

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 105/Ahd/2025
Assessment Year 2012-13**

Dipakkumar Pushkarray Vyas, 136 Ghanchi Ni Pole, Sankdi Sheri Manekchowk, Ahmedabad-380001 PAN: AAXPV2074J (Appellant)	Vs	The ITO, Ward-1(3)(1), Room 302 3 rd Floor-Aayakar Bhavan Near Sachin Tower Anandnagar, Ahmedabad (Respondent)
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**Assessee by: Shri Shailesh J. Shah, A.R.
Revenue by: Shri Santosh Kumar, Sr. D.R.**

Date of hearing : 17-04-2025
Date of pronouncement : 16-05-2025

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 04-12-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2018-19

2. The grounds of appeal are as under:-

[1] That the Learned Assessing officer has erred both in law & on the facts of the case by passing an Order u/s 143(3) rws 147 of the IT Act, 1961 without appreciating the true and correct facts and the legal position of the instant case by determining total income of Rs 64,04,990/- as against returned income of Rs 22,05,490/-.

[2] That the reopening of Assessment u/s 147 by issuing Notice u/s 148 is not legal and valid in law as the entire sales has been recorded in the Books of Account which are audited by Chartered

Accountants and therefore there is no concealment of Income, therefore, initiation of reassessment proceedings based on wrong recorded facts as per explanation-2, which state that, for the purpose of this section the following shall be deemed to be cases where income chargeable to tax has escaped assessment, and as per explanation-2(c)(i) which state that, where the assessment has been made but income chargeable to tax has been under assessed, therefore, reopening of assessment is void ab initio and to be quashed.

The Learned Assessing officer has failed to prove prima facie opinion based on Tangible material which provide nexus or link to having reason to believe that income had escaped assessment. Thus, there was no reason nor any justification given in notice to even arrive at prima facie finding that sales led to escapement of income.

[3] On the facts and in the circumstances of the case, the Learned AO Ward-1(3)(1), Ahmedabad. Income Tax Department has erred, both on facts and in law, as the assessment was reopened u/s 147 on basis of information received from ITO (Inv.) unit-2 Ahmedabad without application of mind, as the very same information was available in assessment record of assessee on the basis of which the assessment was completed u/s 143(3) and learned A O could not be permitted to change his opinion based on same information.

[4] The Order passed u/s. 143(3) r.w.s. 147 of the IT Act, 1961 on 16/12/2019 for Assessment Year 2012-13, by Learned A.O. Ward-1(3)(1), Ahmedabad, Income Tax Department making addition of Rs. 41,99,500/-is wholly illegal, un-law full proceedings its self were and an abuse of process of law and impugned order has been made in violation of the principals of natural justice.

[5] On the facts and in the circumstances of the case, the Learned A. O Ward-1(3)(1), Ahmedabad, Income Tax Department has erred, both on facts in law in rejecting the contention of the assessee that the initiation of the re-assessment proceedings and the re-assessment order are bad, both on the facts and in law as the Income has been assessed without rejection of Books as unreliable u/s 145 of the IT Act and liable to be quashed, as statutory conditions and procedure prescribed under the statute have not been complied with.

[6] On the facts and in the circumstances of the case, the Learned A.O Ward-1(3)(1), Ahmedabad, Income Tax Department has erred, both on facts in law in rejecting the contention of the assessee that the re-assessment proceedings initiated by the Learned A. O are bad in the eyes of law, as the reasons recorded, which are vague and have been recorded without application of mind on the

part of the Learned A.O while issuing notice u/s 148 are bad in the eyes of law and are contrary to the facts.

[7] That the reopening is bad in law since there is mechanical application of mind while granting the approval u/s 151 for issuance of notice u/s 148.

[8] The Learned Assessing Officer has failed to appreciate the various Judgments more particularly CIT v Simit P. Sheth wherein addition sustained was too high considering the fact that assessee was dealing in trading activities and has declared only 0.10% in the Financial year 2010-11 relevant to the AY 2011-12 and 0.07% in the Financial year 2011-12 relevant to the AY 2012-13.

[9] The Learned Assessing Officer has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.

[10] The Learned Assessing officer has grievously erred in making addition of variation in respect of unexplained Income from undisclosed sources, by not providing cross examination though requested, without giving sufficient and specific opportunity to the appellant and thereby violating the principles of natural justice. The Appellant should therefore be allowed to produce additional evidences during the course of appellant proceeding and should be admitted.

[11] The Learned Assessing officer has grievously erred in making addition of variation in respect of unexplained Income from undisclosed sources though, the sales of Rs.41,99,500/- made to M/s. Akshar Corporation prop. Shripal Pravinchandra Shah was recorded in the Books of Account and the payment has been received through banking channel only, which are audited by Chartered Accountants.

[12] That the learned Assessing officer has grievously erred in not considering the explanation of the appellant in regards to the credit is prima facie reasonable even though the same has been rejected on capricious and arbitrary grounds

[13] That the learned Assessing officer has grievously erred in not considering the fact that books of accounts were audited by Chartered Accountants wherein appellant has maintained stock account and there could be no inference on suppression of sales.

[14] That the learned Assessing officer has grievously erred in not considering the fact that after recording purchase and sale in the books of account only profit element should brought to tax which the assessee has already offered to tax.

[15] That on the facts and in law, the learned assessing officer erred making an addition without any incriminating material as to a bogus sale though it was accounted for in the books of account.

[16] That on the facts and in law the learned assessing officer ought to have given the benefit of purchase against sales as the Learned A.O. has accepted purchase.

[17] That on the facts and in law, the learned assessing officer failed to prove that amount returned back to the assessee, though assessee filed relevant documents, Ledger Accounts, Bank Statements details to prove genuineness of sales and payment were received through banking channel.

[18] That on the facts and in law, the learned assessing officer has made addition against bogus sales of same amount though the same has been recorded in the books of account, no addition could be made for similar amount in the hands of the assessee because it amounted to double taxation.

The Learned A.O had doubted sales as bogus and had made additions, it is not in dispute that, the sum of Rs.41,99,500/- has been credited in the sales account and had been duly included in the profit disclosed by the assessee in its income tax return therefore sales could not be treated as undisclosed income and no addition could be made once again in respect of same.

As long as stock is available and nothing adverse against the sale is found then sales cannot be doubted. Sale is offered as income hence the same cannot be added as it is a double addition.

[19] That the reopening on the basis of borrowed information by the AO from the information received from the ITO (Investigation) Unit-2 Ahmedabad vide letter no ITO(Inv) Unit-2/NV Report-Krupa/2018-19 dated 14/03/2019 received through email on 17/03/2019 against M/s Shripal Pravinchandra Shah Prop. Akshar Corporation without applying his independent mind and therefore was not justified.

[20] That the appellant has not committed default of Section 271(1)(C) of the IT Act as the sales has been recorded in the books of account and therefore there is no concealment of income and therefore proceedings initiated deserves to be cancelled.

[21] That the appellant has not committed default of Section 207 to 219 and interest charged under sections i.e. 234A, 234B, 234C and 234D deserves to be deleted.

[22] That the appellant craves leave to add, amend or alter any of the grounds of appeal

It is therefore prayed that the addition of Rs.41,99,500/- made by the Assessing officer should be deleted.”

3. The assessee filed return of income declaring total income at Rs. 19,85,572/- on 31-08-2012. The case of the assessee was reopened for assessment year 2012-13 after recording reasons for doing so and also after obtaining necessary approval from the Pr. CIT. Notice u/s. 148 of the Income Tax act, 1961 dated 28-03-2019 was issued. In response to the notice u/s. 148, the assessee filed return of income on 25-04-2019 declaring total income of Rs. 19,81,572/-. The reasons recorded for reopening of the assessment was provided to the assessee on 18-06-2019 along with notice u/s. 143(2) of the Act. Thereafter, notice u/s. 142(1) dated 02-11-2019 was issued and served to the assessee. In response to the same, the assessee furnished certain details/information on 19-11-2019. The assessee objected reopening of the assessment vide letter dated 27-11-2019 which was disposed of by passing a detailed order on 06-12-2019. Show cause notice dated 27-11-2019 was also issued which was replied by the assessee vide letter dated 03-12-2019 along with the details. The Assessing Officer observed that as per the information received, in the case of Shripal Pravinchandra Shah, Prop. M/s. Akshar Corporation and the inquiries which was carried out in the case of Shripal Pravinchandra Shah. The said proprietorship firm was engaged in issuing bogus bills and providing entries through banking channels. The Assessing Officer observed that there was no business activity like sale, purchase and production carried out. Credit and debit entries in the bank account of M/s. Akshar Corporation have been transaction against issuing bogus bills and for providing entries.

Shripal Pravinchandra Shah, proprietor of M/s. Akshar Corporation was in the activity of accommodation entry provider. As per the information, Dipakkumar Pushkarray Vyas, prop. of Krupa Jewellers is one of the entities who has made transaction with M/s. Akshar Corporation during 2011-12 which was sham and bogus. As per the bank statement of M/s. Akshar Corporation total amount of Rs. 41,99,500/- is debited in the bank account of M/s. Krupa Jewellers during assessment year 2012-13 and thus the same was held by the Assessing Officer as bogus entered to accommodate the unaccounted income of the assessee. The Assessing Officer treated the same as unexplained income from undisclosed source and added the same to the total income of the assessee.

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

5. As regards ground nos. 1 to 10 are not pressed and hence the same are dismissed.

6. As regards ground no. 11, the ld. A.R. submitted that the Assessing Officer erred in making addition of variation in respect of unexplained income from undisclosed source though, the sales of Rs. 41,99,500/- made to M/s. Akshar Corporation was recorded in the books of accounts and the payment has been received through banking channel only which are duly audited by the chartered accountant. The Assessing Officer further submitted that the Assessing Officer did not consider the explanation of the assessee in accordance with the credit which is a prima facie evidence and thus it was rejected arbitrarily.

The ld. A.R. submitted that books of accounts were duly audited and the assessee was opening stock account and therefore there was no suppression of sales as contended by Assessing Officer. The ld. A.R. submitted that recording purchase and sales in the books of accounts then only profit element should be taxed which the assessee has already offered to tax. The ld. A.R. submitted that without any incriminating material as to a bogus sale, the Assessing Officer cannot give finding contrary to the same. The Assessing Officer should have given the benefit of purchase against sales as the Assessing Officer has accepted the purchase. The ld. A.R. submitted that amount returned back to the assessee, though assessee filed relevant documents; ledger accounts, bank statement, details to prove genuineness of sales and payments received through banking channel. The ld. A.R. further submitted that the Assessing Officer has made against bogus sales of same amount though the same was recorded in the books of account, therefore no addition could be made for similar amount in the hands of the assessee because it amounted to double taxation. The sum of Rs. 41,99,500/- has been credited in the sales account and was duly included in the profit disclosed by the assessee in its income tax return, therefore, sales could not be treated as undisclosed income and no addition could be made once again in respect of same. As long as stock is available and nothing adverse against sale is found then sales cannot be doubted. Sale is offered as income hence the same cannot be added as it is a double addition.

7. As regards ground no. 19, the same is related to ground no. 3 hence the ld. A.R. submitted that the same is not pressed. As regards ground nos. 20, 21 and 22, the same are consequential.

8. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

9. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that as relates to ground nos. 11 to 18 related to the merits of the case, the assessee submitted the details of sale invoices, copy of the account and the VAT return to justify that sales were made. Thus, the primary onus was discharged by the assessee. The Assessing Officer has not questioned the sales declaration. Purchases were not doubted by the Assessing Officer. The decisions of Vishal Exports Overseas Ltd. was relied by the assessee that of Hon'ble Gujarat High Court (Tax Appeal No. 2471 of 2009). The Hon'ble High Court held that when the income is already offered for taxation, the same cannot be taxed again as an unexplained cash credit as it would amount to double taxation. It is pertinent to note that in the present assessee's case, the Assessing Officer did not reject the books of account or questioned the quantitative details of stocks. The assessee during the assessment proceedings has given the details of credit and debit entries in the bank account of M/s. Akshar Corporation and at the same time has provided the purchase details along with the sale details. The ld. A.R. pointed out the valuation of closing stock as well as month-wise purchase register with summary sales register and retail invoice sales register during assessment proceedings. The various details of purchase ledger also supported the case of the assessee which was totally ignored by the Assessing Officer as well by the CIT(A). The payments received against the sales were duly reflected in the banking channel as well as in the books of account. The assessee is dealing in trading of gold, silver,

bullion ornaments in the name of M/s. Krupa Jewellers and is regularly tax audit report along with the details of profit and loss account and balance sheet for various years including that of the present assessment year. The Assessing Officer merely on the basis of information of Shripal Pravinchandra Shah has made the addition without taking into account the purchase/stock of the assessee as well as the details filed in support of the sales of the assessee. Therefore, the additions made by the Assessing Officer and confirmed by the CIT(A) u/s. 68 as relates to unexplained cash credit is not justified. Thus, ground nos. 11 to 18 are allowed. In the peculiar circumstances of the present case, the finding of the present appeal should not be taken as precedent. As regards relates to ground no. 1 to 10 and 19 are dismissed as not pressed. As regards ground no. 20, 21 and 22, the same are consequential hence not adjudicated at this juncture.

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

Order pronounced in the open court on 16-05-2025

Sd/-
(Dr. BRR Kumar)
Vice President

Sd/-
(Suchitra Kamble)
Judicial Member

Ahmedabad : Dated 16/05/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद