



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.**

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ ITA No.454 & 455/RJT/2024

निर्धारणवर्ष / Assessment Year: (2013-14 & 2014-15)

(Hybrid Hearing)

Glossy Ceramics Private Ltd. 8 A, National Highway, At Dhuva, Wankaner	Vs.	Assessment Unit Income Tax Department
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCG3069P		
(Appellant)		(Respondent)

Appellant by : None/ Written Submission

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 27/02/2025

Date of Pronouncement : 20/05/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned two appeals filed by the same assessee, pertaining to different assessment years(A.Ys.) 2013-14 & 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), both order dated 29.05.2024, which in turn arise out of a separate ex-parte orders passed by Assessing officer u/s 147 r.w.s. 144 and 144B of the Income Tax Act, 1961, vide order dated 19.05.2023 and 22.05.2023.

2. Since, these two appeals filed by the same assessee are directed against the separate order passed by Ld. CIT(A) for different assessment years and same issue are involved, therefore, the appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and



brevity. First, we will adjudicate the ITA No. 454/Rjt/2024 for AY 2013-14.

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

“1. The Ld. A.O. erred in law as well as on facts in making addition of Rs. RS. 9530010/-. The Ld CIT(A) has also erred in confirming the same. The same needs cancellation.

2 The Ld. A.O. erred in law as well as on facts in making addition of Rs. RS. 9530010/-. Without bringing cogens material. The Ld CIT(A) has also erred in confirming the same. The same needs cancellation.

3. The Ld. A.O. erred in law as well as on facts in making addition of Rs. RS. 9530010/- based on presumption and surmises. The Ld CIT(A) has also erred in confirming the same. The same needs cancellation.

4. The Ld. A.O. erred in law as well as on facts in making addition of Rs. RS. 9530010/-. Without considering statutory accept and judicial pronouncement decide considering factual matter. The Ld CIT(A) has also erred in confirming the same. The same needs cancellation.

5 Taking into consideration legal, statutory, factual and administrative aspects determination of income ought not to have been made as made. The Ld CIT(A) has also erred in confirming the same. The Ld CIT(A) has also erred in confirming the same. The determination needs cancellation.

6. Without prejudice, the assessment made being illegal, void, bad in law and against statutory provisions, needs annulment. The Ld CIT(A) has also erred in confirming the same. the same needs annulment

7. Without prejudice, the assessment is based on the notices which are not served legally and the same being invalid. The Ld CIT(A) has also erred in confirming the same. The assessment needs annulment.

8 Without prejudice, no reasonable opportunity has been given by the Ld. A.O. while completing assessment. The Ld CIT(A) has also erred in confirming the same. The same needs annulment

9 Without prejudice, no reasonable opportunity has been given by the Ld.CIT(A). while completing appeal proceeding.. The Assessment needs annulment

10. The appellant craves leave to add/alter/amend and/or substitute any or all grounds of appeal before the actual hearing takes place. The Ld CIT(A) has also erred in confirming the same.”

3. Brief facts of the case that the assessee has filed Return of Income on 12.09.2013 declaring total income at Rs. 13,80,202/-. As seen from the order u/s.148A(d) of the Act dated 23.07.2022, it is seen that in this case as per the



information, the Angadiyas were involved in various activity which included issuance of cheque in lieu of cash, accommodating cash related to unaccounted Transactions of other persons into their bank accounts and subsequently transferring it to the beneficiaries. The transactions are related to accommodating proceeds of under-invoiced sales or unaccounted sales in their bank accounts. It is seen that M/s. Yash Enterprise, Prop. Shri Chetan Haribhai Bhalodiya used to receive the cash from outstations parties on behalf of the beneficiaries of various parts of Rajkot and transfer the same cash to them and earn commission over the same. These transactions are operated through the bank accounts, of angadiyas. In the course of survey proceedings in the case of M/s. Yash Enterprise and subsequently during assessment proceeding, it was found that during the year the assessee M/s. Glossy Ceramics Pvt. Ltd. has received cash of Rs. 95,30,010/- from M/s. Yasn Enterprise. Therefore, case has been reopened in order to verify the nature and source of cash received amounting to Rs. 95,30,010/- from M/s. Yash Enterprise, prop Shri Chetan H. Bhalodiya and same has been accounted in the assessee's books of account or not.

ii. The case has been reopened in order to verify the nature and source of cash received amounting to Rs.95,30,010/- from M/s. Yash Enterprise, prop Shri Chetan H. Bhalodiya and same has been accounted in the assessee's books of account or not. Notices under various sections of the I.T. Act including notices u/s.142(1) alongwith questionnaire were issued to the assessee on various dates as shown in chart above. The notices were duly delivered by email. However, assessee has not responded to the notices issued on 16.01.2023 & 17.04.2023 wherein the details with respect to the cash received from M/s. Yash enterprise, prop Shri Chetan H. Bhalodiya were called for. Communication letter was also issued to the assessee on 24.04.2023 seeking explanation as to why the assessment should not be completed ex parte in the absence of any details. Centralized Communication letter was also issued by



NFAC on 10.04. 2023. The assessee has not responded to this letter also. Further show cause notice u/s. 144 of the Act dated 02.05.2023 was issued on the assessee. However there has been no response from the assessee to this notice also. As per data available on CPC 2.0 portal the assessee has accessed the e-filing portal on 02.05.2023 but chosen not to respond to the notices. Therefore, final show cause notice dated 09.05.2023 was issued on the assessee seeking compliance by 16.05.2023. However, as usual, this time too, the assessee failed to avail of the opportunity provided in spite of email delivered. Since, the assessee failed to comply with all the terms of statutory notices issued of the I.T. Act during the assessment proceedings there is no other option but to resort to complete the assessment ex-parte u/s. 147 r.w.s. 144B of the I.T. Act as a best judgement assessment after taking into account all relevant materials available and as gathered on the system/record for making the assessment of the total income or loss to the best of knowledge/judgment of the Assessing Officer and to determine the sum payable by the taxpayer on the basis of such assessment.

Sl. No.	Description	Amount (in INR)
1	Total Income as per Return of Income filed on 12.09.2013	13,80,202
2	Income as computed u/s143(1)(a)	13,80,202
3.	Return of Income filed in response to notice u/s. 148 of the Act	NA
4.	Variation in respect of issue of disallowance	95,30,010

4. That the assessee filed an appeal against the order of the Ld. AO before the Ld. CIT(A). The assessee submitted on 18.01.2024 along with additional documents file furnished during the appellate stage;

- a. Audit Report
- b. ITR
- c. Computation of income



- d. HDFC bank statement
- e. HDFC CC account statement
- f. Cash Ledger

i. That the Ld. CIT(A) dismissed the appeal, relevant para of the order are reproduced;

ix. the Appellate authority is in the view that, the appellant assessee did not comply with even a single notice sent by the Assessing officer during the course of assessment proceedings and now during the appellate proceedings the appellant is filing additional evidences even without filing any application under Rule 46A of the income tax rules for submitting additional documents. Further, the appellant assessee has also provided NO in the column of Additional evidences in his FORM 35, which is reproduced hereunder

12. Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A

12.1. If reply to 12 is Yes, furnish the list of such documentary evidence

Sl. No.	Document Name	Description	Documentary Evidence
		No Records Added	

"...I dispute the demand on the grounds that there have been no financial transactions with the firm Yash Enterprise Prop Chetan Bhalodiya. I request you to provide any details or evidence directly connecting us to the said firm. In the absence of clear proof, I assert that this transaction has not been carried out by us..."

This contention of the appellant assessee is not tenable because the right platform to provide the details and submissions regarding its contentions was the assessment proceedings, but appellant assessee intentionally and willingly decided not to provide any submissions/evidences during the course of assessment proceedings.

xiv. It is also pertinent to mention here that, the Assessing officer also provided VC to the appellant assessee, but the appellant assessee chose not respond to the same either.

Thus, from the above mentioned facts and discussions at point no.-(i) to (xiv) it is very much clear that the appellant assessee willingly decided not to avail the opportunities provided to be heard by the Assessing officer at the time of assessment proceedings and also in absence of application under Rule 46A of the Income-tax rules, the documents provided by the appellant assessee are here rejected. Consequently, the addition made by the Assessing officer amounting to Rs 95,30,010/-on account of unexplained money U/s 69A of the Income-tax act 1961 is hereby UPHOLD. The ground of the appellant is rejected.



In the result, the appeal is NOT ALLOWED.”

5. That the appeal filed by the assessee against the impugned order of the Ld. CIT(A), vide order dated 29.05.2024, before this Tribunal.

6. During the course of hearing, the Ld. AR of the assessee submitted written submission before the Ld. CIT(A), relevant para mentioned under:

“1.Both this appeals are against the making addition of Rs.9530010 for A.Y.2013-14 and Rs.26995939 for A.Y.204-15.For both the years assessment order is passed ex party U/s.147 r.w.s 144 and 144B on the ground that assessee has not provided any details.

2. For both these year it is admitted in the assessment order that M/S. yash enterprise prop shree Chetan Haribhai Bhalodiya use to receive the case of house on behalf of beneficiary of various parts of Rajkot and transfer the same case to them and un-commission our the same. Thus the assessment order admits that without prejudice to further mention below whatever received by the assessee from M/s. Yash Enterprise is nothing but an amount on which the assessee earned commission only.

3. On one hand it is to admit that assessee has earned commission only and than to assess some reasonable amount or the amount of commission the details where of are obtained by the department from measurer yes enterprise is totally not consider at all and even a country decision to the surprise of the assessee is taken by the Ld AO to make the addition of the entire amount is fade of amount of commission received by the assessee as confirmed by the Ld AO is erroneous and against the settled judicial pronouncement that gross receipt can not be tax and only the actual amount of commission/gain is to be taxed. Even the provision of section 44AD very clearly provides taxing and amount at 8% only leaving to 92% statutorily which is not respected by the Ld AO and the people to tax the entire amount.

4. Moreover even it is admitted in the assessment order amount in question does not pertain to assessee but the beneficiary there of are at out stations of various parts of Rajkot (para 1,para 2, Assessment order page no. 1) those on one hand to admit that assessee has earned commission and then to tax then tar amount is nothing but contradictory addition against the various judicial pronouncement.

5. Not only this the Ld AO has also pray to provide copy of statement recorded by him and taken as base has deprive the assessee of his rights to consider the entire preceding is bad in law moreover even no opportunity is provided to cross examine the person, that is Chetan haribhai bhalodiya prop of yash enterprise moreover the assessment order contains the whole amount instead of providing the details of date wise and person wise transaction made by the assessee if any with the Hon Supreme Court has from time to time hold that the basic details obtained and relied on for



addition must be supplied to the assessee to rebut or to provide any evidences against the same.

6 Even before the Ld CIT(A) it was specifically stated in statement of facts that

6.1 There is no any financial transaction with this firm yash enterprise prop chetan bhalodiya. Please give us any details evidence directly connection to us otherwise gives us relief in proceeding against us. This is not genuine proof against us. Only on doubt it is not establish that this transaction done by us without any clear proof.

6.2 Though act itself provides that the Ld CIT(A) is a co-terminate appellate and assessing authority that i.e, the assessing officer in spite of assessee special mentioning above as mention at para 6.1 above he prayed that he consider this and strait way proceed to confirmed the addition in spite ligulas and factual position as mention at para 5to above. The appeal order is therefore against the statutory position and cancellation.

7. Not only this although the act has specifically and as specially provides powers to Ld CIT(a) to sat aside the assessment order and to reflect the same as it is passed U/s. 144. There is thus also error by the Ld CIT(A) and not considering views of Most Hon Para lament providing such power.

8. It is therefore request that the addition is made may kindly be deleted and or it may kindly be restored to the Ld AO. To find out the exact nature of commission earned as also the genialness of real transaction whether it is correctly made by the assessee by supplying all the relevant data and details beside allowing to cross examine to the concern person”

7. On the contrary, the Ld. DR for the revenue relied on the order of the Ld. CIT(A).

8. We have heard both the parties and perused the material available on record.

(i) We note that before the Ld. CIT(A) the assessee filed submission on 18.01.2024 alongwith number of documents, such as audit reports, ITR, computation of income, HDFC bank statement, HDFC CC account statement, Cash ledger. However, there was no application under rule 46 of the Income Tax Act was filed. No additional documents can be accepted.

(ii) Further, we note that in Form 35 in, relevant column relating to submitting additional documents;



- i. Column No. 12 No,
- ii. Column No. 12.1 No records added.

(iii) We note that while dismissing the appeal of the assessee, the assessee has not filed the documentary evidences during the assessment proceedings. We note that the non compliance of notice u/s. 148 of the Act on 23.07.2022. In response to the notice u/s. 142(1) issued on 16.01.2023 and 10.04.2023, 17.04.2023, 21.04.2023, A show cause notice u/s. 144 issued on 02.05.2023 and further show cause notice issued on 09.05.2023 and remain uncomplied with. That the conduct of the assessee was irresponsible, Before us, the Tribunal has issued notices on 17.10.2024, 26.12.2024 and 27.02.2024. On the date of hearing, neither the assessee nor Ld. AR of the assessee appeared before us. Since, the assessee is non-cooperative attitude; no action has been taken by the assessee to represent the case before the Tribunal. Written submission filed by the assessee does not disclose the reason why the assessee could not comply with the notices of the Lower Authority. On other words the assessee has not given any reason/cause for not appearing before the lower authority. The latin maxim, “*Vigilantibus, non domientibus, jura subveniunt*”, has rightly stated that “*Law is meant for the vigilant, and not for those who slumber and sleep*”. This rule is designed to promote diligence on the part of suitors and discourage laches. When a party has slept- over his right, would not be benefited by the provision of the Act. Based on these facts and circumstances, we dismissed the both the appeals filed by the assessee.

In the result, the both the appeals (*ITA No. 454 & 455/Rjt/2024 for AY 2013-14 & 2014-15*) filed by the assessee, are dismissed.

Order pronounced in the open court on 20/05/2025.



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

Rajkot

दिनांक/ Date: 20/05/2025

Copy of the Order forwarded to

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

(True Copy)

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot