

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 1888 and 1889/Ahd/2024
(Assessment Year: - 2020-21 and 2021-22)**

Deputy Commissioner of Income-tax, Central Circle-1 (2), Room No. 305, 3 rd Floor, Ayakar Bhavan, Ashram Road, Ahmedabad-380009	Vs.	Mustufamiya Hussenmiya Shaikh, 29, Shoes Market, Nr. Rozi Cinema, Behind Anand Cloth Market, Sarang, Ahemdabad- 380002 [PAN : AEAPS 0626J]
(Appellant)	..	(Respondent)

Appellant by :	Shri V Nandakumar, CIT-DR
Respondent by:	Shri Anil Kshatriya, AR and Shri Alay Anil Kshatriya, AR

Date of Hearing	13.03.2025
Date of Pronouncement	30.04.2025

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:-

These two appeals are filed by the Revenue against the consolidated order of the Commissioner of Income-tax (Appeals)- 11, Ahmedabad (in short 'the CIT(A)') dated 29.08.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Years (AYs) 2020-21 and 2021-22.

2. The Revenue has taken following grounds of appeal:-

ITA No. 1888/Ahd/2024

"1. The Ld. CIT(A) has erred in deleting the addition of Rs. 59,08,859/- u/s 69 r.w.s. 115BBE of the Act on account of unexplained investment in stock ignoring the seized documents and statement recorded during search/post-search proceedings.

2. *The Ld. CIT(A) has erred in deleting the Addition of Rs. 11,16,31,500/- on account of Estimation of Gross Profit on unaccounted purchase ignoring the seized documents and statement recorded during search/post-search proceedings.*

3. *The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."*

ITA No. 1889/Ahd/2024

"1. The Ld. CIT(A) has erred in deleting the addition of Rs. 1,47,07,050/- u/s 69 r.w.s. 115BBE of the Act on account of unexplained investment in stock ignoring the seized documents and statement recorded during search/post-search proceedings.

2. The Ld. CIT(A) has erred in deleting the Addition of Rs. 5,92,40,000/- on account of Estimation of Gross Profit on unaccounted purchase ignoring the seized documents and statement recorded during search/post-search proceedings.

3. The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."

3. Since both the appeals are identical, we are taking up ITA No. 1888/Ahd/2024. The assessee is proprietor of M/s Mustufa Sales Agency, engaged in the business of wholesale trading of tobacco products and partner in various partnership firms in which received interest income. The assessee also received income from house property & income from other sources. The assessee filed original return on 16.12.2020 u/s 139(1) of the Act declaring total income at Rs. 1,25,74,590/-. The same was processed u/s 143(1) of the Income Tax Act, 1961 on 12.11.2021. A search action u/s 132 of the Act was carried out in the case of MHS Group on 16.11.2021. The key person(s) of the MHS Group is Shri MustufamiyanHussenmiyan Shaikh. The group is main distributor of ManekchandGutkha (RMD) in Gujarat Circle and carries on the business of ManekchandGutkha on wholesale basis. Total Sixteen premises of Shri MustufamiyanHussenmiyan Shaikh, their related entities as well as their family members were covered under Section 132 of the Act in the search action. During the search & seizure action, the residential premises of assessee, was also covered u/s 132 of the Act and warrant of authorization u/s 132 of the Act was issued in the case of the assessee. Therefore, the Assessing Officer issued notice

u/s 148 of the Act on 04.07.2022, and the assessee filed return of income in response to the notice on 22.10.2022 declaring total income at Rs. 1,41,39,170/-. Subsequently, notice u/s 143(2) of the Act was issued on 21.2.2023 for A.Y. 2020-21 and notice u/s 142(1) of the Act was issued on 12.04.2023 alongwith detailed questionnaire. In response to the said notices, the assessee filed reply. The Assessing Officer observed that during the course of the search action u/s 132 of the Act, loose papers were found from the Activa, two wheeler parked in residential premises of Shri MayankAshokbhai Khatri (Employee of M/s Zen Industries Pvt. Ltd.). During the search statement of the said Shri MayankKhatri was also recorded u/s 132(4) of the Act. Further during the post search proceedings, Shri RashminMajithia's statement was also recorded. After taking cognizance of these statements, the Assessing Officer observed that assessee made unaccounted purchase of Tobacco & other products amounting to Rs. 23,00,00,000/- and Rs. 21,00,000/- for A.Y. 2020-21, Rs. 33,35,00,00/- and Rs. 25,89,00,000/- for A.Y. 2021-22 and Rs. 5,20,00,000/- for A.Y. 2022-23 from M/s Zen Industries Pvt. Ltd. The Assessing Officer further issued notice u/s 142(1) dated 18.04.2023 which was responded by the assessee vide letter dated 02.05.2023. After taking cognizance of the reply, the Assessing Officer held that purchase transaction recorded on page no. 156 to 159 belongs to the assessee and same were not recorded in the regular books of accounts. Therefore, he was satisfied that the trading results of the assessee do not depict completeness and correctness of accounts and it is a fit case for application of Section 145(3) of the Act. Thus, rejected the books of accounts under Section 145(3) of the Act. The Assessing Officer made addition of Rs. 59,08,859/- as unaccounted investment of the assessee in purchases of the stock and treated the same as unexplained investment u/s 69 of the Act. The Assessing Officer further made addition of Rs. 11,16,31,500/- as difference in Gross profit of the assessee on unaccounted purchase.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) ignored the statements and the documents seized by the Department during the search which clearly states that there was a transactions of sales with M/s Mustufa Sales Agency and M/s Sojas Corporation and such transactions were not recorded in the books of account of the assessee. Thus, it is clearly proved that assessee had made unaccounted purchase of Tobacco & other products amounting to Rs. 23,00,00,000/- and Rs. 21,00,000/- for A.Y. 2020-21, Rs. 33,35,00,00/- and Rs. 25,89,00,000/- for A.Y. 2021-22 and Rs. 5,20,00,000/- for A.Y. 2022-23 from M/s Zen Industries Pvt. Ltd. and M/s Zen Tobacco Pvt. Ltd. Besides this the Assessing Officer has rightly rejected the books of account of the assessee and made addition on account of unaccounted/unexplained initial investment in stock and estimated the difference in GP while passing the assessment order. Therefore, the Assessing Officer rightly made substantive addition of Rs. 59,08,859/- in the hands of the assessee and protective addition in the hand of Shri Faridmiya H. Shaikh Prop. Of M/s Sojas Corporation. The Ld. DR further submitted that the Assessing Officer rightly made addition on account of GP and the working of the difference in GP thereby making addition of Rs. 11,16,31,500/-. The Ld. DR relied upon the Assessment Order and submitted that the CIT(A) ignored all these facts.

6. The Ld. AR relied upon the order of the CIT(A). The Ld. AR submitted that no cross examination was afforded of the person whose statement i.e. Mayank Ashokbhai Khatri is used against the assessee. The Ld. AR further submitted that though on 31.12.2021, the said Mayank Khatri deposed that the related transactions noted were related to sale to M/s Mustufa Sales Agency and M/s Sojas Corporation but Shri RashminMajithia upon being confronted on 03.02.2022 on this loose paper has deposed that the papers are not related to any of his business group. Noting on third party papers are neither in the

handwriting of assessee or containing anything as belonging to the assessee. Mayank Khatri is not assessee's employee and without allowing cross-examination, no cognizance should be taken for those documents. The assessee denied having entered into any transactions for purchase of goods. Assessee again requested for cross-examination which was summarily rejected by the A.O. and the Assessing Officer relied upon the statement of Mayank Khatri. The Ld. AR further submitted that the Assessing Officer ignored the statement of Rashmin Majithia, Director of the company who deposed that these papers are not related to his any business group. Thus, ignoring the statement of Rashmin Majithia reflects non-application of mind by the A.O. as the A.O. gave overdue weightage to the statement of Mayank Khatri who was employee. The Ld. AR submitted that the Assessing Officer recorded his finding on the basis of pick and choose method of statement which is not possible under the Act. The Assessing Officer recorded the statement of Mayank Khatri u/s 131(1) on 23.12.2022 and upon being confronted with specific question on page – 156 to 159 of Annexure-A3, he has categorically and admittedly stated that those papers were exclusively in respect of his financial transactions reflecting his personal deal in money lending. The Ld. AR further submitted that on 16.11.2021 and on 23.02.2022, statement of the assessee was recorded but the assessee was never ever confronted with the referred loose paper. On 23.12.2022, statement of the assessee was recorded by the A.O. during the course of assessment proceedings for A.Y. 2021-22 on the statement of Mayank Khatri and it was again stated that these papers are not related to himself or his family members and they do not reveal name, address or letterhead of the assessee. The Ld. AR relied upon the decision of the jurisdictional High Court as reported in 253 ITR 459 (Guj HC). The Assessee maintained regular books of account which are audited. The A.O. has unreasonably invoked provision of Section 145 of the Act merely for the sake of making unfair addition. The A.O. has not mentioned any other cogent reason which could support the rejection of books. The A.O. has issued identical notices on these pages in the case of Mohammed Asad Faridmiya Shaikh, Faridmiya

Hussainmiya Saikh and details/evidences of particular product sold by Zen Group, its exact quantity, precise rate, actual mode of transaction, place of delivery and acceptance of delivery of alleged purchases made and name of the persons, place of making payment and person receiving alleged payment are not brought on record. The Ld. AR submitted that the CIT(A) has categorically held that no details are mentioned in the seized documents despite the search in the case of MHS Group and no evidence regarding unaccounted purchase of stock from Zen Group of concern or excess vehicle stock was found during the search which was pointed by the A.O. in the assessment order. No evidence related to unrecorded payment made in cash to Zen Group was found during the search. None of the parties concerned had admitted that the seized page no. 156 to 159 related to assessee or his group concern for the unaccounted purchase of tobacco or other products. Thus, the Ld. AR submitted that the Assessing Officer has not brought any record which suggest that the said pages were related/belonging/pertaining to unaccounted purchases made by Mustufa Sales Agency and Sojas Corporation as there is no vital details i.e. name of the assessee, quantity of products/items, description of items, rate of item, details of delivery, date of payment or cash trail was found either from the possession of Mayank Khatri or Rashmin Majithia or any of the person of Mustufa Group. The above details are not found mentioned on the seized documents. Thus, the addition made on account of initial investment in unaccounted stock and estimation of GP does not survive.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the statement of Shri Mayank Ashokbhai Khatri was not confronted to the assessee while recording the assessee's statement by the Assessing Officer. Further the assessee during the assessment proceedings produced copy of ledger account from where the assessee demonstrated that the assessee has regular transactions of purchases from Zen Group and all the transactions of sales and purchase have been duly

recorded in the regular books of accounts. While rejecting the books of account, the Assessing Officer has not followed the basis given under provisions of Section 145(3) of the Income Tax Act, 1961, but only rejected the said books on the ground that no record of cash sales viz. name of the party, contract no., exact amounts were maintained by the assessee as DSR after making entries in tally software and the same was destroyed on daily basis. The Assessing Officer has not given any finding as to on what basis he has arrived on the said conclusion. Therefore, the Assessing Officer was not correct in rejecting the books of accounts of the assessee. In fact, Shri RashminbhaiMajithia denied having any connection with financial transaction with M/s Sojas Corporation and M/s Mustufa Sales Agency from entire Zen Group of concerns. And further denied any cash sales to that extent which was not at all considered by the Assessing Officer. In fact, the entire Assessment Order is based only on the statement of Shri Mayank Khatri which was not even verifiable from the evidences produced by the Assessee. The Assessing Officer has not established the nexus of cash sale to the Zen Group to the assessee concern. The CIT(A) in para 4.4 categorically mentioned that there was no evidence related to unrecorded payment made in cash to Zen Group of concern which was found during the course of search action. Besides this, neither the purchase party i.e. the assessee or his family members nor the seller party i.e. Shri Rashminbhai M. Majithia, Director of M/s Zen Tobacco Pvt. Ltd. & M/s Zen Industries Pvt. Ltd. had admitted in the statement recorded during the course of search action or post search action that the said seized page no. 156 to 159 was related to the assessee or his group concern regarding unaccounted purchase of tobacco or other products. Therefore, the CIT(A) as rightly held that the addition made on account of initial investment in unaccounted stock and estimation of GP does not survive. There is no need to interfere with the findings of the CIT(A). Thus, ITA No. 1888/Ahd/2024 for A.Y. 2020-21 filed by the Revenue is dismissed.

8. As regards to ITA No. 1889/Ahd/2024 for A.Y. 2021-22 filed by the Revenue, the same is identical, hence dismissed.

9. In the result, both the appeals of the Revenue are dismissed.

The order is pronounced in the open Court on 30.04.2025

Sd/-

**(DR. BRR KUMAR)
Vice President**

Sd/-

**(SUCHITRA KAMBLE)
Judicial Member**

Ahmedabad; Dated 30/04/2025

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**