

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Dr. BRR Kumar, Vice President

**ITA No. 1489/Ahd/2024
Assessment Year 2010-11**

The ITO, Ward-1(2)(1), Vadodara (Appellant)	Vs	Kapilkumar Amarchand Agrawal, 6, Gotri Coop Housing Society, Near GEB Sub Station Gotri Road, Vadodara-390007 PAN:ABOPA4431A (Respondent)
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**C.O. No. 36/Ahd/2024
(In ITA No. 1489/Ahd/2024)
Assessment Year 2010-11**

Kapilkumar Amarchand Agrawal, 6, Gotri Coop Housing Society, Near GEB Sub Station Gotri Road, Vadodara-390007 PAN:ABOPA4431A (Appellant)	Vs	The ITO, Ward-1(2)(1), Vadodara (Respondent)
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Assessee by: None
Revenue by: Shri Ketan Gajjar, Sr. D.R.

Date of hearing : 13-11-2024
Date of pronouncement : 13-11-2024

आदेश/ORDER

This appeal filed by the revenue and cross objection filed by the assessee are against the order of the Id. Commissioner of Income Tax, CIT(A), National Faceless Appeal Centre, Delhi, in proceeding u/s. 250 vide order dated 28/06/2024 passed for the assessment year 2010-11.

2. The grounds of appeal taken by the revenue in ITA No. 1489/Ahd/2024 are as under:-

“i) Whether on the facts and circumstances of the case Ld. CIT(A) is justified in deleting the addition of Rs 19,77,500/- made u/s 68 of the Act without appreciating the fact that the National Multi Commodity Exchange had confirmed that the assessee has carried out transaction through sub broker RS Enterprise und Suruchi Trading, being involved in providing accommodation entries (bogus profit/loss)

ii) The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of or before, the hearing of appeal.”

3. The grounds of appeal taken by the assessee in CO No. 36/Ahd/2024 are as under:-

“1. The CIT(A) has passed order covering all facts of the case and provisions of Law and considered the order of the AO as well as submissions made by your Appellant and is finally concluded that the AO was wrong in invoking Sec 68 and making addition of Rs 19,77,500/- which he has deleted in his order against which the Department has filed to the Appeal to the Hon. Tribunal.

It is submitted that in view of facts of the case and provision of Law since the CIT(A) has passed Speaking Order no interference is called for.

2. Without prejudice to your Appellant submits that the Tax Effect in the Departmental Appeal is below Monetary Limit as per Central Board of Direct Taxes in its latest Circular No. 9/2024 and Bench Mark being Rs.60 Lakhs.

3. It is respectfully submitted in view of above by the Respondent that the Departmental Appeal be cancelled and treated as infructuous.

It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly Your Respondent reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”

4. None attended on behalf of the assessee and the adjournment letter filed by the assessee is rejected.

5. I have gone through the facts with the help of the ld. D.R. On perusal of the records, it was found that the case of the assessee has been reopened u/s. 148 based on information that the assessee was involved into commodity transactions with two entities namely; RS Enterprise and Suruchi Trading and has taken accommodation entries to the tune of Rs. 19,77,500/- in the form of profit on account of commodity transactions and claimed the same as set off against loss incurred in share transactions with specific intention to generate unaccounted income. However, after detailed examination and obtaining the information from the National

Multi-Commodity Exchange of India Ltd., the Id. CIT(A) has categorically held that the assessee has not entered into any transactions with RS Enterprise and Suruchi Trading and also accepted that the assessee has indeed had transactions with M/s. Joindre Commodities of Rs. 9,53,933/- and earned profit of Rs. 19,77,500/- from Ratanlal Somani. Since the allegations of the Revenue have not been proved that the assessee has indeed entered into any transactions with RS Enterprise and Suruchi Trading, the Id. CIT(A) has rightly deleted the addition. Even before us, no contrary evidences have been brought by the Revenue. I also find that the speculation profit of Rs. 10,08,574/- earned by the assessee have been duly reflected in the return of income which is not from any transactions with RS Enterprise and Suruchi Trading .

For the sake of ready reference, the relevant portion of the Id. CIT(A) is reproduced herewith:-

“4.3.1 The submission of the appellant is already reproduced above. The appellant has given transaction wise summary in respect of both brokers. He suffered losses of Rs. 9,53,933/- in transactions carried out through Joindre Commodities Ltd and earned profit of Rs. 19,62,507/- in respect of transactions carried out through Ratanlal Somani. It is stated that without verifying the evidence, the AO has again added to the income the transaction carried out through actual brokers which were considered in the income tax return. It is also stated that speculation profit of Rs. 10,08,574/- was declared in the ITR. The details received from Exchange matches with transactions wherein he has made speculation profit on Rs. 19,62,507/- through brokers M/s Ratanlal Somani. The appellant has denied having entered into any transactions with R S Enterprises and Suruchi Trading. It is submitted that all necessary

evidence in possession was provided to the AO. All actual transactions are recorded in the books of accounts and reconciled with the bank books and bank statements. It is also stated that the appellant does not know any of the party i.e. R S Enterprises and Suruchi Trading. The AO has made addition on the basis of information received from the Investigation Wing. It was not supplied to the appellant nor opportunity to cross examine entry providers were given. The appellant has relied upon various judgements.

4.3.2 On careful consideration of the fact, it is seen that the appellant has carried out his transactions through Joindre Commodities Ltd and Ratanlal Somani, No transactions were conducted through the alleged entry providers RS Enterprises and Suruchi Trading. All documents regarding the transactions recorded in the books of accounts were made available to the AO.

Thus, it is a case of double addition as the details provided by Commodity Exchange to the AO were already recorded in the books of accounts and details of the same were matching. Therefore, the addition u/s 68 was unwarranted in this case and is directed to be deleted.”

5.1 Since the assessee has not entered into transaction with entities namely RS Enterprise and Suruchi Trading as alleged by the revenue, I decline to interfere with the order of the Id. CIT(A).

6. In the result, the appeal filed by the Revenue is dismissed and CO filed by the assessee is dismissed as infructuous.

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 13/11/2024

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