

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT
And
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 131 & 132/AHD/2024
निर्धारण वर्ष/Asstt. Years: 2010-2011 & 2011-12

Late Vinodkumar Babulal Dugar, (through legal representative Gaurav Vinodkumar Dugar) C/O. MS Chhajer & Co. CA, "Kamal Shanti", Near Sardar Patel Statue, Ahmedabad-380014. PAN: AANPD6487B	बनाम Vs	The Income Tax Officer, Ward 1(2)(4), Ahmedabad.
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And

आयकर अपील सं./ITA No. 753/AHD/2024
निर्धारण वर्ष/Asstt. Year: 2012-2013

Gaurav Vinodkumar Dugar, (legal heir of Late Vinodkumar Babulal Dugar) C/O. MS Chhajer & Co. CA, "Kamal Shanti", Near Sardar Patel Statue, Ahmedabad-380014. PAN: AANPD6487B	बनाम Vs	The Income Tax Officer, Ward 1(2)(4), Ahmedabad.
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(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
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Assessee by :	Shri M S Chhajer, AR
Revenue by :	Shri Santosh Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing :16/04/2025
घोषणा की तारीख /Date of Pronouncement : 03/06/2025

आदेश/ORDER

PER SUCHITRA KAMBLE, JM:

The captioned three appeal have been filed at the instance of the Assessee against the separate order dated 28.12.2023& 23.02.2024 passed by the National Faceless Appeal Centre(NFAC)/CIT(A), arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2010-11, 2011-12 & 2012-13. Since the issues raised in these three appeal are identical, we are extracting the ground of appeal raised in ITA No.131/Ahd/2024 for the purpose of adjudication. The decision in the said appeal will be applicable to other appeals also.

ITA No.131/Ahd/2024 for AY 2010-11

2. The assessee has raised the following grounds of appeal:

1. *The order passed by the Ld.CIT(A) is against law, equity & justice.*
2. *The assessment passed by the Ld.AO is void & illegal as no addition made for the reason for which is reopened.*
3. *Assessment is void & illegal as no requisite sanction given u/s.151 of the Act.*
5. *The Ld.CIT(A) has erred in law and on facts in upholding addition of commission income of Rs.1,05,41,476/-*

6. *Your appellant craves liberty to add, amend alter or modify all or any grounds of appeal before final appeal.*

3. The original return of income was filed on 09.10.2020 declaring total income of Rs.3,68,480/-. The original return filed under section 139 of the Act was considered and filed u/s.148 of the Income tax Act 1961. The original return was scrutinized but no addition was made to the total income of the assessee. The assessment was reopened by the Revenue u/s.148 of the Income Tax Act 1961, based on the information received from investigation on 29.03.2017, after recording the reasons which was served to the assessee. The AO observed that the assessee was a proprietor of the firms namely Arihant Enterprise &Arihant Organisation. The assessee has furnished Tax Audit Report in prescribe Form 3CB-3CD along with Audited profit and loss accounts and balance-sheet with the all schedules of Arihant Enterprise &Arihant Organisation u/s.44AB of the Income-tax Act. As per the information the search action was carried out by the Commercial Tax (Enforcement) Ahmedabad, on 20.01.2012 against the Arihat Group of Ahmedabad in which large amount of sales tax evasion was found. The same has been intimated to Revenue Department by the Additional Commissioner of Commercial Tax(Enforcement), Ahmedabad, Gujarat Ahmedabad through REIC. Further enquiries were conducted by the investigation Wing by issuing summons to the assessee. During the enquiry it was found that assessee Shri Vinodkumar Babulal Dugar care of Arihant Enterprises has shown sales at Rs.43,39,38,544/- in ITR for AY 2009-10 whereas as per the Assessment order dated 21.11.2013 passed by Assistant Commercial Tax Officer(Investigation) Unit-2, Ahmedabad (Charge), it was found that Rs.46,02,85,319/-. Therefore, the AO had a reason to believe that the assessee has suppressed sales in his books of accounts during the

Financial Year 2009-10 to the extent of Rs.2,63,46,775/-. Further the purchase of the assessee during the relevant period was appearing in the ITR at Rs.43,25,19,557/- whereas as per the Assessment Order dated 21.11.2013 passed by Asst. Commercial Tax Officer(Investigation), Unit-2, Ahmedabad, it was found that Rs.43,83,84,919/- Hence, the assessee also suppressed the purchase in his books of accounts during the Financial Year 2009-10 to the extent of Rs.58,65,362/-. Thus, the AO observed that there is an escapement of income to the extent of Rs.3,22,12,137/- in the AY 2010-11. The reason recorded were supplied to the assessee vide letter dated 13.04.2017 and notice u/s.143(2) was issued on 20.04.2017. In response to notice dated 29.03.2017 issued u/s.148 of the Act the assessee has shown income from business from two firms i.e Arihant Enterprises, Ahmedabad and Arihant Organization, Jaipur. The assessee filed the submission dated 05.05.2017 as the assessee has not responded to letter dated 05.08.2017 and has not furnished details. The summons dated 17.08.2017 was issued to the assessee thereby requesting to appear along with the books of account i.e sales purchase register, bills, ledger etc. On 29.09.2017 the statement of assessee Shri Vinodkumar Babulal Dugar was recorded on oath u/s.131 of the Income-tax Act. From the statement of assessee the AO pointed out following facts.

(1) Arihant Enterprise having branches at Ahmedabad in which trading of Scrap and tobacco & 2) M/s. Arihant Orgnaization trading business at Ahmedabad trading in edible oil etc. on wholesale basis & 3) Gaurav Enterprises, Jaipur trading in Cattle feed.

In answer to question no 7 assessee has stated that in Arihant Entperise he purchased goods like Tobacco product from local market of various cities Gujarat and the same was sold within Guajrat and outside the states like Rajasthan and Bihar.

In answer to question no 8 when the assessee was asked to furnish details of goods delivered by him, he stated that transportation charges were borne by the customer.

In answer to question no 9 when the assessee was asked names and addresses of all the parties from whom goods were purchased and sold in Arihant Enterprises, the assessee stated that he will supply the same within a 15 days' time. However, no such details have been furnished

In answer to question no 14, when the assessee was asked to explain the modus operandi of his business keeping in view the assessment framed by the commercial tax officer and the details furnished in the income tax return, the assessee stated on the basis of return filed with VAT department the Income tax return has been filed and there is no bogus billing as stated by the VAT department...

In answer to question no 17 when the assessee was asked that whether it was true the assessee was not maintaining the stock register as well as details of transportation of goods inward and outward, the assessee stated that they were maintaining the stock on computer reflecting day wise quantity and amount of goods inward and outward.

4. The assessee did not furnished the details as stated in statement and therefore, AO further requested the assessee to furnish the details on 25.10.2017. Certain details were furnished by the assessee but it was not furnished and therefore the AO again issued a letter dated 08.11.2017, thereby requesting the assessee to furnish stock registered maintained by the assessee for the proprietor concerned Arihant Enterprises with regard to goods purchased/sold during the Financial Year 2009-10, 2010-11 & 2011-12. The copy of vouchers towards handling/loading/unloading charges for Financial Year 2009-10, 2010-11 and 2011-12 for the proprietor concerned Arihant Enterprises. The AO also requested to furnish the details of copy of lorry receipts towards goods receipts/dispatched for FY 2009-10, 2010-11 & 2010-12 for proprietor concerned Arihant Enterprises. The assessee submitted that before the AO that documents were impounded/seized due to survey of the search action carried out by Gujarat VAT Department in assessee's concerned Arihant Enterprises and therefore could not furnished the details. As the AO pointed out that the assessee has shown total sales of Rs.46,02,85,318/- from Arihant Enterprises, Ahmedabad but could not

furnished the proof of goods despatched, the AO did not agree with the OGS (Outside Gujarat) Sales and as the assessee failed to furnish the proof of conveyance of goods sold by him during the commercial tax assessment. The commercial tax authorities accordingly disallowed the credit available on suspended sales. Since the assessee has not given details as well as supporting documents like lorry receipt and other evidences, the assessee was issued a combined show cause notice 21.11.2017 asking the assessee to explain as to why the books of accounts may not be rejected u/s.145(3) of the Income-tax Act. The assessee submitted the combined reply dated 27.11.2017 and after taking cognizance of the same, the AO due to lack of correctness and completeness of books of accounts had rejected the book result, in view of the provisions of section 145(3) of the Act. The AO further failed to establish that the business shown by the assessee is genuine and the assessee is indulged in raising bogus bills and sales/purchases. The activities raising bogus bills in the proprietary firm Arihant Enterprises totalling to Rs.84,33,18,101/- comprising of total sales of Rs.43,39,38,544/- and purchase of Rs.40,93,79,557/- as per ITR filed and Audit report. As the assessee could not demonstrate the proof of delivery of goods, genuineness of sales and purchase was not accepted by the AO and looking into the scale of billing done considered Rs.1,05,41,476/- being 1.25% of sum of sales and purchases agreement to Rs.84,33,18,101/- shown in ITR for AY 2010-11 and the audited accounts as net commission income of M/s.Arihant Enterprise, Ahmedabad. The assessee has shown profit of Rs.20,717/- earned from M/s.Arihant Organization, Ahmedabad in the return of income along with income from other heads of income. Accordingly, addition of Rs.1,05,41,476/- from M/s.Arihant Enterprises was made and pretend the same income as commission income of the assessee in respect of M/s.Arihant Enterprises, Ahmedabad.

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

6. The Ld.AR has taken two additional grounds firstly, the notice issued u/s.148 of the Act is bad and illegal, as it is without signature and reopening of assessment is bad in law, as the notice issued u/s.148 of the Act was issued before sanction u/s.151 of the Act, accorded by the PCIT. The Ld.AR submitted that the notice u/s.148 of the Act was issued without signature and hence is not a valid notice and therefore the assessment itself becomes invalid. As regards prior sanctioned u/s.151 of the Act accorded by the PCIT, the same was not obtained before reopening of assessment and the same is bad in law and hence the reopening itself is not justified .

7. The Ld.DR submitted that the notice u/s.148 of the Act has been duly signed and sanctioned u/s.151 of the Act was properly taken by the AO before passing the assessment order.

8. We have heard both the parties and perused all the materials available on record. It is pertinent to note that though the contention of the assessee that the notice u/s.148 of the Act is not signed is not sustainable as the same is properly signed and hence this additional ground stands rejected. The second additional ground related to prior sanction u/s.151 of the Act by the PCIT was also taken by the AO and therefore re-opening was justifiable. Hence, both the additional grounds are rejected.

9. Now coming to the merits of the case, the Ld.AR submitted that the rejection of books of accounts without pointing out how the method of the

assessee which was adopted continuously was defective or the income computed cannot be the reason for rejecting the method of accounting of the assessee. The Ld.AR submitted that there are plethora of decision of not approving this approach of the Revenue. Where the correctness of sales and genuineness of purchase are found duly recorded and otherwise verifiable then rejecting is not justifiable. The Ld.AR submitted that rather view of Hon'ble Courts is that the absence of daily stock register by itself must not be a convincing ground for rejection of accounts, specially, in the absence of any positive material against the correctness of accounts. The Ld.AR submitted that in each and every casewithout considering the feasibility mere non maintenance of item-wise stock register would not justify rejection of accounts. If there is no detection of specific understatement of income then non-maintenance of item-wise stock or day to day stock register is not a conclusive proof of invocation of the provisions of section 145(3) of the Act. Maintenance of such record depends upon the nature of business carried out and that whether practically possible or physically feasible to maintain such intricate record. The Ld.AR further submitted that the assessee has filed the sales register and purchase register for AY 10-11 and the assessment order of Commercial Tax Officer for Arihant Enterprise, Ahmedabad. The Ld.AR further submitted that the quantification of commission is also not justified. As the assessee has not received any commission and 1.25% of sum of sales and purchases aggregating Rs.84,33,18,101/- is not justifiable.

10. The Ld.DR relied upon the Assessment Order and the order of the Ld.CIT(A).

11. The Ld.DR further submitted that the AO has made the addition on the strength of independent analysis of the documents to arrive at the conclusion that the assessee has failed to prove genuineness of the transaction in respect of STCL as well as per the requirements of section 68 of the Act, the AO has shifted the onus back on the assessee by confronting the adverse findings. The action of AO in rejecting the books of accounts u/s.145(3) of the Act was without any adverse findings. Since the assessee was asked to produce the evidence for transportation of goods like lorry receipt, the assessee stated that the LRs have been seized by the commercial tax authorities but on verification by the AO it was observed that no LR were seized by the Commercial Tax Department. The AO also noted that as per the form no.3CB at column No.28(a) the auditor had noted no stock register is available for verification. The assessee also failed to furnish the procedure of raising bills, dispatch of goods, transportation, maintaining the stock register etc from receiving the order on the purchase of goods from the vendors and dispatching the goods and finally accounting for the purchase/sales and related expenses.

12. The Ld.DR submitted that the AO was justified in not affording opportunity of cross examination of Commercial Tax Officer and in rejecting the books of accounts and estimated income at the rate of 1.25% of suppressed sales & purchases. Therefore the Ld.DR submitted that the Ld.CIT(A) has rightly dismissed the assessee ground on merits as well.

13. We have heard both the parties and perused the materials available on record. While rejecting the books of account u/s.145(3) of the Act, the AO has given the details as to the discrepancies related to the books of account as the auditor has given the report in Form No.3CB column No.28

(a) that no stock register is available for verification. But the assessee has filed a copy of order of MetropolitanMagistrate claiming that there is seizedmaterial which includes Lorry receipts and transport receipt seized by the Commercial Tax Officer, during the course of search. The assessee has filedthe return prior to the search dated 28.01.2012 as the original return was filed on 09.10.2010. If the auditor is recording that no stock register was available for verification, it amounts to that the assessee is not keeping stock registered and the books are not very verifiable to that extent for it completeness and correctness. The AO in para 6.10 of the assessment order has categorically expressed this and therefore the AO has rightly rejected the books of account of the assessee. As regard to net commission at the rate of 1.25% the commission adopted by the AO, the sum of sales and purchases aggregating to Rs.84,33,18,101/- the same needs to be verified as the VAT authorities has accepted the same as per the submission of the assessee during the course of hearing. Hence, this issue is remanded to the file of the AO to verify the assessee's turnover as accepted by the VAT authorities. The assessee be given opportunity of hearing by following the principle of natural justice. After verifying the details the AO will adjudicate the same as per the Income Tax Law.Thus, the ground no.5 is partly allowed for statistical purposes.

14. In the result the ITA No.131/Ahd/2024 is partly allowed for statistical purposes.

15. As regards to the ITA No.132/Ahd/2024 for A.Y 2011-12 and ITA No.753/Ahd/2024 for A.Y 2012-13 are identical to that of AY 2010-11 and similar direction to be complied with and said assessment years are also remanded back to the file of the AO for proper verification and

adjudication. Thus, both the appeals of the assessee are partly allowed for statistical purposes.

16. In the combined results, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 03rd June, 2025 at Ahmedabad.

**Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/06/2025 *Manish, Sr. PS*

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

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad