the entire purchases are disallowed, the corresponding sales also need to be ignored but the assessing officer has not done so. Therefore, this leaves with unjustified adjustment in case of the assessee. Therefore, Id CIT(A) noted that many high courts and tribunals have dealt with this issue of bogus purchases in greater details and have upheld that certain gross profit

shall be added to total income instead of adding entire purchases (especially when corresponding sales are not challenged). In this context, the Id CIT(A) relied on the following judgments:

1. The Hon'ble Gujarat High Court in the case of Commissioner of Income-tax vs. Simit P. Sheth reported in [2013] 38 taxmann.com 385 (Gujarat) has held as under: -

In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.)Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.

8. If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

*9. This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. **In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.**"*

2. Nickunj Eximp Enterprises Pvt. Ltd Vs CIT [Bombay HC WRIT PETITION NO.2860 OF 2012]

In the underlined writ petition, Bombay HC upheld addition based on GP ratio”

3. The Hon'ble Bombay High Court in the case of PCIT vs. Pinaki D. Panani vide order dated January 18, 2020 has held that even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed. As the assessing officer did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated.

4. The Hon'ble Bombay High Court in the case of Usha Exports vs. ACIT vide order dated December 21, 2019 has held that in case of bogus purchases where sales are accepted, the addition can be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. The assessing officer is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases.

5. PCIT vs. Jakharia Fabric (P) Ltd. (2020) 429 ITR 323 (Bom-HC) dated 10/02/2020

In the underlined case, honourable HC upheld the decision of IT AT for restricting adjustment to the tune of estimated profit element involved in bogus purchase.”

11. The assessee has also submitted before Id CIT(A) that the entire amount should not be treated as bogus and reasonable gross profit at the rate of 5% shall be added to the total income of assessee in wake of various judicial precedence pronounced by ITAT. However, it was observed by Id CIT(A) that the assessee's business is recently started and it is into second year of its operations. During the year under consideration the gross profit earned by assessee is 13.05%. Therefore, Id CIT(A) restricted the addition to Rs. 9,80,121/- (Rs.75,10,503/- X 13.05%). We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

12. In the result, ground nos.1 and 2 raised by the Revenue, is dismissed.

13. Coming to grounds nos. 3 to 6 raised by the Revenue, which relate to an addition of Rs.80,00,000/- made by assessing officer under section 69A of the Act.

14. Succinct facts qua the issue are that during the assessment proceedings, assessing officer has noticed that assessee has deposited Rs. 1.90 Crs in his bank account No.005205007591 maintained with ICICI bank, Athwalines Branch, Surat during the demonetization period. The Assessing Officer has requested to explain the source of cash deposits during the period under consideration with necessary evidences and accordingly assessee has replied that out of this amount, Rs. 1.10 Crs was declared PMGKY Scheme, 2016 and submitted related documents also. A show cause notice was issued to assessee on 26.11.2019 and 02.12.2019 with a request to submit the details of cash deposits made in bank account during the period under consideration alongwith purchase book, sales book, Bank book and cash book for the period. However, while verifying the submissions made by the assessee, the assessing officer has noticed that assessee had failed to prove the source of cash deposits of Rs. 80,00,000/- out of Rs. 1.90 Crs made with ICICI Bank, therefore, assessing officer made addition to the tune of Rs.80,00,000/-.

15. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

16. The ld. Sr. DR for the Revenue, argued that if the assessee has claimed that the amount of Rs.80,00,000/- deposited in the bank account is part of the sales, then the onus to prove that the said amount is out of the cash sales is on the assessee and assessee has failed to discharge the same during the course of the assessment proceedings, therefore addition made by the assessing officer may be upheld.

17. On the other hand, Ld. Counsel for the assessee defended the order passed by the ld. CIT(A).

18. We have heard the rival parties and have gone through the material placed on record. We note that assessing officer has carried out addition of Rs.80,00,000/- on account of cash deposited during demonetization. The assessing officer has observed that the assessee has not submitted any documentation to substantiate its claim that the underlined money was disclosed under Pradhan Mantri Garib Kalyan Yojana and the same money was deposited into bank account during demonetization. We note that before ld CIT(A), during the appellate proceedings, the assessee had submitted copy of letter which was filed with Assistant Director of Income Tax (Investigation) intimating for option to disclose amount of Rs.1.1 crore. On perusal of said letter it was observed by ld CIT(A) that the assessee has *suo -moto* intimated to the Income Tax Department regarding such cash deposit during the demonetization which was declared by the assessee in PMGKY amnesty scheme. It is also observed that the assessee has paid due taxes as per the PMGKY amnesty scheme. The assessing officer has mentioned in the Assessment Order that assessee was not able to substantiate its claim, however on perusal of the supporting

documentation, the claim of assessee is found to be acceptable and therefore the addition made by learned assessing officer for sum of Rs.80,00,000/- was deleted by Id CIT(A).

19. We note that in this nature of assessee's business, normally the sales are made in cash and the parties do not give any identification. However, the assessee had filed the details of customers with address and PAN to the tune of Rs.39,61,223/-. The sales of jewellery / bars were through counters in shop and most of the customers pay the bills in cash. The receipts and accumulation of cash on hand, as per accounts, is quite obvious and the same ought to be accepted more particularly when books of accounts are not rejected. The quantum of sales depends on marriage / Diwali and such auspicious days. If we look into the monthly sales lying on page 34 of the paper book, there was huge sales in April, 2016 and September, 2016 though there was less sale during demonetization. The assessee had cash on hand of Rs.61,19,899/- as per the cash book on 29.09.2016 and the same was further increased to Rs.83,03,182/- on 08.11.2016. The assessee had sufficient cash on hand of Rs. 83,03,182/- on 08.11.2016 out of which Rs.80/- lacs were deposited during the demonetization period. The assessee used to maintain quantity details/ account and the same was filed alongwith tax audit report which lies on page 31 to 33 of the paper book. We note that assessee has already covered huge amount of Rs.1.10 crores under PMGKY scheme against the doubtful transactions. The assessee urges that the said disclosure covers all the irregularities and, therefore, further addition of Rs.80/- lacs being the amount of cash deposit in the demonetization period is unjustified. We note that amount of Rs.80,00,000/-(being cash deposited during demonetization) is a part of disclosure of 1.10 Crores by the assessee,

in the scheme of Pradhan Mantri Garib Kalyan Yojana, hence further addition should not be made. The said fact has been examined by the Id CIT(A) also. Therefore, we find that there is no infirmity in the order of Id CIT(A). The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the grounds (2 to 6) raised by the Revenue.

20. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 21/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 21/12/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat