

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 988/Ahd/2023
Assessment Year 2012-13**

Jay Ved Agro Improve Pvt. Ltd. RS No. 230/1, AT & PO Vedanchar, Tal. Palanpur Dist. Banaskantha- 385511, Gujarat PAN: AACCCJ6676N (Appellant)	v.	The Dy. CIT-Circle- Gandhinagar (Previously DCIT B.K. Circle Palanpur) Gandhinagar-382011, Gujarat (Respondent)
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**Assessee by: Shri S.N. Divatia, A.R. &
Shri Samir Vora, A.R.**
Revenue by: Shri N.J. Vyas, Sr. D.R.

Date of hearing : 26-06-2024
Date of pronouncement : 02-07-2024

आदेश/ORDER

This appeal in ITA No 988/Ahd/2023 for assessment year 2012-13 is filed by the assessee with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad, which

has arisen from the appellate order passed by ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi passed u/s. 250 of the Income-tax Act,1961, dated 05-09-2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1055754732(1) , which in turn has arisen from the assessment order dated 27-11-2019 passed by the Assessing Officer u/s. 147 read with Section 143 of the Act.

2. The grounds of appeal raised by the assessee in Memo of Appeal filed with ITAT, Ahmedabad Bench, Ahmedabad, reads as under:-

“[1] The Ld. CIT(A), NFAC, Delhi has grievously erred in confirming the addition made by the Ld. A.O. of credit entries of Rs. 14,78,000/- which includes the cash deposit of Rs. 5,38,000/- though the explanation given by the appellant, which is not correct and bad in law.

[2] The Ld. CIT(A), NFAC, Delhi has also grievously erred in confirming the addition made by the Ld. A.O. of share capital amounting to Rs. 1,00,000/-though the same has been received from two members which was shown in the detailed submission which has not been considered, and therefore likely to be deleted.

[3] The Ld. CIT(A), NFAC, Delhi has also grievously erred in confirming the addition of the Ld. A.O. of Rs. 52,852/- being 10% of

the expenses of Rs. 5,28,516/- though the ledger account was submitted during the assessment proceedings has not been considered.

[4] The Ld. CIT(A), NFAC, Delhi has also grievously erred in mentioning on Page No. 6 of the Appellate Order that the activity of the appellant's company is agricultural activity which is not correct.

The appellant submits that the appellant company is doing the business of developing the seeds of different varieties and doing the trading activity in the same items.

[4] The appellant therefore requests your goodself to kindly delete the above mentioned additions made by the Ld. A. O. looking to the merits of the case.

[5] The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

3. The brief facts of the case are that the assessee has not filed return of income for assessment year 2012-13. The assessment was re-opened on the basis of information from Non-filers Monitoring System(NMS) , that the assessee has deposited cash of Rs. 6 lakhs in its bank account maintained with the HDFC Bank, and after obtaining required statutory approvals and recording reasons. Notice u/s 148 dated 22.03.2019 was issued by the AO to the assessee which was claimed by the AO to have been duly served on the assessee, requiring the assessee to file return of income within 30 days

from the date of service of notice. The assessee did not file return of income in response to notice u/s 148. Thereafter , notices were issued by the AO u/s. 142(1) of the Act. But the assessee did not comply with the said notices. Finally show cause notice was issued to the assessee by the Assessing Officer dated 15-11-2019 , which is reproduced as under:-

“Please refer to the Income tax assessment proceedings in your case for A.Y. 2012-13 which were reopened by issuing notice u/s 148 of the IT Act on 22.03.2019 vide which you were requested to file return of income within 30 days from service of notice. Thereafter, notice u/s 142(1) dated 27.08.2019 and reminder notices dated 12.10.2019 were issued to you requesting you to provide certain details. However, you have neither filed return of income nor submitted any details in response to abovementioned notices. Thereafter, penalty was levied u/s 271(l)(b) of the act for non compliance of notice u/s 142(1) of act. In view of non - compliance of required details, I have no alternative but to complete the assessment on the basis of details on record as under:-

1) Balance sheet of the company shows addition of share capital of Rs.1,00,000/- during the year. In absence of required details, you are requested to show cause that why the same should not be added to your income u/s 68 of the I. T. Act.

2) Bank account of the company with HDFC Bank having account no. 03352560001844 shows total credits of Rs.14,78,000/- which includes cash deposits of Rs.5,38,000/-. In absence of any explanation for these credits, you are requested to show cause that why the amount of Rs. 14,78,000/- should not be added to your income u/s 69 of the I. T. Act.

3) In absence of required details, you are requested to show cause why 10% of purchases should not be disallowed and added back to your total income.”

3.2 In compliance thereof the aforesaid SCN, the assessee filed return of income on 19-11-2019 and also filed submissions before the Assessing Officer. Thereafter, the notices u/s. 143(2) of the Act was issued to the assessee by the AO on 22-11-2019 , but there was no compliance by the assessee. The Assessing Officer observed that the assessee

has deposited cash of Rs. 5,38,000/- in its bank account with HDFC Bank 03352560001844 , and total credit in the aforesaid HDFC bank account was to the tune of Rs. 14,78,000/-. The Assessing Officer obtained bank statement from the HDFC Bank directly u/s. 133(6) of the Act, and the assessee was asked to explain the aforesaid credits. The AO observed that in reply dated 11.11.2019 filed by the assessee , the assessee has not made any submissions to explain nature and source of credit entries and cash deposits in the bank account. The AO observed that the assessee in his submission has enclosed ledger account of 91 persons to whom the goods have been sold for total of Rs. 5,58,908/- as reported in P & L account. All the sales are shown to have been made in cash, all the accounts are squared up during the year under consideration. The Assessing Officer observed that in the ledger accounts, names of certain persons are shown, and the ledger accounts are computer generated and does not bear any signature or initials. The Assessing Officer observed that in cash sales, ledger are not prepared. Only bills are given which are entered in the sale register. The Assessing Officer observed that that these sales are not genuine representing cash sales for explanation of cash deposit in the bank account. The Assessing Officer also observed that most of the purchases are made in cash by the assessee. The Assessing Officer observed that in cash book opening balance as on 01-

04-2011 is shown as Rs. 1,02,500/- , but the Balance Sheet dated 31st March, 2011 shows 'Nil' against all assets and liability. The AO observed that no transactions are shown in the Profit and Loss account of the financial year 2010-11. The Assessing Officer observed that the cash book furnished is not genuine. The AO rejected the contentions of the assessee. The Assessing Officer made addition of Rs. 5,38,000/- being cash deposit in the bank account as unexplained deposit , which were added by the Assessing Officer to the income of the assessee u/s. 69 of the act. The Assessing Officer further observed that the bank statement shows that there are other credits of Rs. 9,40,000 but the assessee has not provided any submissions for the same. The AO observed that the assessee has claimed to have received unsecured loan aggregating to Rs. 8,08,500/- during the year from following three persons:-

Arpankumr G. Judal	: Rs. 40,000/-
Galabhai Somabhia Judal	: Rs. 7,50,000/-
Hinaben A. Judal	:Rs. 18500/-

3.3 With respect to the aforesaid unsecured loans, the Assessing Officer observed that the assessee has furnished ledger account without any signature, address and PAN of the lenders. The Assessing Officer observed that assessee could not prove the identity of the creditors and thus failed to discharge its liability to explain credits appearing in the books

of accounts to the tune of Rs. 8,08,500/-. The Assessing Officer invoked section 68 of the Act and made addition of Rs. 8,08,500/- u/s. 68 of the Act. With respect to remaining credits of Rs. 1,31,500/- in the Bank account, the AO observed that the assessee has not given any explanation before the Assessing Officer, which led AO to invoke provisions of Section 69 and the same was added to the income of the assessee.

3.4 The Assessing Officer further observed from the Balance Sheet of the assessee Company as on 31st March, 2012, that there are additions to Share Capital of Rs. 1,00,000/- during the year. The assessee was asked by AO to explain the same. The assessee submitted copy of share capital , and stated that no new share capital is introduced during the year. The Assessing Officer observed that the contention of the assessee is not correct. Balance Sheet of the assessee company shows Share Capital of Rs. 1,00,000/- on 31st March, 2012 , which also shows share capital as on 31March, 2011 of 'Nil'. Thus, the AO concluded that share capital of Rs. 1,00,000/- was introduced during the year under consideration. The AO also observed that the assessee has not discharged its burden to explain the source of sum credited in the books of account. The Assessing Officer invoked provisions of section 68, and share capital of Rs. 1,00,000/- found credited in the books of

accounts of the assessee were added by the Assessing Officer as unexplained cash credit u/s. 68 of the Act.

3.5 The Assessing Officer further observed from the Profit and Loss Account that the assessee has claimed purchases of stock in trade of Rs. 5,28,516/- , and in the absence of required detail, the Assessing Officer show caused the assessee as to why 10% of the purchase should not be disallowed , and added to the income of the assessee. The assessee submitted ledger account in support of purchases, and submitted some of the purchases bills. The said bills reflected that the purchases were made in cash. The assessee could not furnish complete details regarding purchases expenses , and the AO made additions to the income of the assessee to tune of 10% of the said purchases expenses of Rs. 5,28,516/-, the addition to the income came to Rs. 52,852/-.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A). The assessee submitted that the assessee has filed submissions before the AO , but the same were not considered by the AO. The assessee filed certain additional evidences before the ld. CIT(A), but the ld.CIT(A) did not call for remand report from the AO in terms of Rule 46A of the Income-tax Rules, 1962, but dismissed the appeal of the assessee. Before ld. CIT(A) , the assessee submitted that the assessee has made

cash deposit of Rs. 5,38,000/- in the bank account maintained with HDFC Bank, and also received other credits of Rs. 1,31,500/-. It was submitted that assessee has also received unsecured loan during the year aggregating to Rs. 8,08,500/- from three persons. The assessee claimed that the assessee has explained source of cash deposit before the Assessing Officer, but the Assessing Officer has not considered the same. The assessee submitted before the CIT(A) that assessee has submitted before the Assessing Officer that the assessee is doing the business of seeds of different varieties and trading activities of the same. The assessee has filed return of income on 19-11-2019 by declaring business loss of Rs. 1969. The Copies of audit report with Schedules, Computation of Income and income tax return were enclosed. With respect to cash deposits, copy of the bank account statement along with ledger account was filed by the assessee before the Assessing Officer. So far as the receipt of Rs. 8,08,500/-, the assessee submitted that these loans were received from three persons, and confirmations were enclosed. The copy of cash book and bank book was enclosed. The assessee submitted that no interest was paid. The assessee submitted that Rs. 1,31,500/- was also received as unsecured loans, but the Assessing Officer has made the addition. The assessee also submitted that rejection of cash book by the Assessing Officer is illegal. The

assessee submitted that Rs. 1,00,000/- Share Capital was received from two members who are Directors of the assessee company, which were received in the financial year 2010-11 . It was submitted that the accounts are prepared from 16th March, 2011(i.e. date of incorporation of the company) until 31st March, 2012 and the amount was received in 2010-11. It was submitted that since the accounts were prepared from 16th March 2011 to 31st March 2012, the balance as of 31.03.2011 was shown as 'Nil'. The assessee submitted copy of shareholder ledger, copy of cash book and company status in MCA. The assessee submitted that in MCA web site online, the share capital is shown as Rs. 1,00,000/-. The assessee also filed certain additional evidences before the CIT(A) as under:-

*“The Acknowledgement for F.Y.2011-12 Copy of Profit and Loss A/c and Balance Sheet
Copy of Bank Statement of HDFC Bank with their ledger copy
Copy of Audit Report for F. Y.2011-12 Ledger copies of Debtors, Creditors Xerox
Copies of Sales and purchase bills
Copy of Cash book ”*

The assessee also submitted following documents before ld. CIT(A) as additional evidences, as under:

- Copy of bills of purchase and sales along with Cash Book for F.Y. 2011-12
- Acknowledgement of return of income along with computation of income
- Copy of Profit and Loss A/c, Balance Sheet

The CIT(A) dismissed the appeal of the assessee by holding as under:-

“5. Decision: In this case, the first ground raised by the appellant is addition worth Rs. 14,75,000/- The Assessing Officer has added Rs. 8,08,500/- u/s 68 of the Income Tax Act, 1961 and Rs. 6,69,500/- u/s 69 of the Income Tax Act, 1961.

5.1 The appellant is a non-filer and information was received that the appellant has deposited cash worth Rs. 6,00,000/- in the Bank Account. The Assessing Officer issued notice u/s 133(6) of the Income Tax Act, 1961 and found that total credits were of Rs. 14,75,000/- including cash deposit of Rs. 5,38,000/-

5.2 The appellant produced ledger account of 91 persons to whom goods were sold worth Rs. 5,56,908/- The Assessing Officer found that all the purchase and sale have done in cash. Assessing Officer found various discrepancies in the opening balance in cash book. Ledger was computer generated and the names of the parties were not complete. Hence, the Assessing Officer found that the cash book is not genuine and hence made the addition of Rs 5,38,000 u/s 69 of the Income Tax Act. 1961.

5.3 The Assessing Officer further found that the appellant has credit of Rs. 9,40,000/- The appellant mentioned that-it-has received unsecured loans from Arpankumar G Judal Rs. 40000/-, Galabhai Sombhai Judal Rs. 7,50,000/- and Hinaben A. Judal 18,500/-

The appellant produced ledger account of these parties without signature, without address and without PAN. Hence, identity, creditworthiness and genuineness of the transaction could not be proved before the Assessing Officer. Hence, the Assessing Officer made the addition of Rs. 8,08,500/- u/s 68 of the Income Tax Act, 1961 and Rs. 6,69,500/- (Cash deposit of Rs. 5,38,000/- and Rs. 1,31,500/- other credits) u/s 69 of the Income Tax Act, 1961.

5.4 Now before me in the appellate proceedings, written submission has been filed. I have gone through the same. Appellant has mentioned that cash deposit is out of seeds sale. Books of account have not been produced. Cash vouchers are incomplete. They are without address. Similar signature is on all the vouchers. They are simply an afterthought and they have been fabricated. Hence, the cash deposits remain unexplained. Hence, the Assessing Officer is justified in making addition on account of cash deposit.

5.5 The appellant has filed loan confirmation of three parties Arpankumar G Judal Rs. 40000/-, Galabhal Sombhai Judal Rs. 7,50,000/- and Hinaberi A. Judal 18,500/- . I have gone through the loan confirmations. It is all similar. Nature of deposits is not known. Bank statement of three parties have not been given. Creditworthiness is not proved in absence of bank statement of these parties regarding deposit made in the bank account. All the loan confirmations look manufactured and fabricated. Hence, the Assessing Officer is justified in making addition of all the three loans u/s 68 of the Income Tax Act, 1961.

Hence, the first ground of the appellant of Rs. 14,75,000/- is dismissed, and the addition of the Assessing Officer is confirmed.

5.6 Second ground is addition of Rs. 1,00,000/- as share capital addition u/s 68 of the Income Tax Act, 1961. The appellant did not submit any details and hence the Assessing Officer made the addition.

5.7 Now before me in the appellate proceedings the names of two persons Arpankumar G Judal and Hijaben A. Judal contributing Rs. 50,000/- each have been filed. No bank details and creditworthiness have been fled. Relying upon the decision of the Hon'ble Delhi High Court, in the case of M/s N.R. Portfolio Vs. PCIT (Delhi) which has been approved by Hon'ble Supreme Court the, addition on account of share capital worth Rs. 1,00,000/- u/s 68 of the Income Tax Act 1961 is confirmed.

5.8 Third ground is addition of 10% worth Rs 52,852/- on account of cash sales worth Rs. 5,28,516/-, The appellant did not produce any details before the Assessing Officer.

5.9 Now before me in the appellate proceedings, incomplete and fabricated vouchers are produced. Hence, third ground of the appellant regarding addition of Rs. 52,852/- is confirmed and the appeal of the appellant is dismissed.”

5. Aggrieved , the assessee filed second appeal with Tribunal. At the outset ld. Senior Counsel for the assessee, Shri S N Divatia for the assessee submitted that Assessing

Officer has erred in holding that as on 31st March, 2011 share capital was 'Nil'. He drew our attention to the audited Balance Sheet and Profit and Loss account, and submitted that accounts were prepared from 16th March, 2011 (date of incorporation of the company) till 31st March, 2012. It was submitted that accounts were not prepared for one year but for the period of one year and 15 days (from date of incorporation on 16.03.2011 till 31.03.2012) which is permissible under the Companies Act. The Assessing Officer erred in holding that assessee share capital on 31st March, 2011 was 'Nil'. It was submitted that the assessee company was incorporated on 16th march, 2011 and the share capital was introduced by the Director/Promoters of the company to the tune of Rs. 1,00,000/- which was introduced by way of cash in the financial year 2010-11 (assessment year 2011-12), and hence no addition can be made in the impugned assessment year i.e. assessment year 2012-13. The ld. Senior Counsel for the assessee, Shri S.N. Divatia Advocate submitted that with respect to unsecured loans of Rs. 7,50,000/-, it was submitted that the said unsecured loan was raised by the assessee company from the father of the Director Shri Arpankumar G. Judal namely Mr. Galbabhai Somabhai Judal, and the details were submitted but the same were not considered by the authorities below. It was submitted that Rs. 18,500/- was raised by the assessee from

the wife of the Director Shri Arpan Kumar Jugal and the confirmation was submitted. Similarly Shri Arpankumar G. Jugal has given loan of Rs. 40,000/-. The details were submitted but the authorities below have not considered the contentions of the assessee. It was submitted that additional evidences were filed before the CIT(A). The CIT(A) did not call for any remand report and did not give any observation that whether he is admitting the additional evidences or not, and dismissed the appeal of the assessee. It was submitted that all the purchases/sales were made in cash. It was also submitted that chart showing break up of cash deposit source (PB/page 27-28) are filed as additional evidence before ITAT. The ld. Departmental Representative on the other hand relied upon the order of the ld. CIT(A) and submitted that no purchase/sale were made by way of banking transactions. All the transactions were made in cash and the books of accounts are just manipulated to get out of the clutches of the taxes. The assessee has never filed return of income u/s. 139(1) of the Act. Prayer was made to uphold the order of CIT(A). On being asked by the Bench, the ld. counsel for the assessee submitted that there are no registrations of the assessee with VAT/GST or other government regulatory authorities which could substantiate that the assessee is engaged in the business of trading of seeds.

6. I have considered rival contentions and perused the material on record. I have observed that the assessee company was incorporated on 16th March, 2011 and the first audited accounts were prepared from 16th March, 2011 to 31st March, 2012, and there is no bar in preparing audited financial statements for the said period under the Companies Act. However, in the audited account which is placed on record, the assessee has shown balance in the Balance Sheet as on 31st March, 2011 to be 'Nil' erroneously as there was no requirement in such cases to give comparative figures for the preceding period comprising of 15 days , as the same was included in the period 16.03.2011 to 31.03.2012, as these are first audited account of the assessee. This led to the conclusion by the Assessing Officer , that the assessee has declared 'Nil' share capital as on 31st March, 2011 and share capital to Rs. 1,00,000/- as on 31st March, 2012 , leading to the conclusion that the share capital has been received by the assessee during the year under consideration. The actual receipt of Share Capital by the assessee from its Directors/Promoters now requires verification by authorities below. With respect to the unsecured loan of Rs. 7,50,000/- received by the assessee company from the father of the Director of the assessee namely Mr. Galbabbhai Somabhai Judal, I observed that the confirmation and bank statements are filed. However, I observed that Rs. 7,50,000/- loan to the

assessee company by the father of the Director is preceded by depositing of cash of similar amount. However, the authorities below have not considered these confirmations and the bank statements of the father of the Director etc. filed by the assessee, and have simply dismissed the appeal of the assessee while these documents have been claimed by the assessee to have been filed before the Assessing Officer and CIT(A). Moreover, the father of the assessee Director namely Mr. Galbabbhai Somabhai Judal who have advanced loan of Rs. 7,50,000/- to the assessee company has claimed that he is an agriculturist and into husbandry business as well Retired Pro Vice-Chancellor from Agricultural University, Dantiwada, and the source of advances are from these activities. These aspects were not considered by any of the authorities below and simply additions were confirmed. Similar observations are there with respect to the other loans raised by the assessee company wherein the authorities below have not considered the contentions of the assessee. With respect to cash deposits made in the bank, the assessee has claimed same to be cash sales of seeds. The assessee has filed ledger accounts, but the assessee has not filed conclusive evidence to prove that these purchase and sale of seeds has taken place and that the assessee in the business of trading of seeds. These aspects requires further verification by authorities below as the evidence filed are also not considered. Similarly for purchase

of seeds of Rs. 5,28,516/-, the assessee has claimed that the payments have been made in cash. The Assessing Officer has disallowed purchases to the tune of 10%. The assessee has filed additional evidences before the CIT(A) and has also filed certain additional evidence before the Tribunal . The CIT(A) has not called for remand report from the AO on these additional evidences which led to breach of Rule 46A, and the ld. CIT(A) has also have not given his decision whether the additional evidences are to be admitted or not. The additional evidences were also filed before us. Under these circumstances, keeping in view facts and circumstances of the case, I am of the considered view that in the interest of justice, the entire matter wrt all the additions made by the AO and as confirmed by ld. CIT(A), needs to be set aside to the file of Assessing Officer for de-novo assessment. The Assessing Officer shall also admit all the evidences filed by the assessee while framing de-novo assessment on merit in accordance with law after giving proper opportunity to the assessee. The assessee in his part is also directed to file all the necessary documents/evidences called for by the Assessing Officer in support of its contention. I clarify that I have not commented on the merits of the issue in this appeal . Thus, the appeal of the assessee is allowed for statistical purpose. I order accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02-07-2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated 02/07/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद