

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 105/Ahd/2024

निर्धारण वर्ष/Assessment Year: 2017-18

Kshetrapal Gold Private Limited, SF-1, Kush Avenue, Mandvi Ni Pole, Manek Chowk, Ahmedabad, Gujarat-380001 PAN : AAFCK 6724 M	Vs.	Income Tax Officer, Ward 2(1)(2), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mahesh Chhajed, AR
Revenue by :		Shri Prateek Sharma, Sr DR

सुनवाई की तारीख/Date of Hearing : 10.10.2024

घोषणा की तारीख /Date of Pronouncement: 22.10.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 20.11.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2017-18.

2. The grounds raised by the assessee are as under:-

"1. The order passed by the Ld. CIT (A) is against law, equity & justice.

2. The Ld. CIT(A) has erred in law and on facts in upholding rejection of books of accounts in contravention to the provisions of Act.

3. The Ld. CIT (A) has erred in law and on facts in upholding addition made by the Ld. A.O. u/s 68 of the Act even after rejection books of accounts.

4. *The Ld. CIT(A) has erred in law and on facts in upholding addition made by the Ld. A.O. u/s 68 of the Act of Rs.4,12,67,000/- which appellant has shown sales income.*

5. *The Ld. CIT (A) has erred in law and on facts in upholding the action of Ld. A.O. of invocation of section 115BBE of the Act when transaction are occurred prior to insertion of provision on statute.*

6. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal."*

3. The brief facts relating to the case are that the assessee is a company engaged in the business of selling gold ornaments. During the impugned year, noting the fact that the assessee had deposited cash during demonetization period from 8th November 2016 to 30th December 2016 of Rs.4,12,67,000/-, the case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS). The Assessing Officer rejected the books of accounts of the assessee noting huge anomaly and differences in the financial figures of sales and cash in hand available with the assessee in the impugned year as compared to in the preceding year; finding abnormal increase in cash sale made by the assessee just prior to demonetization, which cash he found was shown as deposited in the bank account of the assessee, and the cash deposits thus justified as representing the cash collected from sales made by the assessee. After rejecting the books of accounts of the assessee, the Assessing Officer went on to treat the entire cash deposits in the bank account of the assessee of Rs.4,12,67,000/- as from unexplained sources u/s 68 of the Act.

4. The assessee carried the matter in appeal before the Id. CIT(A) who upheld the rejection of books of accounts as also the addition made u/s 68 of the Act of the cash deposits in the bank account of the assessee of Rs.4,12,67,000/-.

5. Aggrieved by the order of the Id. CIT(A), the assessee has come up in appeal before the Tribunal raising the aforesaid grounds.

6. Ground Nos. 1 & 6 are general in nature and need no adjudication.

7. Ground No.2 raised by the assessee challenges the order of the Id. CIT(A) in upholding the action of the Assessing Officer in rejecting the books of the assessee in terms of the provisions of Section 145(3) of the Act. The arguments made by the Id. Counsel for the assessee before us was that in terms of the provisions of law in this regard i.e. Section 145(3) of the Act, the Assessing Officer could have rejected the books of accounts of the assessee only if he was not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting as provided in sub-section (1) of Section 145 of the Act has not been regularly followed by the assessee, or the income has not been computed in accordance with the standards notified under sub-section (2) of Section 145 of the Act. In this regard, our attention was drawn to the provisions of Section 145(3) of the Act as under:-

"145. (1) Income chargeable under the head " Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."

8. Ld. Counsel for the assessee contended that for the purposes of rejecting the books of accounts of the assessee, the Assessing Officer has to consider whether the assessee has regularly employed a method of accounting, and if 'yes', whether the annual profits can be properly deduced from the method employed and whether the accounts are correctly maintained.

9. Having so pointed out the position of law with regard to the rejection of books, the ld. Counsel for the assessee pointed out that, in the facts of the present case, none of the conditions as required by law were satisfied for rejecting the books of accounts of the assessee. That despite all the books of accounts, vouchers and other documents being produced before the Assessing Officer, neither were the same examined nor a single anomaly pointed out by them in it. That the only basis for rejecting the books of accounts of the assessee was on mere surmises and conjectures of the Assessing Officer. That the Assessing Officer merely studied the financial data of the assessee of the preceding year and the impugned year, and noted allegedly huge increase in cash sales made by the assessee, in cash in hand of the assessee prior to the demonetization and in cash deposited in the bank account of the assessee during demonetization period. That despite the justification submitted by the assessee with regard to the huge increase in cash sales in the impugned year by pointing out that the sales were backed by adequate purchases made by the assessee also and other reasons, the Assessing Officer merely on account of the abnormality in the alleged financial data noted by him held that by applying the principle of preponderance of probability, the books of accounts of the assessee were all made up and not correct, and huge cash sales were booked only to justify the cash deposits in the bank account of the assessee during the demonetization period. He pointed out that even the purchases of the assessee were held by the AO to be all cooked up. The ld. Counsel for the assessee contended that

none of his findings with regard to the sales and purchases being bogus were backed with any evidence or investigation conducted by the Assessing Officer in this regard and this despite the fact that all the books of accounts and vouchers were placed before the Assessing Officer. That all Sales were backed with purchases made. That the Books of accounts reflected sufficient stock with the assessee for making the sales. And without doubting any specific entries made in the Books, the AO, he stated, rejected the Books of accounts of the assessee on generalized observations that too totally unsubstantiated. He, therefore, contended that the rejection of books of accounts by the Assessing Officer was not in accordance with law and needed to be set aside.

10. Ld. DR, though was unable to controvert the contention of the Id. Counsel for the assessee that the rejection of books of accounts was based on a mere comparative analysis of the financial data of the assessee of the preceding year and the impugned year, more particularly that relating to sale made by the assessee and the cash in hand available with the assessee and not based on any defect found in the books maintained by the assessee; he, however, heavily relied on the order of the Assessing Officer and argued that rejection of the books of accounts by the Assessing Officer was correct and justified.

11. We have heard the contentions of both the parties and perused all the material available on record. The issue for adjudication is whether the Books of accounts of the assessee were rightly rejected by the AO u/s 145(32) of the Act in the facts of the case before us.

12. In terms of the provisions of section 145(3) of the Act, the AO can reject the Books of accounts of the assessee and make a best judgement assessment u/s 144 of the Act, if he is not satisfied with the correctness or completeness

of the Books of accounts of the assessee. The relevant section is reproduced above in our order.

13. This dissatisfaction of the AO has to be *vis a vis* the **correctness** and **completeness** of the Books of the assessee for rejecting the same. And this power cannot be exercised in a subjective manner. The reason being that serious consequences follow the rejection of the Books of accounts of the assessee since it gives power to the AO to make a best judgement assessment. The AO surely cannot reject the Books on his own whims and fancies. He has to give basis for finding the Books unreliable and not capable of revealing the true financial picture of the assessee. Books of accounts can be rejected as unreliable if important transactions are omitted therefrom, or if proper particulars and vouchers are not forthcoming or there is an inherent lacuna in the system of accounting or where sales vouchers and stock registers were not maintained or where there were deficiencies and discrepancies in the books of accounts or where bogus purchases were recorded and opening and closing stock was not verifiable. As pointed out by the Id. Counsel for the assessee, in terms of provisions of Section 145(3) of the Act, the Assessing Officer is duty bound to find patent, latent and glaring defects in the books of accounts while rejecting the Books of the assessee. The reliance placed by the Id. Counsel for the assessee in the decision of the Hon'ble High Court of Gujarat in the case of CIT Vs. Vikram Plastics [1999] 239 ITR 161 (Guj.) clearly holds that for the purpose of rejecting the books of accounts of the assessee, discrepancies and defects in the same need to be pointed out.

14. In the facts of the present case, admittedly no defects or discrepancies have been pointed out. The rejection of books of accounts is merely on the basis of surmises and conjectures of the Assessing Officer which he has based on a mere financial analysis of the sales and cash data of the assessee for the impugned year and the immediately preceding year. He has noted the sales

to have increased abnormally as also the cash in hand with the assessee. He has noted that in the absence of any expenses to be incurred in cash, there was no reason for the assessee to maintain such cash in hand and he presumed, therefore, that these were all bogus entries of cash sales with the only purpose of introducing the unaccounted income of the assessee for facilitating deposit of it in bank account of the assessee during the demonetization period. There is not a single whisper about any discrepancy noted by the Assessing Officer in the sales recorded by the assessee. All evidences relating to which were admittedly placed before the Assessing Officer. The assessee had also stated all sales to be duly corroborated with corresponding purchases made of the same. All evidences relating to the purchase was also placed before the Assessing Officer. The assessee had also presented his stock register for examination before the Assessing Officer, but not a single document or evidence was examined or investigated by the Assessing Officer. Admittedly, no discrepancy in the books of accounts maintained by the assessee was pointed out before rejecting the books of accounts, and since it is settled law that the rejection of books of accounts can take place only when the books are found to be maintained in such a manner that true profits cannot be ascertained therefrom, for which it is necessary for the Revenue Authorities to pinpoint the defects in the maintenance of the same.

15. We are in agreement with the Id. Counsel for the assessee that the rejection of books of accounts by the Assessing Officer in the present case was not in accordance with law.

The act of the Assessing Officer, therefore, in rejecting the books of accounts of the assessee is therefore set aside.

The ground No. 2 of the assessee's appeal is accordingly allowed.

16. The remaining grounds raised by the assessee challenge the addition made to the income of the assessee of the cash found deposited in its bank after rejecting books of accounts of the assessee. Since we have held that the rejection of books of accounts was not correct, the additions made do not survive and therefore are directed to be deleted.

In effect, all the grounds raised by the assessee are allowed.

17. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 22/10/2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad; Dated 22/10/2024

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आदेश की प्रतिलिपि अग्रेषित/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, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad