



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,
RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

**आयकर अपील सं./ITA No.101/RJT/2024
(निर्धारणवर्ष / Assessment Year: (2010-11))**

(Physical Hearing)

Pareen Riaz Dosani Verad naka Bahar Road, Bhanvad, Gujarat 360510	Vs.	Income Tax Officer Ward – 1, Dwarka
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMUPD9716C		
(Assessee)		(Respondent)

Assessee by : Shri Chetan Agarwal & Shri Brijesh Parekh,
A.Rs.
Respondent by : Shri Abhimanyu Singh Yadav, Sr.. DR
Date of Hearing : 10/10/2024
Date of Pronouncement : 07/01/2025

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AYs) 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short ‘NFAC/Ld. CIT(A)’], dated 20.10.2023, which in turn arises out of an assessment order passed by the Assessing Officer (in short ‘assessing officer’) u/s 144 r.w.s. 263 of the Income tax Act, 1961, dated 29.09.2021.



2. The grounds of appeal raised by the assessee are as follows:

“1. Ld. CIT (A) has erred in law as well as on fact in upholding addition of Rs. 23,28,800/- u/s. 68 made by ld.assessing officer in order passed u/s 144 r.w.s 263 being cash deposited in bank account.”

3. The appeal filed by the assessee, for Assessment Year 2010-11, is barred by limitation by 65 days. The assessee has moved a petition requesting the Bench to condone the delay. The Ld. Counsel for the assessee, submitted that because of the mistake of the Chartered Accountant, the delay of 65 days, has occurred. On the other hand, Learned DR for the revenue, did not have any objection, if the delay is condoned. We heard the party on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

4. Succinctly, the factual panorama of the case is that assessee before us is an Individual and the return of income for the assessment year (A.Y.) 2010-11 was e-filed by the assessee, on 16/06/2013, declaring total income of Rs. 1,66,230/-, Subsequently, the case of assessee was reopened u/s.147 of the Act and the reassessment was finalized u/s 143 (3) r.w.s. 147 of the Act, vide order dated 22/12/2017, by the erstwhile assessing officer, after rejecting book result disclosed by the assessee and estimating gross profit 95% of the turnover and thereby making addition of Rs.83,454/- and accordingly income was assessed at Rs. 2,49,684. Further, in this case, order u/s 263 of the Act, was passed by Pr.CIT. Jamnagar on 05/09/2019 (after giving opportunity of being heard to the assessee) wherein the above reassessment order dated 22/12/2017 was held erroneous and prejudicial to the interest of revenue and therefore the



same was set aside with a direction to make a fresh assessment after giving opportunity to the assessee.

5. The set aside assessment proceedings were transferred to National Faceless Assessment Centre due to launching of Faceless Assessment Scheme-2021. On verification of bank account of assessee maintained with Bank of India bearing account No. 326210100014083, it has been found that the assessee has made cash deposit of Rs. 23,28,800/- in the above account during F.Y.2009-10. As per the provisions of section 68 of Income Tax Act, 1961, if any sum is found credited in the books of an assessee, the onus lies on the assessee to prove the genuineness of the sum with supporting evidences. Therefore, assessing officer held that the assessee has failed to establish the genuineness of his business activities and failed to establish the source of cash deposit in her bank account. In view of above facts and discussions, the source of cash deposit amounting Rs. 23,28,800/- (in the bank account of assessee) was considered by the assessing officer as unexplained and hence the same is added to the total income of the assessee u/s 68 of the I.T.Act, 1961.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the assessing officer. The Ld. CIT(A) has just reiterated the findings of the assessing officer and sustained the addition made by the assessing officer. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

7. The Learned Counsel for the assessee submitted that during the original assessment proceedings, the assessee submitted entire documents and



evidences, which is evident from the order of the original assessment u/s.143(3) r.w.s. 147 of the Act dated 27.12.2017. The relevant part of the assessment order is reproduced below:

“3. During the course of assessment proceedings, the assessee has furnished trading account, profit and loss account, balance sheet etc. Therefore, vide order sheet entry dated 08/12/2017, the assessee was requested to produce the supporting documentary evidence of the purchases/sales, opening stock, closing stock etc. declared in the trading account. The assessee attended on 11/12/2017 and has furnished only zerox copies of some order estimate form. The A.R. of the assessee has further stated that he is not in a position to furnish any further documentary evidence in respect of sales, purchase etc. In the absence of any further supporting documentary evidence, the gross profit declared by the assessee is not found acceptable. It is also worth noting that all the purchases and sales had been done in cash. No quantitative details has been furnished. Even the sales and purchases are not fully supported by bills. In the circumstances, the book result disclosed by the assessee is rejected and gross profit is estimated at 9.5% of the turnover i.e. Rs.2,60,086/-. The assessee has already declared G.P. of Rs.1,76,632/. Therefore, the remaining amount of Rs.83,454/- is added to the total income. Penalty proceedings are initiated separately u/s 271(1)(c) of the Income-tax Act, 1961 for furnishing inaccurate particulars of income.”

8. Therefore, ld. Counsel for the assessee contended that the gross profit estimated by the assessing officer in the original assessment proceedings may be sustained in the hands of the assessee.

9. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. We have given our thoughtful consideration to rival contention. Case file as well as paper books perused with the able assistance of learned Counsel representing the assessee and the Revenue. We find that assessee is an individual, engaged in business of trading of jaggery(gur) and filled return of income u/s 148 dated 07.12.2017. the assessment framed u/s. 143(3) r. w. s. 147 of the Act dated 22.12.2017 by determining income at



Rs.2,49,684/-, in which the assessing officer has rejected the books of accounts and estimated profit @9.5% of cash deposit in bank account. During the course of original assessment u/s 143(3) r.w.s 147 of the Act, assessee has submitted trading account, profit & loss account, balance sheet and copies of order estimate forms for purchase sale for verification of assessing officer. Subsequently assessee`s case was selected for review by Pr. CIT, Jamnagar and Pr. CIT, had passed the order u/s. 263 for reframing the assessment by setting aside the original assessment made u/s. 143(3) r.w.s. 147 of the Act, by the assessing officer. The assessing officer, while giving the appeal effect of the order under section 263 of the Act, made the entire addition of the cash deposit to the tune of Rs. 23,28,800/-, therefore, the assessee is in further appeal before us.

11. We find that assessee is actually engaged in retail business of jaggery (gur) and in course of assessment, trading account, profit and loss account, balance sheet and sample copies of order estimated forms in course of business were submitted, before the assessing officer. The assessee`s business is cash oriented- retail business of jaggery (gur), where the customer pays cash, thus, such cash was deposited in the bank account by the assessee, therefore in the bank account of the assessee, only the sale proceeds of assessee`s business were deposited, the assessee does not do any other business, therefore entire cash deposited in the bank account should not be taxable and only the profit element should be taxable. The retail sale of jaggery cannot be expected through banking mode and also assessee had purchased jaggery in cash from time to time, as there was sufficient cash balance on hand to make purchases of jaggery. We also find that the fact of non-availability of purchase and sales bills were itself known to the assessing officer at the time of original



assessment and then only the estimation of gross profit @9.5% was taken place by framing the assessment u/s. 143(3) r.w.s. 147 by rejecting the books of accounts of the assessee. We do not find any infirmity in the findings of the assessing officer in the original assessment proceedings u/s.143(3) r.w.s. 147 of the Act dated 27.12.2017.

Thus, the book result disclosed by the assessee was correctly rejected and gross profit was estimated at 9.5% of the turnover, that is, Rs.2,60,086/-. The assessee has already declared G.P. of Rs.1,76,632/-. Therefore, the remaining amount of Rs.83,454/- (Rs.2,60,086- Rs.1,76,632) should be added to the total income of the assessee. Therefore, appeal of the assessee is partly allowed.

12. In the result, appeal filed by the assessee, is partly allowed in above terms.

Order is pronounced in the open court on 07/01/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date:07/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot