

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

सुश्री सुचित्राकाम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.587/Ahd/2020
निर्धारण वर्ष / Assessment Year : 2913-14

Devendra Thakershibhai Thakkar Prop. Of PRISM AGRI TRADELINK Ravjipura Nava Bazar, Bavla Tal: Dascroi Ahmedabad - 380 057	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-3(2)(1) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: AOSPT 8109 B		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Mehul Thakkar, AR
Revenue by :	Shri Rignesh Das, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/01/2025
घोषणा की तारीख /Date of Pronouncement: 09/01/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been filed by the assessee challenging the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 21.05.2018 for the Assessment Year (AY) 2013-14, wherein the CIT(A) partially upheld the addition made by the Assessing Officer [hereinafter referred to as "AO"] under Section 144 r.w.s. 145(2) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] by estimating the profit at 0.1% of the gross turnover after rejecting the books of accounts.

Facts of the Case

2. The assessee is an individual carrying on a wholesale trading business of rice and paddy in the name of Prism Agri Tradelink. The return of income was filed on 14/10/2013 declaring a total income of Rs.3,23,500/-. The case was selected for scrutiny under CASS due to the declaration of very low net profit compared to the high gross turnover. A show-cause notice dated 01/03/2016 was issued by the AO, but no response was received from the assessee. Hence, the AO proceeded ex-parte and rejected the books of accounts under Section 145(2) on the ground that they were incomplete and unreliable. The AO estimated the profit at 0.5% of the total turnover and made an addition of Rs.58,42,160/-. Further, the AO made an addition of Rs.29,28,066/- on account of the difference between sundry creditors and debtors and an addition of Rs.5,00,000/- as "other income." The total assessed income was Rs.92,18,346/-.

3. The assessee filed an appeal before the CIT(A) along with an application for admission of additional evidence under Rule 46A of the Income Tax Rules, 1962, submitting Sales and purchase registers, original bills and invoices, Bank statements, Stock details and supporting documents for expenses. The CIT(A) admitted the additional evidence and called for a remand report from the AO. The AO, in the remand report dated 20/02/2018, categorically stated that the books of accounts were duly verified, and no discrepancies were found. Despite the AO's findings in the remand report, the CIT(A) rejected the books of accounts and estimated the profit at 0.1% of the gross turnover. The CIT(A) relied on the judgment of Hon'ble Jurisdictional High Court in the case of **CIT v. Bholanath Poly Fab Pvt. Ltd.**

(355 ITR 290), holding that only the profit portion of any bogus transactions should be taxed. The CIT(A) thus reduced the addition to Rs. 11,68,431/- but did not provide specific reasons for rejecting the books of accounts despite the verification by the AO.

3. Aggrieved by the order of CIT(A) the assessee filed an appeal before us with following grounds of appeal:

1. *Both the Id. A.O. and Ld CIT(A) has erred in law in rejecting book results under section 145(2) of the IT Act, 1961 despite the fact that no adverse findings were brought out by the A.O. during remand proceedings.*
2. *Both, the Ld. AO has erred in estimating the income of the assessee @ 0.5% on the gross turnover and the Ld. CIT(A) further erred in estimating the income of the assessee @ 0.1% overlooking the facts mentioned in the remand report of the A.O. wherein trading activities of the appellant was thoroughly verified during remand proceedings and therefore there is no scope of attracting provisions of section 145(2) of the I.T. Act, 1961.*
3. *The appellant craves leave to add, alter or delete any ground either before or in the course of hearing of the appeal.*

Condonation of Delay

4. It was observed that there is delay of 880 days in filing an appeal before us. The assessee has filed an application for condonation of delay, supported by an affidavit explaining the reasons for the delay. The primary reason cited for the delay is that the assessee, who has limited educational qualifications, relied entirely on the assurances of Shri Jayeshbhai Ganatra, his former employer, who had opened the proprietorship firm Prism Agri Tradelink in the name of the assessee without his involvement in the firm's operations. It has been submitted that all transactions of the firm were conducted by Shri Ganatra, and the assessee was merely a signatory to the documents under instructions. The affidavit further explains that the assessee was repeatedly

assured by Shri Ganatra that all tax matters were being handled properly and that substantial relief had been granted by the higher authorities. It was only in November 2020, after conducting his own inquiries, that the assessee discovered that no appeal had been filed for the relevant assessment year before the tribunal. Upon this realization, the assessee promptly sought the guidance of CA Shri S.P. Thakker and filed the present appeal on 15 December 2020.

4.1. It is pertinent to note that a significant portion of the delay coincides with the COVID-19 pandemic period. The Hon'ble Supreme Court, through its judgment in Miscellaneous Application No. 21 of 2022 in Suo Motu **Writ Petition (C) No. 3 of 2020**, extended the period of limitation for filing appeals due to the unprecedented disruptions caused by the pandemic. The period from 15 March 2020 to 28 February 2022 has been specifically excluded while calculating the limitation period. Therefore, in the present case, nearly one-third of the delay falls within the COVID-19 period, which warrants a liberal approach in condoning the delay.

4.2. The Hon'ble Supreme Court in **Collector, Land Acquisition v. Mst. Katiji (167 ITR 471)** held that the expression "sufficient cause" must be interpreted liberally to ensure that justice is not denied due to procedural delays. Additionally, in **N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123**, it was held that if the delay is explained in a bona fide manner and does not indicate malafide intent, it should be condoned in the interest of justice. In the present case, the delay in filing the appeal has been sufficiently explained. The reasons for the delay are genuine and supported by an affidavit. Further, a significant portion of the delay coincides with the

COVID-19 period, during which the limitation period was suspended as per the directions of the Hon'ble Supreme Court. There is no indication of any malafide intent or undue advantage sought by the assessee.

5. During the course of the hearing, the Departmental Representative (DR) did not raise any objection to the condonation of delay. This strengthens the case for condoning the delay, as there is no adversarial stance taken by the revenue in this regard.

6. In view of the principles of substantial justice, the Hon'ble Supreme Court's directions regarding the COVID-19 period, and the facts of the case, we find it appropriate to condone the delay of 880 days. Accordingly, the delay is condoned, and the appeal is admitted for adjudication on merits.

On Merits

7. During the course of hearing before us the Authorised Representative (AR) of the assessee argued on the basis of key points relating to -

- Verification of Books of Accounts in the Remand Report by the AO.
- Summons to Sundry Creditors/Debtors by the AO.
- Contradiction in the CIT(A)'s Findings.

7.1. The AR stated that the AO, after thorough verification during the remand proceedings, found the following records to be complete and accurate:

- Sales register and purchase register

- Original invoices and bills
- Bank statements
- Stock details and evidence of expenses

7.2. The AR further stated that four parties were summoned by the AO for verification of transactions, and all appeared before the AO with original photo ID and confirmations, proving the genuineness of the transactions.

7.3. The AR also argued that the CIT(A) acknowledged that the missing details had been provided during remand proceedings and verified by the AO but still upheld the rejection of the books without valid reasons. The CIT(A)'s reliance on Bholanath Poly Fab Pvt. Ltd. (supra) was misplaced as no bogus transactions were identified in the assessee's case.

7.4. The AR emphasized that estimating income at 0.1% of the turnover without any cogent basis amounted to "pure guesswork," which is impermissible under settled law.

7.5. The AR placed relied on some judicial precedents including the following case laws:

- **Suresh Chand Talera v. CIT (MP HC) reported in 73 CCH 1034** where it was held that rejection of books is permissible only if they are incomplete or unreliable.
- **Pandit Brothers v. CIT (P and H HC) reported at (1954) 26 ITR 159** where it was held that Low profits alone cannot justify the rejection of books.
- **Dhakeshwari Cotton Mills v. CIT (SC) noted in 26 FIR 775:** Where Apex Court held that additions based on guesswork without evidence cannot be sustained.

- **Minal Intermediates (ITA No.594/Ahd/2023)** Where the Co-ordinate Bench decided that when the remand report accepts the genuineness of records, additions based on estimation are not justified.

8. The Departmental Representative (DR) relied on the orders of the Assessing Officer (AO) and CIT(A) and contended that the transactions of the assessee were found to be bogus and therefore rejection of books of accounts was justified.

9. We have considered the rival submissions, the orders of the Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [CIT(A)], and the material placed on record, including the submissions of the Authorized Representative (AR), and the copy of the FIR filed by Bank of Baroda against Shri Jalaram Rice Industries Pvt. Ltd. and its directors. We find that the AO rejected the books of accounts under Section 145(3), citing that they were incomplete and lacked supporting details, leading to an estimation of income at 0.5% of turnover. The CIT(A), while upholding the rejection, reduced the estimation to 0.1% of turnover based on judicial precedents. However, during remand proceedings, the AO verified the sales register, purchase register, original bills/invoices, bank statements, quantitative details of stock, and supporting evidence of expenses. The remand report categorically noted that all books and documents were duly produced and verified, and no discrepancies were observed. This raises a pertinent question—if the AO found the accounts complete and accurate during remand, the basis for rejecting the books of accounts in the assessment order loses its credibility. The FIR filed by Bank of Baroda alleges that Shri Jalaram Rice Industries Pvt. Ltd., through its directors, including Mr. Jayesh Tribhovandas Ganatra,

submitted false/fictitious details of book debts and siphoned off loan proceeds. The forensic audit report accompanying the FIR supports these findings and indicates a pattern of fraudulent conduct by the employer. The assessee has consistently maintained that all transactions in the name of Prism Agri Tradelink were controlled by his employer and that he derived no personal benefit from them. This FIR substantiates the assessee's submission that he was merely a signatory on the instructions of his employer and was not involved in any fraudulent activity. It also lends credence to his claim that his financial records were unrelated to the employer's alleged fraud and were verified as genuine during the remand proceedings.

9.1. The Hon'ble Supreme Court and various High Courts have consistently held that the rejection of books of accounts must be based on concrete findings and not mere conjecture or low profit ratios. In the present case, the AO's remand report verified all entries in the books of accounts, confirming their correctness. The CIT(A), however, relied on **CIT v. Bholanath Poly Fab Pvt. Ltd. (355 ITR 290)**, which held that only the profit element in a bogus transaction can be taxed. However, the CIT(A) failed to demonstrate how the transactions recorded in the assessee's books were bogus, especially in light of the AO's verification report that found no discrepancies.

9.2. The DR argued that the transactions were fictitious based on the findings of the lower authorities. However, we find that there is no substantive evidence to support this claim. The AO's own verification contradicts the initial assumption of fictitious transactions. The AR demonstrated that all purchases and sales were accounted for and supported

by valid documents, which the AO found to be correct. Further, the **recent decision of the Co-ordinate Bench in DCIT v. Minal Intermediates (ITA No. 594/Ahd/2023)** held that when the AO accepts the genuineness of sundry creditors in the remand report, no addition can be made on mere suspicion or unsubstantiated assumptions.

9.3. It is a settled legal principle that estimation of income must be based on facts and cannot be arbitrary or excessive. The Hon'ble Supreme Court in *State of Orissa v. Maharaja B.P. Singh Deo* (76 ITR 690) held that assessments must be based on relevant material and not conjecture. Similarly, in *CIT v. J.J. Enterprises* (122 Taxman 124), the Court disapproved of arbitrary estimations without cogent reasons.

9.4. In this case, the estimation of income at 0.5% and subsequently 0.1% by the AO and CIT(A), respectively, was not justified when the books of accounts were accepted as complete and accurate during the remand proceedings.

9.5. In view of the above findings the rejection of books of accounts under Section 145(3) is held to be unsustainable, as the AO's remand report established that the books were complete, supported by evidence, and free from defects. The FIR and forensic audit further corroborate the assessee's claim that he had no control over the transactions and was merely a signatory under his employer's instructions. The arbitrary estimation of income by the lower authorities is set aside. Accordingly, the additions made to the assessee's income are deleted and in the result the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 9th January, 2025 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 9/01/2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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