

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
&  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.888/Ahd/2023  
(Assessment Year: 2015-16)

|   |     |   |
|---|-----|---|
| Baldevbhai Lalabhai Luhar,<br>E-401, Shidhashilla Apartment,<br>Vasna,<br>Ahmedabad-380007. | Vs. | Income Tax Officer<br>Ward-1(1)(2),<br>Ahmedabad. |
| [PAN No.ACMPL5821A]   |     |   |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>                               |

|                       |                             |
|-----------------------|-----------------------------|
| <b>Appellant by :</b> | Ms. Vidhi V Pandya, A.R.    |
| <b>Respondent by:</b> | Shri Sudhakar Verma, Sr. DR |

|                              |            |
|------------------------------|------------|
| <b>Date of Hearing</b>       | 03.09.2024 |
| <b>Date of Pronouncement</b> | 11.09.2024 |

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the 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”), vide order dated 16.06.2023 for Assessment Year 2015-16.

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

1. *On the facts and circumstances of the case, the Ld.CIT(A) has erred in passing the order u/s.250 by confirming the addition of Rs.5,85,000/- on account of cash deposits in Dena bank account. It may be deleted.*
2. *On the facts and circumstances of the case, the Ld.CIT(A) has grossly erred in passing the order u/s.250 by confirming the addition of Rs.54,78,655/- on account of bogus purchases. It may be deleted.*
3. *In law, on the facts and circumstances of the case, the Assessing Officer has grossly erred in initiating the proceedings for levy of penalty u/s.271(1)(c) when*

- 2-

*no such penalty is leviable. The proceedings are wrongly initiated. He may be directed to withdraw such proceedings.*

4. *The appellant craves to Add/alter any Ground of Appeal during the ITAT Proceedings.*

**Application for condonation of Delay:**

3. At the outset, at the time of hearing, it is noticed that there was a delay of 95 days in filing the present appeal before us. The Ld.Counsel for the assessee filed an affidavit in which it was submitted that previously, the assessee was having a different authorized representative who was not having the requisite knowledge of procedural requirement of ITAT relating to the matter and time limit in filing the appeal before ITAT. Thereafter, the assessee changed his representative on whose advice the present appeal has been filed by the assessee, although with a delay of 95 days. Accordingly, in view of the above circumstances, the assessee has requested for condonation of delay in filing the present appeal. Accordingly, looking into the facts and circumstances of the case as mentioned by the Ld.Counsel for the assessee in delay in filing the present appeal, the delay in filing the appeal is hereby condoned.

3. The first ground raised by the assessee is that the Ld.CIT(A) erred in confirming the addition of Rs.5,85,000/- on account of cash deposits in Dena Bank Account.

5. The brief facts in relation to ground of appeal are that during the course of assessment, the Assessing Officer(AO) observed that the assessee has made cash deposit of Rs.5,85,000/- in the Dena Bank Account during the year under consideration. The assessee was requested to explain the source of cash deposits. In response, the assessee submitted that he had sold personal gold ornaments of family members for sum of Rs.5,06,050/- on 20.08.2014 and

- 3-

had deposited Rs.5,00,000/- in cash in his personal bank account with Dena Bank. The assessee also produced the copy of invoice of gold ornaments sold to M/s.Baghya Gold Cast Pvt. Ltd to whom the gold was sold for a consideration of Rs.5,06,050/- However, the AO did not accept the contention of the assessee for the reason that from the invoice dated 20.08.2014, produced by the assessee, it is noticed that seller and purchaser are one and the same and the name of the seller is Shri Baldevbhai L Luhar and name of the purchaser as evident from the bottom of the invoice is also Shri Baldevbhai L Luhar. The AO further observed that the assessee has neither furnished the ledger account nor has furnished the confirmation of M/s.Bhagya Gold Cast Pvt. Ltd. to prove the genuineness of the bill. The AO observed that the bill is signed by the assessee as authorized signatory of Bhagya Gold Cast Pvt. Ltd. and the bill is also issued in the name of the assessee only i.e Baldevebhai L Luhar. Moreover, the payment has been given by the purchaser in cash, so the authenticity of the transaction cannot be verified. The AO further observed that the address of the purchaser of the gold ornaments and address of the assessee's business premise is same i.e 4707, Waghan Pole Hallmark Complex, Kalupur, Ahmedabad. However, the AO observed that in the computation of total income of the assessee, no capital gain was shown by the assessee in respect of sale of gold ornaments. Accordingly, assessee's contention that the cash deposit of Rs.5,85,000/- were sourced out of sale of gold ornaments of family members was not accepted by the AO and he made the addition of Rs.5,85,000/- as undisclosed income u/s.68 of the Act.

6. In appeal, the Ld.CIT(A) dismissed the appeal of the assessee with the following observations:

- 4 -

*6.1 The first ground of appeal is against addition of Rs. 5,85,000/- on account of cash deposit in Dena Bank. The assessee claimed the cash deposit out of sale of personal jewellery of family members in cash and has produced cash sale invoice dated 20.08.2014 issued by Bhagya Gold Cast Pvt Ltd. The observation of the AO rejecting claim of the assessee is found to be justified for the reason that the assessee has signed the bill as authorized signatory and the bill was also issued in the name of the same person. Address of the assessee on invoice dated 20.08.2014 Was the new flat when possession thereof was taken by the assessee on 20.10.2014. The payments were claimed as received in cash. The assessee has not specified the name of the family member who was the owner of jewellery and how the same was acquired by the family member. Capital Gain was not shown on gold ornament. Even the confirmation from the buyer or cash book was not filed by the assessee. Considering all the factors and discrepancies, it is held that the AO has correctly made addition of Rs. 5,85,000/-on account of cash deposit and hence the same is hereby confirmed. The relevant ground of appeal is dismissed.*

7. The assessee is in appeal before us against the aforesaid order passed by the Ld.CIT(A).

8. The Ld.Counsel for the assessee submitted that during the impugned year under consideration, the assessee has sold certain gold ornaments belonging to the family members to another concern M/s.Baghya Gold Cast Pvt. Ltd. in which the assessee was a Director. In support to the same, the assessee has also produced the requisite invoice of sale of gold ornament and accordingly, it was submitted that the onus which lies upon the assessee has been discharged. The Ld.Counsel for the assessee, drew our attention to the invoice dated 20.08.2014 in which the ornament was sold by the assessee for a consideration of Rs.5,06,050/-. The Ld.Counsel for the assessee submitted the cash deposit of Rs.5,85,000/- was partly sourced out of sale of gold ornaments and partly out of personal savings which were deposited in the bank account of the assessee. So far as the contention of the AO, that no capital gain tax was offered by the assessee, the Ld.Counsel for the assessee submitted that the assessee had incurred a capital loss on sale of Jewellery and hence no capital gains tax was offered by the assessee in the return of income.

9. In response, the Ld.DR placed reliance on the observations of the AO and the Ld.CIT(A) in their respective orders.

10. The Ld.DR submitted before us that both the seller and the purchaser of the gold ornaments was one and the same parties i.e assessee itself. Further, the entire transaction had taken place in cash and therefore, there was a serious doubt regarding the genuineness of the source of cash deposits.

11. We have heard the rival contentions and perused the material available on record. We observe that the assessee had not filed cash book in respect of the above transaction. The assessee had filed copy of cash book of M/s.Bagya Gold Cast Pvt Ltd. for the first time before the Tribunal for its consideration. However, the said cash book has not been filed either before the AO or Ld.CIT(A) during the course of respective proceedings before them. Secondly, the assessee had filed before us computation of capital loss (at page No.2 of the paper book), wherein it has been submitted before us that assessee had incurred net capital loss of Rs.94,837/- towards sale of ornaments. However, we observe that the argument that the assessee has incurred capital loss on the sale of gold ornaments was never taken either before the AO nor was this argument taken before the Ld.CIT(A) during the course of proceedings before them. The assessee for the first time has taken this argument before us, that the assessee had in fact incurred a capital loss on sale of gold ornaments during the impugned year under consideration, however, this computation of capital loss has been submitted before us for the first time and the computation of capital loss was never submitted before the AO or Ld.CIT(A) for their consideration.

Further, we observe that assessee has also not filed requisite confirmation from the purchaser of gold ornament and the Ld.Counsel for the assessee submitted if required such confirmation can also be filed. Accordingly, in view of the above observations and in the interest of justice, the matter is restored back to the file of the Ld.CIT(A) for fresh consideration. The assessee is directed to file requisite computation of capital loss, cash book, confirmation of the purchaser of the gold ornaments etc in response of the genuiness of the transaction.

12. In the result the ground no1 of the assessee is allowed for the statistical purposes.

13. The next ground raised by the assessee is that the Ld.CIT(A) erred in confirming the addition of Rs,54,85,000/- on account of bogus purchases.

14. The brief facts in relation to this ground of appeal are that during the course of assessment, the Assessing Officer(AO) asked the assessee to produced the details of purchase of goods amounting to Rs.14,31,10,475/-. However, the assessee did not furnish any details to prove the genuineness of the purchases. Further, the AO observed that from the sale register, the assessee had shown total sales at Rs.13,69,66,384/- whereas in the Audit Report, total sales were shown at Rs.13,70,07,503/-. Accordingly, the AO treated the purchases from the parties as bogus and rejected the books of account of the assessee u/s.145 of the Act. Further, the AO was of the view that the GP ratio in this line of business of assessee is namely in the range of 3 to 4 percent (i.e in the business of trading of rice and wheat etc.) and therefore, the AO applied the ratio of Simit V/s. Commissioner of Income-tax In Tax

Appeal No. 553 2012, Gujarat High Court wherein it was held that where purchases were not bogus but where made from the parties other than those mentioned in books of account, not the entire purchase price but only profit element embedded in such purchases can be added to income of assessee. Accordingly, the AO estimated the GP ratio @ 4% of the total sale of 13,69,66,384/- on the basis of sales register and added a sum of Rs.54,78,655/- to the total income of the assessee.

15. In appeal, the Ld.CIT(A) confirmed the additions with the following observations:

*6.2 The second ground of appeal is against the account of GP estimation for bogus purchases. In this regard, it is found that the assessee claimed purchases of rice and wheat from twelve parties amounting to Rs. 14,31,10,475/-. To verify genuineness of purchase, notices u/s 133(6) were issued to the parties to file confirmations, ledger account and other relevant details like bank statement, ITR, audit report and transportation details. In case of seven parties, the notices were returned back with remark "left" or "not known". No reply was received from the other five parties. The AO also observed that supporting evidences like transportation details containing mode of transport, vehicle No., details of godown were not filed by the assessee. The bills prima facie seems to be generated from one place. Delivery chalan and transport receipts were not filed. On the purchase bills, destination of goods to be delivered, VAT, TIN no. etc. were not mentioned. There was also a difference in total sales as per audit report and as per sales register. Therefore, the book results were rejected and considering the grey purchase and manipulation of billing, the earning of the assessee/GP ratio was estimated @4% on total sales of Rs. 13,69,66,384/- which comes to Rs. 54,78,655/- and the same was added to the total income.*

*6.3 The assessee had claimed to be engaged in the business of wholesale trading of grains viz rice, wheat etc. All purchase bills were generated vide tally software which is widely used and hence the format appears to be same. The address of the assessee mentioned in the bills are not the same. Bank statement confirming payments and copy of confirmation of account from Shakti Agro Industries were filed.*

*6.4 The claim of the assessee was examined and it is found that the same is not acceptable. It is settled law that the field enquires cannot be ignored and has evidentiary value. Merely payment made by banking channel does not make a purchase genuine when none of the parties filed any reply directly to the AO for the*

*reason that notices u/s 133(6) issued to seven parties returned unserved and in case of five other parties, no reply was received. The assessee has not furnished the copies of delivery challan and transport receipt. In view of above, it is held that the purchase remained unverified and the AO has correctly rejected books of account and added GP of 4% on sales of Rs. 13,69,66,384/- and the addition of Rs.54,78,655/- being most reasonable and justified is hereby upheld. The relevant ground of appeal is dismissed.*

16. The assessee is in appeal before us against the aforesaid order passed by the Ld.CIT(A) before us. The Ld.Counsel for the assessee submitted a table/chart before us in support of the fact that Department has erred in computing gross profit ratio @ 4% in the assessee's line of business and as per the chart of similar companies in the same line of business, GP ratio in this line of business is approximately 0.9 percent. Accordingly, the Ld.Counsel for the assessee submitted that the AO has erred in facts and in law in computing a high amount of GP ratio estimated @ 4 percent whereas in assessee's line of business the correct GP ratio is approximately 1%. The Ld.Counsel for the assessee relied on the several judicial precedents in support of his contentions. Therefore, it was submitted that it is a fit case and no addition should be confirmed in the hands of the assessee or in the alternative a reasonable GP ratio may be considered to be added in the hands of the assessee.

17. Before proceeding in the matter, we would like to reproduce/refer to same judicial precedents on the subject. In the case of **Simit P. Sheth V/s. Commissioner of Income-tax reported in 38 taxmann.com 385** Hon'ble Gujarat High Court held that where purchases are not bogus but were made from parties other than those mentioned in books of account, not entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee. In the present case, the Gujarat High

Court confirmed the order of the Tribunal which sustained addition to the extent of 12.5% as the profit of the assessee.

18. In the case of **PCIT Vs/ Sunil Mithal HUF in 164 taxmann.com 709 (Gujarat)** the Hon'ble High Court held that where Assessing Officer disallowed entire purchases made by assessee from two parties on ground that said parties were engaged in business of providing accommodation entries, the Assessing Officer could not have disallowed entire purchases in absence of any finding on correctness of amount paid/payable to creditors, possibility of purchasing goods from grey market at lower rates and recording same at inflated price in books of account could not be ruled out and, hence, Commissioner (Appeals) was justified in restricting addition to 13.05 per cent of gross profit

19. In the case of **Ashwin Purshotam Bajaj 155 taxmann.com 478(Bombay)** wherein the Hon'ble Bombay High Court held that the assessee was engaged in selling footwear, etc.. The Assessing Officer having noticed that assessee had purchased goods from someone else while bogus bills were organized by some hawala traders treated purchases as bogus and made addition to assessee's income under section 69 of the Act. The Commissioner (Appeals) estimated profit element on such purchases at 12.5 per cent and restricted addition to that extent . The Tribunal dismissed revenue's appeal. The High Court held that section 69 was not applicable to such purchases as only profit had to be added in income of assessee. Further, since issue of estimating profit at 12.5 per cent was essentially a question of fact, there was no reason to interfere with Tribunal's order.

20. In the case of **Hiren C. Parekh 153 taxmann.com 470 (Bombay)** the Hon'ble Bombay High Court held that where Assessing Officer added entire amount of purchases to income of assessee on ground that same were bogus purchases, since it was not disputed that purchases were actually made and payments for same were

- 10-

made through account payee cheque and further, assessee had already declared 7.5 per cent as gross profit, Tribunal was justified in restricting addition to 8 per cent of gross profit on impugned purchase transactions

21. Accordingly, looking into judicial precedents cited above and the chart/table submitted by the Ld.Counsel for the assessee of comparable companies submitted by the assessee and in the interest of justice, the addition is restricted to GP ratio @ 2 % of the sales.

22. In the result, the ground no.2 is partly allowed.

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

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

**This Order pronounced in Open Court on 11/09/2024**

**Sd/-**  
**(MAKRAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 11/09/2024  
Manish, Sr. PS

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

*(True Copy)*