



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
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.704& 766/RJT/2010

निर्धारण वर्ष /Assessment Year : 2003-2004

Shri Chandresh K Dhandha Prop. Of M/s Uma Textile processors, Jetpur		The Assistant Commissioner of Income-tax, Circle-1, Rajkot
Deputy Commissioner of Income-tax, Circle-1, Rajkot, Aayakar Bhavan, 5 th Floor, Room No.508, Race Course Ring Road, Rajkot- 360 001	बनाम Vs.	Shri Chandresh K Dhandha Prop. Of M/s Uma Textile processors, Bhadar Road, Gondal Darwaja, Jetpur
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. ADNPD 2830 R		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.705& 767/RJT/2010

निर्धारण वर्ष /Assessment Year : 2004-2005

Shri Chandresh K Dhandha Prop. Of M/s Uma Textile processors, Jetpur		The Assistant Commissioner of Income-tax, Circle-1, Rajkot
Deputy Commissioner of Income-tax, Circle-1, Rajkot, Aayakar Bhavan, 5 th Floor, Room No.508, Race Course Ring Road, Rajkot- 360 001	बनाम Vs.	Shri Chandresh K Dhandha Prop. Of M/s Uma Textile processors, Bhadar Road, Gondal Darwaja, Jetpur
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. ADNPD 2830 R		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)



आयकरअपीलसं./ITA No.706/RJT/2010
निर्धारण वर्ष /Assessment Year : 2005-2006

Shri Chandresh K Dhandha Prop. Of M/s Uma Textile processors, Jetpur	बनाम Vs.	The Assistant Commissioner of Income-tax, Circle-1, Rajkot
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. ADNPD 2830 R		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/Assessee by : Shri Vimal Desai, AR
राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, CIT-DR

सुनवाईकीतारीख/**Date of Hearing** : **17/10/2024**
घोषणाकीतारीख/**Date of Pronouncement** : **13/01/2025**

आदेश/Order

Per Bench,

This is bench of five appeals, out of which four cross-appeals are for assessment years (AYs) 2003-04 and 2004-05 and one appeal in ITA No.706/RJT/2010 is filed by assessee for AY 2005-06, all are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-1, Rajkot [in short 'Ld. CIT(A)'] all dated 16.12.2009, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 31.03.2006, 29.12.2006 and 26.12.2007, respectively.

2. Since the issue involved in four cross-appeals consisting appeals filed by the assessee and Revenue and assessee's appeal ITA No.706/RJT/2010 contained identical, and common issues, therefore, we



have clubbed these five appeals and heard together and a consolidated order is being passed to avoid the conflicting decisions.

3. The facts as well as grounds of appeals narrated in assessee's appeal ITA No.704/RJT/2010 for AY 2003-04 have been taken into consideration for deciding these appeals *en masse*.

4. The assessee, in ITA No.704/RJT/2010 has raised the following grounds of appeals:-

"1. The assessment order is bad in law.

2. The learned Assessing Officer has erred in law as well as on facts in rejecting the books of accounts u/s 145(3). The Id. CIT(A) has erred in confirming it.

3. The learned Assessing Officer has erred in law as well as on facts in estimating GP @ 15% and thereby making addition of Rs.5,00,64,597/- to the income of the appellant. The Id. CIT(A) has erred in confirming the addition to the extent of Rs.3,33,76,398/- by estimating GP @ 10%.

4. The Id. AO has erred in law as well as on facts in treating unsecured loans of Rs.1,88,17,540/- as unexplained. The Id. CIT(A) has erred in confirming it.

5. The learned Assessing Officer has erred in law as well as on facts in making addition of Rs.3,15,86,798/- on account of peak investment in bank account alleged to be unexplained. The Id. CIT(A) has erred in confirming it.

6. The Id. CIT(A) has erred in law as well as on facts in not adjudicating up the request of the appellant offset off (telescoping) of GP addition against cash credit/bank deposits.

7. The Id. CIT(A) has erred in law in not appreciating that in the facts and circumstances of the case no other addition except earnings from duty ought to have been made.

The appellant craves leave to add, alter amend, delete or withdraw one or more grounds of appeal."

5. The grounds of appeal raised by the Revenue in ITA No.766/RJT/2010, are as follows:



"1)The learned CIT(A)-1, Rajkot, has erred in law and/or on facts in granting relief of Rs.1,66,88,199/- out of addition of GP (Rs.5,00,64,597/- less Rs.3,33,76,398/-).

2)The learned CIT(A)-1, Rajkot, has erred in law and on facts in deleting the addition of Rs.1,00,07,872/- made on account of unaccounted income in respect of evasion of customs duty.

3)On legal and factual status of the case, the learned CT(A), ought to have upheld the order of the Assessing Officer.

4) It is, therefore, prayed that the finding given in the order of the Id.CIT(A) may be dismissed/deleted and that of the assessing officer be restored.

5) Your appellant reserves the right to add, alter, withdrawn any/all grounds of appeal."

6. Succinct facts qua the issue are that the return of income was filed by the assessee on 29.11,2003 declaring loss of Rs. 17,52,15,160/-. The return was processed u/s. 143(1) of the I.T. Act on 28.01.2004 without any modification. Later on, assessee`s case was selected for scrutiny and notices u/s 143(2) of the Act, was issued on 17.11.2004 and 20.06.2005 which were served on the assessee, on 21.11.2004 and 23.06.2005. In response to these notices, Shri. Chandresh K. Dlianda, assessee himself attended, however, no details relating to his assessment were furnished.

7. Brief facts of the case as borne out from the investigation made by the DRI and the show cause notices issued by the DRI are as under:

DRI, Zonal Unit, Ahmedabad had carried out investigation in respect of M/s. Uma Textile Processors, Jetpur (100% EOU) on the basis of intelligence that the said unit was diverting raw materials procured duty free for the purpose of manufacture of goods meant for export into the local market without subjecting the same to the process at the unit itself and also that fictitious transactions: were being effected in the guise of the deemed export. The assessee has effected clearances for deemed export/physical export to the tune of Rs. 44.07 crores. The total Central Excise Duty involved in these transactions are reported to be Rs. 98.65 crores. On investigation, it was found by the DRI that most of these clearances were fictitious. Various modes by which the fictitious clearances were shown by the assessee have been enlisted by the DRI. On enquiry with



transporters as well as with the parties through whom deemed exports have been made, the DRI has come to the conclusion that the assessee was involved in diverting most of the goods manufactured out of imported and indigenously procured raw material and cleared in the guise of deemed exports/physical exports, into the local market. Thus, the DRI has demanded duties to the tune of Rs. 198.55 crores from the assessee.

As seen from the show cause notice, the assessee has involved in fake clearances of deemed exports during the period 28.06.2002 to 17.06.2003, During F.Y. 2002-03, the deemed exports were amounted to Rs. 32.06 crores and in the F.Y. 2003-04 it amounted to Rs. 7.87 crores. The show cause notice described the modus operandi of the assessee employed in clearances of all these goods. The evidences collected against the assessee are also discussed in detail. Total 17 clearances have been made in F.Y.2002-03 and remaining six transactions pertain to F.Y. 2003-04

As seen from the above facts, it appears that the assessee must have made huge profits by diverting the imported and indigenous raw material procured duty free to the local market by selling the same at the prevalent market rate. Apparently, the assessee has not declared the profits made by him in these transactions. Instead, it had declared a loss of Rs. 17.52 crores in his business as stated earlier which is unbelievable considering the facts and material collected by the DRI. The assessee has transacted with 23 parties in respect of deemed export. Only one party M/s. Devyani Processors Pvt. Ltd., Jetpur is a local export company. The details of transaction with M/s. Devyani Processors Pvt. Ltd., Jetpur are discussed at Paragraph 69 of the show cause notice. The assessee is stated to have procured the raw material from M/s. Devyani Processors Pvt. Ltd. @ Rs. 125/Meter and the finished goods made out of this have been cleared @ around Rs. 20 to Rs. 25 per Meter to the same party which is prima facie unbelievable. In this transaction, the assessee has incurred at least a loss of Rs. 5.04 crores (sale price less than the purchase price to that extent), on enquiry, it was noted that no transport particulars could be furnished by both the parties i.e. seller and purchaser. The DRI has concluded that the said goods have been diverted clandestinely in the local market without payment of duty and without permission of the proper officer. From Income-tax angle, it can be presumed that the assessee must have made huge profits by selling the imported and processed material into local market.

The assessee has manipulated in the physical export transaction also. The 100% duty free imported material quantity 25000 metres worth Rs. 13.59 lakhs were never exported as verified by DRI from the clearances shown by the assessee. In respect of physical export of 4 consignments of polyster fabrics to M/s. Harshil Trading at UAE also, the assessee has misdeclared the goods quality as well as indulged in over-invoicing. The values declared at the port of loading and at the port of shipment are different. The difference in the value declared at India and at Dubai amounted to Rs. 32.20 lakhs and Rs. 50.91 lakhs.

Thus, the assessee appears to have employed the method of under-invoicing in respect of deemed exports resulting in loss in the purchase-sales transactions whereas in the physical exports he has resorted to over-invoicing to show that the standard quality material has been exported whereas actually the exported material was found to be of sub-standard quality i.e. old and used oven dyed fabrics made out of old/used sarees and GSM instead of Polyster Viscos dyed and printed fabrics which was declared to have been exported."



8. During the assessment proceedings, the assessee did not file the entire documents and evidences and explanation, as required by the assessing officer, therefore, the assessing officer, after considering the part reply of the assessee, noticed that the assessee has sold goods worth Rs.33,37,63,982/- on which the assessee has evaded excise duty by diverting the said goods meant for export to local markets which would have earned certain amounts of additional profits on the sales made by the assessee. The normal gross profit in this export business at Jetpur is around 10% as verified from various cases assessed with this circle who are in the export of textile business. Some of the instances are as under:

Company	GP for AY 03-04
Jay Exports	8.70%
Royal Impex	12.50%
Bharti Exports	6.68%

9. Therefore, assessing officer held that the assessee would have earned additional profit on sale of goods in local market due to evasion of excise duty on the indigenous raw material. It was estimated by the assessing officer that the assessee has earned GP @ 15% on the total sales of Rs.33,37,63,982/- which works out to Rs.5,00,64,597/-. Accordingly, an amount of Rs.5,00,64,597/- was taxed as unaccounted & undisclosed income of the assessee from his business.



10. Aggrieved by the order of assessing officer, the assessee carried the matter in appeal before Ld. CIT(A), who has partly deleted the addition made by the assessing officer observing as follows:

"10. I have carefully considered the issue. So far as claim of the appellant that Mr. Chovatiya was actually the culprit was concerned, it may be pointed out that merely by saying that someone else is responsible for all the wrong doings in the name of the appellant cannot absolve the appellant from the consequences of wrong act unless some credible evidence is produced. No such evidence was produced at any time. If the showcause notice of the DRI is gone through properly, it is seen that time and again statement of the directors of M/s. Devyani processors Pvt. Ltd. (who are Chovatiyas) as well as the appellant was recorded and at no point of time earlier ever the appellant had replied that he was not involved and everything was being done at the instance of Chovatiyas. On page 44 the AO has mentioned that even summons were issued to them, but no one had attended. He has again pointed out that assessee was clearly involved clandestinely sale of imported material in the local market. In fact if show cause notice of DRI is seen when appellant was asked about supply of goods to M/s. Devyani Processors Pvt. Ltd. against CT-3, he stated that payment was adjusted against credit adjustment in their ledger, as they had also received raw material from the said concern. Nowhere he ever blamed that Chovatiyas were the actual persons who were doing all these transactions. The fact is that when the burden of assessment started coming on to the appellant, he has started taking names of various persons though the present business is being run by him and he was the in-charge of everything, when DRI was searching the premises. Thus, without any evidence the claim that somebody else has done all these wrong cannot be accepted. It has also been shown clearly by the AO that in the books of accounts which are manipulated, sales have been shown at a much lower rate than purchases to evade tax. However, there is in the plea of the appellant that his sales figures are unreliable. In fact the AO should have worked out profit on the basis of purchases which has actually been shown in the books of accounts as they cannot be denied, as most of them imported raw material. However, applying a GP rate on the basis of sales is also a method and same method may be applied. There is also merit in the plea that if such rate is adopted the extra addition of Rs.1,00,07,872 being the amount of custom duty saved / premium earned should not have been added separately because when profit rate is



applied, the same shall be included in it. I find that though this year separate addition for custom duty has been made, but in next asstt. year the same has been considered as part of estimated gross profit. Therefore, there is merit in the plea that only one addition has to be made. It is seen that on page 47 of the asst. order for A.Y. 2003-04 the AO has himself mentioned that normal gross profit rate of 10% in textile business is to be adopted. However, he has finally adopted a GP rate of 15%. The reasons for that are not clear. Therefore, addition is restricted to 10% which also happens to be almost the average gross profit rate of other concerns noted by the AO on total sales and therefore, this addition would be restricted to Rs.3,33,76,398 and it would include the extra income earned on account of custom duty. Thus, separate addition of Rs.1,00,07,872 for A.Y. 2003-04 is deleted and addition of Rs.5,00,64,597 on account of working out profit at 15% is restricted to profit @ 10% and the addition sustained would be Rs. 3,33,76,398 (5,00,64,597 – 3,33,76,398)."

11. Aggrieved by the order of Ld. CIT(A), the assessee and Revenue, both are in appeal before us.

12. The assessee is in appeal against the addition sustained by Ld. CIT(A) @ 10% to the tune of Rs.3,33,76,398/- *whereas* Revenue is in appeal in respect of addition deleted by Ld. CIT(A) to the tune of Rs.1,66,88,199/-.

13. The Ld. Counsel for the assessee submitted that books of account of the assessee were rejected without any valid reasons. The Ld. Counsel for the assessee also stated that in the entire assessment order, the Assessing Officer has discussed the fake export. The Assessing Officer has



not doubted the purchases made by the assessee when the purchases are genuine then sales made by the assessee against the purchases are going to be genuine and no cash transaction has been noticed by the Assessing Officer in the entire assessment order and there is no mention by the Assessing Officer in respect of other assets found and thus, the entire addition was made by the Assessing Officer based on the external report and Assessing Officer did not conduct independent inquiry from his part. Therefore, Ld. Counsel for the assessee contended that addition made in the gross profit @ 15% in assessee's case is very higher side. Besides, the addition is normally made based on the net profit and not based on the gross profit ratio, because after deducting the indirect expenses from the gross profit, the net profit is arrived at, therefore, the Assessing Officer should have estimated the income of assessee based on the net profit and on the gross profit. The Ld. Counsel also stated that in assessee's case there is loss and there is no net profit therefore, net profit should be estimated at lower side, as compared @ 15% gross profit estimated by the Assessing Officer.

14. The Ld. Counsel for the assessee also submitted that since in assessee's case gross profit addition was made after rejection of books of accounts. Therefore, other addition should not be made in the hands of assessee and for that Ld. Counsel for the assessee relied on the following judgments:



- CIT vs. Dulla Ram, Labour Contractor [2014] 42 taxmann.com 349 (P&H)
- ACIT vs. Shri S. Moorthy ITA No.3091/CHNY/2019 dated 10.03.2021
- Elcon Drugs & Ltd. vs. JCIT ITA No.299/JP/2020 dated 14.12.2022

15. Therefore, Ld. Counsel for the assessee contended that the estimate addition made by the Assessing Officer is on higher side and therefore it should be restricted to a reasonable extend. The Ld. Counsel submitted that since Assessing Officer made estimated addition @ 15%, however, on appeal, the Ld. CIT(A) restricted the addition @ 10% of the gross profit. However, the assessee has incurred losses in two assessment years, hence, there is no profit in the hands of assessee, therefore, estimated addition sustained by Ld. CIT(A) @ 10% should be reduced further.

16. On the other hand, Learned CIT-DR for the Revenue, argued that assessee made fake export as highlighted by DRI report. The Ld.CIT-DR stated that all the vehicles, which were carried the goods from one place to another were owned fake numbers and this fact came to know, when these vehicles were examined by the report of RTO, then all the vehicles numbers mentioned by the assessee were found false. By doing the fake export, the assessee avoided the payment of due tax to government. The Ld. CIT-DR also stated that Assessing Officer during the assessment proceedings has questioned the sales that sale / export made to other parties were not genuine, however, purchases made by assessee were not questioned by the Assessing Officer. During the assessment



proceedings, the Assessing Officer, asked the assessee to file the required documents and evidences, and to produce the real person who has done the transaction on behalf of the assessee, however, the assessee has failed to do so. The assessee's bank accounts were fake and export sale was also fake. Therefore, the books of account cannot be relied and hence, the Assessing Officer has rightly rejected the books of account of assessee. The Ld. CIT-DR for the Revenue also pointed out that in assessee's case, the gross profit addition @ 15% is not sufficient even the entire addition should be sustained in the hands of the assessee.

17. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. We note that during the assessment proceedings, the assessee did not submit the entire and required documents and evidences before the assessing officer and explanation thereof, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee and arguments advanced by the Id. Counsel for the assessee and Ld. DR for the Revenue. We note that during the assessment proceedings before the Assessing Officer, the assessee submitted that someone else has made the transaction on behalf of the assessee (him), however, neither the assessing officer insisted nor the assessee submitted address of that



person, who has carried out the transactions. Merely by saying that someone else is responsible for all the wrong doings in the name of the assessee cannot absolve the assessee from the consequences of wrong act unless some credible evidence is produced by the assessee about that someone else, person. Thus, assessee needs to produce evidence about somebody else who has done all these wrong on behalf of the assessee. The assessee did not bring that person before the assessing officer to confront the issue. It is assessing officer's duty to bring that person by way of issuing the notice u/s 131 of the Act, and should have recorded the statement of that person, during the assessment proceedings, who has done the transaction on behalf of the assessee. The Assessing officer should have sustained the addition in the hand of that person or should have made at least protective addition in the hands of that someone else, person. However, assessing officer has failed to do so.

18. We also note that during the assessment proceedings, the assessee has submitted incomplete details and that too very late, so assessing officer did not get an opportunity to verify them properly. The reply of the assessee, in response to the various notices issued by the Ld. AO, are as follows:

ITA-704 & 766/RJT/2010 For AY-2003-04		
Date of notice	Requisite information	Reply
Notice-1 (17/11/2004)	Details regarding unsecured loans & creditors	Submitted return of income in one of the creditors and stated does
Notice-2	Details regarding unsecured	



(20/06/2005)	loans & creditors	not know any other people
ITA-705 & 767/RJT/2010 For AY-2004-05		
Notice-1(25/07/2005)	Details regarding unsecured loans & creditors	Attended but did not furnish details and Documents before AO.
Notice-2(28/09/2006)	Details regarding unsecured loans & creditors	
ITA-706/RJT/2010 For AY-2005-06		
Notice-1(25/09/2006)	Details regarding unsecured loans & creditors	AR appeared but submitted incomplete details
Notice-2(18/09/2007)	Details regarding unsecured loans & creditors	

19. From the above details, it is vivid that neither assessee got the opportunity to plead his case before assessing officer nor assessing officer conducted proper inquiry. The Assessing officer noted that proper details and documents required were not submitted by the assessee, therefore, assessing officer could not make proper examination and scrutiny of the assessee`s case, hence, it is violation of principle of natural justice. We note that the Hon`ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of nemo judex in parte sua (no person shall be a judge in his own case) and audi alterem partem (the right to



be heard). It has been pointed out that the aim of natural justice is to secure justice.

20. We find that the AO has noted that the assessee did not cooperate in the assessment proceedings, and assessee also did not get proper opportunity to plead his case successfully before the assessing officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. For that reliance is placed on the judgement of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC) wherein the Hon'ble Supreme Court has held as under:

"It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of



the assessee. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as afore-stated."

21. In such a scenario in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra), we set aside the order of the Ld. CIT(A) and remand the matter back to the file of Assessing Officer for de novo assessment and to decide the matter in accordance to law.

22. For the reasons given above, we are of the view that the order of the CIT(A) on this issue in respect of all appeals, requires to be set aside and the issue needs to be looked into afresh by the Assessing Officer in the light of the observations as set out above. We hold and direct accordingly. The Assessing Officer will afford opportunity of being heard to the Assessee before deciding the issues, involved in these five appeals. The Assessee will also be at liberty to let in further evidence to substantiate it's case. For statistical purpose, all these appeals of the Assessee and Revenue are treated as allowed.



21. In the result, all the appeals of the Assessee and Revenue (in IT(SS)A No.704,705,706,766,767/Rjt/2010) are allowed for statistical purposes.

Order is pronounced in the open court on 13/01/2025

Sd/-

(DINESH MOHAN SINHA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट/Rajkot

दिनांक/ Date:13/01/2025

आदेश की प्रतिलिपि अत्रेणित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

Sd/-

(DR. ARJUN LAL SAINI)

लेखा सदस्य/**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot