

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE
BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1385/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Rathod Jewellers, 660 Raviwar Peth, Pune- 411002 Maharashtra PAN: AAFFR5463H	Vs.	ACIT, Central Circle-2(3), Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by:	Shri Suhas Bora
Department by:	Shri Arvind Desai, Addl CIT DR
Date of hearing:	25-11-2024
Date of Pronouncement:	21-02-2025

आदेश / ORDER

PER MS. ASTHA CHANDRA, JM:

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), Pune ["CIT(A)"] dated 24.04.2024 pertaining to Assessment Year ("AY") 2017-18.

Briefly stated the facts are that the assessee is a Partnership Firm, engaged in the business of retail trading of jewellery. For A.Y. 2017-18, the assessee filed its original return of income on 28.10.2017 declaring total income of Rs. 4,91,23,140/- The case was selected for scrutiny under CASS and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (**"The Act"**) on 16.11.2019 accepting income returned by the assessee. Subsequently, based on the information available with the "Ld. Assessing Officer (**"AO"**)", the case of the assessee was re-opened by issue of notice u/s 148 of

the Act on 31.03.2021. In response there-to, the assessee filed its return of income on 28.05.2021 declaring the same income as was declared in the original return of income.

2.1 The reasons recorded by the Ld. AO for reopening are that based on the information available, he found that during the demonetization period, M/s AB Agrotech Pvt. Ltd., had deposited cash of Rs. 2.33 crores in its Bank Account maintained with Janta Sahakari Bank, Mumbai and this cash was specifically transferred to various beneficiaries including the assessee to the tune of Rs. 10,00,000/- This cash was deposited on the direction of Shri Atul Bora , Director of M/s AB Agrotech Pvt. Ltd. During the assessment proceeding in the case of M/s AB Agrotech Pvt. Ltd., for A.Y. 2017-18, It was found that the Company, M/s AB Agrotech Pvt. Ltd. had filed its return of income till A.Y. 2011-12 only and thereafter it was claimed to be struck off. The Ld. AO further found that, though Shri Atul Bora, director of M/s AB Agrotech Pvt. Ltd. had left the Directorship he was still operating the Bank Accounts of the Company and the cash deposits were made under his directions. During the assessment proceedings in the case of M/s AB Agrotech Pvt. Ltd., Shri Atul Bora was summoned and his statement was recorded u/s 131 of the Act wherein he stated that the source of cash deposit during the demonetization period was cash in hand and withdrawals from Bank Account of the Company. However, on perusal of the financials of M/s AB Agrotech Pvt. Ltd. , the Ld. AO found that the cash in hand of the Company account was only of Rs. 87,000/- in the last return filed for A.Y. 2011-12. He further noted that though the Company was suffering from financial crisis and was not in a position to file the return, but it was holding cash in hand of crores of rupees.

2.2 Based on the above, the Ld. AO formed a belief that certain income in the case of assessee firm i.e. M/s Rathod Jewellers

had escaped assessment for A.Y. 2017-18. Consequently after recording the reasons that income had escaped assessment and obtaining the approval of the competent authority, the case of the assessee was reopened on 31.03.2022 u/s 147 of the Act. Statutory notice(s) u/s 143(2)/142(1) were issued and served on the assessee along with questionnaire specific to the case. The assessee furnished its response from time to time before the Ld. AO. The Ld. AO assessed the income of the assessee at Rs. 5,01,23,140/- by making an addition u/s 68 of the Act amounting to Rs. 10,00,000/- on account of unexplained cash credit, vide his order dated 29.03.2022 passed u/s 143(3) r.w.s. 147 of the Act, based on the observations and findings recorded by him, the relevant extract of which is reproduced below:

“7.2 Rebuttals: As per the information contained in the letter sent by the DCIT Circle-5, Pune, the above said company I.e., M/s. AB Agrotech Pvt. Ltd, had filed its latest return for A.Y.2011-12 and thereafter no return has been filed and the company was claimed to be strike off. Therefore, if at all the alleged amount of Rs. 10,00,00/- was advance by M/s. AB Agrotech Pvt. Ltd for the purchase of the jewellery as argued by the Assessee, this amount should have been reflected in the ROI and financial statement of M/s. Agrotech Pvt. Ltd. But the fact that the company M/s. AB Agrotech Pvt. Ltd. is non-filer since A.Y. 2010-11 and only its bank account operations are being done and that too by the persons who have already left the Directorships is itself proves that the transaction under consideration is dubious one. Further, as per the last return filed, the cash in hand of the Company, M/s. Agrotech Pvt. Ltd. was noted to be of Rs.87,000/-only. As regards to the bill of sale of jewellery as submitted by the Assessee, on perusal of the same it is found that the bill has been issued in the name of Shri. Atul Bora whereas the money was transferred from the company's account. Therefore, the conclusion drawn by the AO while finalizing the assessment in the case of

M/s. Agrotech Pvt. Ltd. seems to be very logical and therefore proves it beyond doubt that the Assessee has received its own accounted money through the above said entity.

“8.2 Rebuttal: The Company M/s. AB Agrotech Pvt. Ltd. had filed its last return for the A.Y.2011-12. In the return of income filed for A.Y.201-12 the company had shown total cash in hand amounting to Rs.87,000/- only. Further during the Demonetization period in the month of November 2016, M/s. AB Agrotech Pvt. Ltd. had deposited cash of Rs.2,33,40,000/- in its bank account. Shri. Atul Bora, the key person associated with M/s. AB Agrotech Pvt. Ltd. had accepted in his statement that the company was in financial crisis therefore he could not file the return of income.

It is pertinent to mention here that, Shri. Atul Bora, director of the company M/s. AB Agrotech Pvt. Ltd. had accepted that the company was in financial crunch and therefore could not file the return. Then it is surprising to see how the cash amounting to Rs.2.50 Cr was deposited in its bank account. From the statement of Shri. Atul Bora, it can be seen that, he had deposited the cash in the company's account on various dates and on the same day he had transferred almost the same amount to the concerned parties. With respect to the case of the assessee, Shri. Atul Bora had deposited cash of Rs.8,97,000/- In the Janta Sahakari Bank on 19/11/2016 and the same day amount of Rs. 10,00,000/- was transferred to the bank account of M/s. Rathod Jeweller. Here the assessee has argued that the transaction has happened with Shri. Atul Bora in regular course of business and the captioned amount of Rs. 10,00,000/- was an advance received by the assessee for the sale of jewellery by Shri. A Bora in an individual capacity assessee has rolled bills generated for that of Shri. Atul Bora. It is MENTAL DEPARTMENT of this the In the name Jewellery here that, generating a bill doesn't justify that the sale transaction booked by the assessee is a genuine one. Secondly, the assessee is based in Pune and Shri.

Atul Bora is based in Mumbai, then it is surprising to see that how can he might have taken an interest in purchasing a jewellery from a Pune based jeweller. Further, this was the only transaction executed by the assessee with Shri Atul Bora and that too during the time period of demonetization. A assessee has also argue that the financial condition of the client is immaterial for the assessee and why should he bother about the cash in hand of the company through which he is receiving the money on behalf of the client. It is hereby stated that the financials of the company are highlighted because the same are of suspicious nature and as a result of detailed enquiry conducted in the case it has been concluded that the transactions executed by the M/s. AB Agrotech Pvt. Ltd. during the demonetization period are dubious.

Therefore, from all this discussion it can be fairly concluded that, the Assessee firm M/s. Rathod Jeweller has brought back its unaccounted money through the entity M/s. AB Agrotech Pvt. Ltd. It is a common practice in the cases of round tripping, that first of all the cash is received from the beneficiaries. The entry provider gets his commission in cash for such entry provision. After receiving of such cash, the entry provider introduces the same in the various bank accounts opened in the names of paper entities which are maintained and managed by him. And thereafter he transfers such amounts to the bank accounts of the beneficiaries.

9.2 Rebuttal: The basic requirement of section 147 is that the Assessing officer must have a reason to believe that income chargeable to tax has escaped assessment based on the facts and material available in the custody of the officer reopening the case. It is possible that the 'information' for reopening of the case may be discovered from new and important matter or fresh facts or even from external sources. The finding drawn in the reasons recorded for reopening of the case vide paras 2,3,4 and 5 are

based on the information in the hand of the AO which is sufficient enough to draw the conclusion that the income to the tune of Rs. 10, 0,00,000/-mesoscaped assessment.

10.2 Rebuttal:First of all, it is submitted that there is no provision in the Income Tax Act which bars the AO to issue the notice u/s.148 at the same day in which the approval has been received. Also, there is no rule set either in law or by the ruling by the any court. The approval given by the range head in a single day doesn't mean that there has been non application of mind on the part of the AO and range head. Further, the information received in the case of the assessee is so crystal clear that it won't require much time for the application of mind. Further, the assessee just trying to raise the technical grounds so as to go Scott free from the genuine tax liability which is supposed to be raised in its case.

10.2.1 Further in this case, material collected by the Department during the assessment proceeding, which is adverse to the assessee, has already been given to the assessee to his rebuttal alongwith all the additional documents which were called by it. Even, the objections filed by the assessee vide letter dated 27/10/2021 have already been disposed of vide order dated 16/02/2022. Hence, the principles of natural justice have been followed. In respect of demand of cross-objection, the reliance is placed on the judgment of Hon'ble Allahabad High Court in the case of Motilal Padampat Udyog Ltd. v CIT 293 ITR 565 where in, the Hon'ble High Court after considering the judgment of Supreme Court in the case of Krishna Chand Chela Ram v CIT has held that right of cross examination from whom the AO has collected the evidence is not required under the income tax law and such assessment was valid under the Act. In the instant case, the copy of reasons recorded has already been provided to the assessee

along with all the documents which were called by it from time to time. Therefore, in the instant case, as the assessee has been proper opportunity to controvert the material gathered by the assessing authority and used against it there had been compliance of the principle of natural justice.

10.2.2 Further, In the case of *Nokia India (P.) Ltd. v DDIT 59 taxmann.com 212 ITAT Delhi Bench* has neke that: Whether cross-examination is to be provided rule or or not depends upon the facts of each case straight tight jacket formule facts of anthare is no thumb whether principles of natural justice have been comaltechwith apa decision making authority has provided due opportunity to the person complaining of non observance of principles of natural justice, then it is for the person so complaining to demonstrate the same and show the prejudice caused to him."

10.2.3 Further, in the case of *GTC Industries Ltd. v ACIT 65 ITD 380, ITAT Bombay Bench* has relied upon the judgment of Calcutta High Court in the case of *Kisanlal Agarwalla v. Collector of Land Customs AIR 1967 & Cal. 80* and quoted this judgment in para 90 which throws light on the right of cross examination-
 ."90. There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judged in his own cause and that no man should be condemned unheard. This latter doctrine is known as *audi alteram partem*. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record mustbe placed before him for his information, comment and criticism.

That is uste placed before him one of audi alteram partem, that no party should be condemned unheard. No natural Justice requires that there should be a kind of a formal cross-examination. Formal cross examination is procedural justice. It is governed by rules of evidence. It is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly Includes that any statement of a person before it is accepted against somebodyelse, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has astic and reasonable opportunity to see, comment and criticise the evidence statement or record on which the charge is being made against him the demands and the test of natural justice are satisfied. Cross-examination in sense is not the technical cross-examination in a Court olaw in the witness-box."

Therefore, in view of above this office is of the opinion tht there is no need as well time for cross examination. Further, the party of which the cross examination has been asked for has been duly verified and examined by the department and the person Mr. Atul Bora is non traceable now. Further, the cross-examination opportunity has been asked at the fag end just to create technical ground so as to get the relief in the appellate proceedings. Further, the party of whom cross examination has been asked for stays in Mumbai and the same is absconding after the raid was conducted in his case.

11. Considering the corroborative evidences as well as the statement of Shri. Atul Bora during the assessment proceeding in the case of M/s. AB Agrotech Pvt.Ltd., it can be fairly concluded that M/s. Rathod Jewellers has given cash amounting to Rs. 10,00,000/- to the company M/s. AB Agrotech Pvt.Ltd and received the same amount to its bank account. The onus to prove that the documents relied upon by the department are not authentic and the apparent cash transactionwas never executed in reality, was on the assessee. Further, the assessee has failed to produce any other cogent material that the amount received in his account was other than the cash given to M/s. AB Agrotech

Pvt.Ltd. Thus, the assessee has failed miserably to discharge the onus cast upon it.

*12. According to **Section 68 of Income Tax Act 1961**, where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the opinion of A.O.. the sum so credited may be charged to income tax as the income of the assessee of that previous year.*

13. Thus, in the absence of any supportive evidences as well as any satisfactory explanation furnished thereto it clear that the cash deposit as made by the M/s. AB Agrotech Pvt Ltd during the demonetization period, is nothing but the cash received from various parties which were subsequently transferred to their account through NEFT in lieu of commission. The verification done during the course of the assessment proceedings in the case of M/s. AB Agrotech Pvt. Ltd. clearly establishes that Mis Rathod Jeweller is one of the beneficiaries for an amount of Rs. 10.00000/- which has brought back its unaccounted money during the F.Y. 2018-18. Thus, the amount of Rs. 10,00,000/- represents the assessee, therefore the same is added back to the total income of the assessee for A.Y. 2017-18.

*14. Thus, in the absence of any supportive evidences as well as any satisfactory explanation furnished thereto, the source of the sum credited in the books of account of the assessee has remained unexplained and as such, it is a clear case of addition **u/s.68** of the Income Tax Act, 1961. Thus, the entire amount i.e., Rs. **10,00,000/-** is deemed to be the income of the assessee for the A.Y. under consideration.*

3. Aggrieved the assessee filed the appeal before the Ld. CIT(A) challenging the validity of reassessment proceedings as well as the addition of Rs. 10,00,000/- made by the Ld. AO u/s 68 of the Act as unexplained cash credit. Before the Ld. CIT(A), the assessee filed its detailed response via on-line submission on ITBA system. The ground wise submissions of the assessee are reproduced in Para 4 and 5 of the Ld. CIT(A)'s order. After considering the detailed submissions of the assessee, the Ld. CIT(A) upheld the addition of Rs. 10,00,000/- made by the Ld. Assessing Officer (AO). The relevant findings and observations

of the Ld. CIT(A) in respect of each of the grounds raised by the assessee before him are reproduced below:-

“4.2.1 The submissions of the appellant have been considered. On perus assessment order it is observed that during the demonetization period M/s AB Agrotech Pvt. Ltd had deposited cash of Rs. 2.33Crores in its bank account in Janta Sahakari Bank and subsequently transferred to the various beneficiaries including the appellant. Assessing Officer had reason to believe that the appellant's income had escaped assessment. Based on this information the Assessing Officer had reason to believe that income had escaped assessment and accordingly he issued notice u/s 148 of the Act on 31.03.2021 to reopen the assessment proceedings. Now during the appellate proceedings, the appellant has challenged the reopening proceeding u/s 147 of the IT Act. Its main argument is that the Assessing Officer did not carry out any independent verification before reopening the assessment proceedings and therefore, the 147 proceedings should be declared null and void.

4.2.2 I have gone through the objection of the appellant. It is clear that the Assessing Officer had received specific information that the appellant was beneficiary of cash transferred by, Mis AB Agrotech Pvt. Ltd. Therefore, the appellant cannot say that the mopening proceedings were conducted based on general information. In fact, the Assessing Officer had received specific information about the appellant having received the cash transferred by M/s AB Agrotech Pvt. Ltd.

4.2.3 The Hon'ble Supreme Court in Raymond Woolen Mills vs. ITO (1999) 236 ITR 34 (SC) has held that there should be reason to believe about the escapement of income at the stage of initiation of reassessment of reassessment proceedings. Sufficiency or correctness of such materia o considered at that stage. The Hon'ble Apex Court has held in As Rajesh Jhaveri stock Broker (P) Ltd. (2007) 291 ITR 500 (SC) that: "The word reason" in the phrase "reason to believe would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusions'. Explaining the position further, it laid down that: at the initiation stage, what is required is "reason to believe", but not the established fact of

escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction. Similarly, the Hon'ble Supreme Court in the case of *Phoolchand Bajrang Lal and Anr vs. ITO and Anr.* (1993) 203 ITR 456 (SC), the Bombay High Court in the case of *Bright Star Syntex Pvt. Ltd. vs. ITO* (2016) 387 ITR 231 (Bom), and the Gujarat High Court in the case of *Pr. CIT vs. Laxmiraj Distributors Pvt. Ltd.* (2019) 410 ITR 495 (Guj), have held that at the stage of initiation of reassessment the AO is not required to have conclusive evidence that income chargeable to tax has escaped assessment. The Assessing Officer may start the assessment proceedings either because of some fresh facts having come to light, which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. Further, the reasons recorded for reopening must establish a link between the material available and the conclusion reached by the AO for reopening of the assessment. All these factors are present in this case such as information available with the office where appellant was one of beneficiaries of cash transferred by M/s AB Agrotech Pvt. Ltd. as well as the specific amounts which have escaped assessment. Thus, it is abundantly clear that the receipt of such information is sufficient enough under the provisions of this law for the Assessing Officer to initiate reassessment proceedings. In view of the above reasons and discussions it is the opinion that the action of the Assessing Officer in initiating reassessment proceedings are correct. Accordingly, this ground of the appellant is dismissed.

5.2 I have considered the surmise of the appellant. Briefly, the facts are that during the demonetization period MAB Agrotech Pvt. Ltd. had transferred an amount of Rs. 10,00,000 in the plant's bank account along with other beneficiaries. During the assessment proceeding the AO observed that M/s AB Agrotech Pvt. Ltd, filed return of income up to A.Y. 2011-12 only and thereafter, it was reopened after recording the reasons to believe that income has escaped assessment.

5.3 During the appellate proceedings, the appellant filed a detailed submission which has been reproduced above. In brief, the appellant submitted that the amount received by the appellant through normal banking channel via RTGS and the said amount received by the appellant is

nothing but advance received from the customer against sale bill No. SBBG-3325 dated 25.03.2018 in respect of jewellery sold to the customer i.e. Shri Atul Bora. The transaction is duly disclosed in the regular books of accounts of the appellant firm. In support of the ground raised the appellant relied on various case laws mentioned below.

(a) Hon'ble Delhi Tribunal in the case of DCIT vs. Subhash Chand Gupta I.T.A. No. 1548/Del/2022 order dated 25.05.2023.

(b) Hon'ble Kolkata Tribunal in the case of Bhagwant Merchants Private Limited vs. ITO, Ward-13(1), Kolkata I.T.A. No. 2614/2019 order dated 29.05.2020

(c) Hon'ble Jalpur Tribunal in the case of ACIT vs. Chandra Surana I.T.A. No. 166/JP/2022 dated 15.12.2022.

(d) Hon'ble Jaipur Tribunal in the case of Smt. Kanchan (widow)S/Shri Dinesh Kumar Sharma & Shri Yogesh Kumar Sharma(Sons) vs. Income tax officer, Ward 3(2), Jaipur ITA No. 184/JP/2021 dated 06.05.2022.

(e) Hon'ble Hyderabad Tribunal in the case of NECX(P.) Ltd vs. Income Tax officer (2022) Taxcorp (A.T.) 101795 (ITAT-Hyderabad) dated 29.09.2022

5.4 I have gone through the assessment order and the submission filed by the appellant. In this case, the above mentioned company le. M/s AB Agrotech Pvt. Ltd. had filed its latest return for A.Y. 2011-12 and thereafter no return has been filed and the company was claimed to be struck off. Therefore, if at all the alleged amount of Rs. 10,00,000/- was advanced by M/s Agrotech Pvt. Ltd. for the purchase of the jewellery as argued by the appellant, this amount should have been reflected in the Return of income and financial statement of M/s Agrotech Pvt. Ltd. But the company M/s AB Agrotech Pvt Ltd. is a non-filer since A.Y. 2010-11 and only Bank account operations are being done and that too by the persons who have already left the directorships. This proves that the transaction under considerations dubious one. Further, as per the last return filed, the cash in hand of the Company wanted Riba Rs 87,000/-only. As regards to the bill of sale of jewellery submitted by the appellant, on perusal of the same it is found that the bill has been issued in the name of Shri Atul Bora whereas the money was transferred from the company's account. Therefore, the conclusion can be drawn from the above that the appellant has received its own unaccounted money through the above said entry. I find no reason to digress from the detailed findings of the AO since the appellant had failed to submit any fresh evidence whatsoever to substantiate the claims made. The AO has

already rebutted the arguments made by the appellant which are repeated during the appellate proceedings. The addition made by the AO is, therefore, upheld. Ground no. 3 raised by the appellant is hereby dismissed.”

4. Dissatisfied the assessee is in appeal before the Tribunal raising the following grounds of appeal:-

“On facts and in law:

1. *On the facts and circumstances of the case, learned CIT(A) failed to appreciate that the order passed by the Id AO u/s 147 is bad in law and void ab initio on account of following reasons:*
 - i. *The original assessment was completed u/s 143(3) of the Act wherein all the transaction were duly verified.*
 - ii. *There was no tangible and fresh material on record to show that there is escapement of income*
 - iii. *The Ld. AO made the addition without the application of his independent competent mind to the information received from Dy. Commissioner of Income Tax, Circle-5, Pune.*
 - iv. *The re-assessment proceedings were been initiated only on the basis of assessment proceedings in the case of M/s. AB Agrotech Pvt. Ltd.*
 - v. *Reasons recorded were based on presumption and surmises and on the borrowed satisfaction by the AO.*
 - vi. *The assessment order was passed without providing the appellant an opportunity of cross-examination of Shri Atul Bora and other persons whose statement were relied upon.*
 - vii. *The learned AO failed to appreciate the facts of the case and the valid documents submitted during the course of assessment proceedings.*
2. *The Id CIT(A) has erred in confirming the addition of Rs.10 lakhs made by the Id AO u/s 68 of the Act as unexplained income on account of advance received from Shri Atul Bora, director of M/s AB Agrotech Pvt Ltd by the appellant on the ground that the appellant had failed to submit fresh evidence to substantiate the claims made without appreciating the fact that advances, were legitimate and part of the normal business practices expected from jeweller which has been subsequently converted into sales and sales has been accounted in the books of accounts of the appellant, without considering the submissions made and evidences submitted by the appellant.*

3. *The Id CIT(A) while confirming the addition failed to consider and appreciate the following crucial facts that:*

- i. The amount received by the appellant was advance received from Shri Atul Bora, director of M/s AB Agrotech Pvt Ltd during the course of carrying out its business of trading in jewellery.*
- ii. The amount received as advance was transferred via RTGS, i.e., accepted banking channel and was adjusted against sale bill no. SBBG-3325 dated on 25.03.2018 in respect of jewellery sold to Shri Atul Bora.*
- iii. The transaction was duly disclosed in the regular books of accounts of the appellant firm.*
- iv. The sale bill was duly considered in the sales disclosed by the appellant firm.*
- v. Since it is a trading transaction, question of invoking provisions of section 68 doesn't arise.*

4. *On the facts and circumstances of the case, learned CIT(A) failed to appreciate the fact of incorrect levy of interest 234B of the Act on the entire assessed income while calculating demand.*

5. *The appellant may kindly be permitted to add to or alter any of grounds of appeal, if deemed necessary."*

5. The Ld. AR submitted that the case of the assessee has been re-opened based on the assessment proceedings in the case of M/s AB Agrotech Pvt. Ltd. He submitted that the assessment in the case of M/s AB Agrotech Pvt. Ltd. was completed ex-parte u/s 144 of the Act wherein the assessee's name was listed as one of the beneficiaries. The copy of the assessment order in the case of M/s AB Agrotech Pvt. Ltd. was brought to the notice of the Bench, placed at page No. 114 to 121 of the Paper Book.

5.1 Referring to the statement(s) of Mr. Atul Bora recorded u/s 131 of the Act in the case of M/s AB Agrotech Pvt. Ltd. placed on pages 123 to 132 of the Paper Book, the Ld. AR submitted

that no question pertaining to Rathod Jewellers, the assessee in the present case was asked from Mr. Atul Bora.

5.2 Referring to the confirmation letter given by Mr. Atul Bora, placed on page No. 133-134 of the Paper Book, the Ld. AR submitted that the transfer of Rs. 10,00,000/- from Bank Account of M/s AB Agrotech Pvt. Ltd. to the Bank Account of the assessee, M/s Rathod Jewellers was made via RTGS. Mr. Bora has stated in the said confirmation letter that the transfer of Rs. 10,00,000/- was made on 19.11.2016 from the Janta Sahakari Bank account of M/s AB Agrotech Pvt. Ltd. via RTGS as advance amount towards the purchase of Diamond jewellery by him from the assessee, M/s Rathod Jewellers totaling to Rs. 1,00,003/-. The sale bill was raised subsequently via invoice No. SBBG-3325 dated 25.03.2018 (a copy of which is placed at page 137 of the paper Book) and the advance amount given in FY 2016-17 of Rs. 10,00,000/- was adjusted against purchase of jewellery and Rs. 3/- was paid in cash. He also brought to our attention the Bank of India bank account statement of the assessee, placed at page No. 138 of the Paper Book, to show the transaction via RTGS. He further submitted that this confirmation letter was also filed with the Ld.AO during the assessment proceedings but he failed to consider the same.

5.3 The Ld. AR also submitted that the assessee has offered this amount of addition as sale in its regular books of account and the Department has accepted the sales and stock are correct and therefore the same cannot be treated as deemed income u/s 68 of the Act under reassessment proceedings.

5.4 The Ld. AR also contended that the assessee was not granted any opportunity of cross examination of Mr. Atul Bora and other persons including Accountant of M/s AB Agrotech Pvt. Ltd., Mr. Sachin Rajee whose statement(s) are relied upon by the lower authorities.

5.5 Lastly, referring question No. 36 of the statement of Mr. Atul Bora, the Ld. AR contended that the copy of the statement of Mr. Sachin Raje recorded u/s 131 of the Act, has not been provided to the assessee.

5.6 In support of its various grounds raised before the Tribunal, the Ld. AR of the assessee placed a legal compilation on record, consisting of the following case laws:-

1. Re-opening of the assessment is nothing but a change of opinion

a. Hon'ble Bombay High Court in the case of Hindoostan Mills Limited vs DCIT Tax Corp (DT) 89952 (HCBOMBAY)

b. Hon'ble Bombay High Court in the case of Prabhat Properties Private Limited Va. ACIT (2023) TaxCorp (DT) 89809 (HC-BOMBAY)

c. Hon'ble Bombay High Court in the case of Maharashtra State Power Generation Company Limited Vs. ACIT (2023) TaxCorp (DT) 89894 (HC-BOMBAY)

d. Hon'ble Bombay High Court in the case of Kapstone Construction Private Limited Vs. ACIT (2023) TaxCorp (DT) 9049 (HC-BOMBAY)

e. Hon'ble ITAT Surat in the case of Murlimanohar Ramkishan Mundhra Vs. ITO ITA No. 158/SRT/2023

f. Hon'ble Delhi Delhi Tribunal in the case of M/s. Shark Packaging (India) P. Ltd. Vs. ITO ITA Nos. 8309 8310/Del/2019 No. 2163/Del/2022 & ITA

2. Opportunity of Cross examination

a. Hon'ble Supreme Court of India, in the case of CTT vs. Sunita Dhadda (2018) TaxCorp (LJ) 18102 (SC)

b. Hon'ble Supreme Court of India in the case of M/s Andaman Timber Industries Vs. Commissioner of Central Excise (2016) 38 GSTR 117(SC)

c. Hon'ble Supreme Court of India in the case of Ayaaubkhan Noorkhan Pathan vs. The State of Maharashtra and Ors. (2013) 4 Supreme Court Cases 465

d. Hon'ble Madras High Court in the case of Thilagarathilam Match Works vs. Commissioner of Central Excise, Tirunelveli (295) ELT 195 (MAD)

e. Hon'ble Pune Tribunal in the case of Anita Sanjay Agarwal and others in ITA No. 2622 to 2624

f. Hon'ble Pune Tribunal in the case of Full Moon Housing Private Limited vs The DCIT ITA No.289/PUN/2016

3. The amount offered as a sale cannot be treated as deemed Income under section 68 of the Act.

a. Hon'ble Delhi Tribunal in the case of DCIT us, Subhash Chand Gupta I.T.A No. 1548/Del/2022

b. Hon'ble Kolkata Tribunal in the case of Bhagwant Merchants Private Limited vs. ITO I.T.A. No. 2614/Kol/2019

c. Hon'ble Jaipur Tribunal in the case of ACIT Vs. Chandra Surana I.T.A. No. 166/JP/2022

d. Hon'ble Jaipur Tribunal in the case of Smt. Kanchan (Widow)S/Shri Dinesh Kumar Sharma & Shri Yogesh Kumar Sharma (Sons) vs. ITO ITA No. 184/JP/2021

e. Hon'ble Hyderabad Tribunal in the case of NECX (P.) Ltd. v. ITO Tax Corp (A.T.) 101795 (ITAT -HYDERABAD)

f. Hon'ble Lucknow Tribunal in the case of Kwality Zippers (P.) Ltd. V DCIT [2022] 143 taxmann.com 427 (Lucknow Trib.)

6. Ld. DR strongly supported the order of the Ld. AO and CIT(A).

7. We have heard the Ld. Representative of the parties and perused the material available on record. At the outset, we note that the Ld. Counsel for the assessee has not argued / pressed ground no. 1 challenging the validity of reassessment proceedings for which the same is dismissed.

8. Now coming to the other grounds i.e. challenging the addition on merits, we have considered the submissions of the Ld. AR, perused the material available on record and also various judicial precedents cited by the parties. We note that for

the cogent reasons (reproduced in preceding paragraphs) recorded by the Ld. AO, he made the impugned addition of Rs. 10,00,000 under section 68 of the Act which has been upheld by the Ld. CITIA). The Ld. AO found that during the demonetization period, M/s. AB Agrotech Pvt. Ltd. had transferred Rs. 10,00,000 to the bank account of the assessee, M/s. Rathod Jewellers along with other beneficiaries. It is not clear in our mind as to why Atul bora has purchased jewellery from the assessee, a Pune based jeweler, by making an advance payment of Rs. 10,00,000 towards purchase of jewelley for personal use and the payment has been made by Mr. Atul Bora via the bank account of M/s AB Agrotech Pvt. Ltd., the company which has last filed its return of income in AY 2010-11 and it has already been struck off and having no existence when the said amount was transferred. It is also questionable as to why Mr. Atul Bora held the directorship and was operating the bank account of M/s AB Agrotech Pvt. Ltd, even after the striking off of the company. Before us, the Id. Counsel submitted that the payment has been made via RTGS as an advance payment which was subsequently adjusted against the sale bill. However, in our considered view and as the law has been laid down on this issue, mere furnishing of particulars and mere payment by way of account payee chqee / RTGS is not enough and would not make the non-genuine transaction as genuine one. The assessee submitted copies of sale bill, confirmation letter of Mr. Atul Bora and ledger account of the assessee company reflecting the above transaction in its books of account before us as well as before the lower authorities. Perusal of the confirmation letter of Mr. Atul Bora reveals that the jewellery worth Rs. 10,00,003/- was purchased from the assessee, out of which the payment of Rs. 10,00,000/- was made via RTGS from the bank account of M/s. Agrotech Pvt. Ltd. to the assessee's bank account as an advance payment in FY 2016-17 and the balance of Rs. 3 was paid in cash. This statement of Mr. Atul Bora itself

is little hard to believe and raises doubt in our minds, considering the overall factual context of the assessee case as we fail to understand why Rs. 3 was paid in cash and not transferred along with Rs. 10,00,000 to the bank account of the assessee via RTGS.

8.1 Against this background, though the assessee seems to have created a good paper trail, we do not find force in the arguments advanced by the Ld. Counsel for the assessee. It is now well settled position of law that it is essential on the part of the Assessing Officer to look into the real nature of transaction and what happens as the real word and contextualize the same to such transactions in the real market situation in the light of the judgments of the Hon'ble Apex Court. We may here refer to the decision(s) of the Hon'ble Supreme Court in Sumati Dayal vs. CIT 214 ITR 801 (SC) which laid down the "test of human probabilities" for drawing inference where chances of discovering direct and clinching evidence are remote. Also, on the issue of circumstantial evidence and in the matters related to the discharge of proof and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More (1972) 82 ITR 540, observed as under:

“that though an appellant's statement must be considered real until it was shown that there are reasons to believe that the appellant was not the real, in a case where the party relied on self-serving recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability.

Human minds may differ as to the reliability of piece of evidence but in the sphere, the decision of the final fact finding authority is made conclusive by law"

8.2 In view of the detailed discussion above, and keeping in view the totality of the facts and circumstances and specific peculiarity of the instant case and the Judgments quoted above, we decline to interfere with the findings / observations of the Ld. CIT(A). The order of the Ld. CIT(A) is sustained. Accordingly, we reject the appeal of the assessee.

9. Ground No.4 relating to levy of interest under section 234B of the Act is consequential in nature.

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

Order pronounced in the open court on 21st February, 2025.

Sd/-

(R.K. Panda)
VICE PRESIDENT

Sd/-

(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated: 21st February, 2025.

Neeta

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune