

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.757/SRT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

M/s Chhanabhai Kanjibhai Patel Block No.135, Vallabh Vidhya Nagar Society, Kamrej, Surat-394 185	बनाम/ Vs.	Assistant Commissioner of Income-tax, Circle-2(2), Surat, Room No.622,6 th Floor, Aaykar Bhavan, Near Majura Gate, Opp. Civil Hospital, Surat -395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AASFM 1594 M		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr. DR
सुनवाई की तारीख/Date of Hearing	04/06/2025
उद्घोषणा की तारीख/Date of Pronouncement	18/07/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 24.06.2024 by the Commissioner of Income-tax (Appeal)/ Addl/JCIT(A)-10, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises from the assessment order passed by Assessing Officer (in short, 'AO') u/s 143(3) of the Act on 04.12.2019.

2. Grounds of appeal raised by the assessee are as under:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the Learned CIT(A) has erred in confirming the action of the Assessing Officer in making addition of Rs.7,22,420/- by invoking section 41(1) of the IT

Act, 1961 as against section 68 of the IT Act, 1961 invoked by Assessing Officer.

2. It is therefore prayed that the above addition confirmed by CIT(A) may please be deleted.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

3. Facts of the case in brief are that assessee filed its return of income for AY 2017-18 on 16.10.2017 declaring total income at Rs.90,63,409/-. The case was selected for complete scrutiny and in response to the notices issued by the AO, the assessee filed various submissions and details. The assessee had shown current liabilities at Rs.5,52,29,911/-, out of which creditors were Rs.4,98,99,620/-. Subsequently, the AO issued notices u/s 133(6) to the some creditors. After receiving reply from the assessee, he issued show cause notice on 19.11.2019 in respect of 4 creditors. After considering the reply of the assessee, he added Rs.2,12,820/- and Rs.5,09,600/- in respect of 2 creditors, namely, Shri Diyora Maheshbhai Talashibhai and Nareshbhai I Patel respectively u/s 68 of the Act because the assessee failed to discharge the primary onus to establish the identity and creditworthiness of the above creditors and genuineness of the transactions. Accordingly, he added Rs.7,22,420/- to the total income. Aggrieved by the order of AO, assessee filed appeal before CIT(A).

4. Before CIT(A), the appellant filed PAN of both the creditors and also ledgers for subsequent years where payments have been made to them. The CIT(A) observed that addition could not be made u/s 68 of the Act but u/s

41(1) of the Act. He has examined the ledger of the creditors for subsequent AY 2018-19 and found that all payments were made in cash of Rs.10,000/- each on different dates. No genuine creditors will receive payments in above manner over different dates. Thereafter, the CIT(A) discussed the provisions u/s 251(1)(a) of the Act at pages 5 and 6 of the appellate order and observed that it empowers the CIT(A) to enhance the assessment. Since the impugned 2 creditors were not genuine, he observed that it was proper to invoke Section 41(1) of the Act instead of Section 68 of the Act, restored to by the AO. Accordingly, he sustained the addition under a different section i.e., Section 41(1) of the Act.

5. Aggrieved by the order of CIT(A), the appellant has filed present appeal before the Tribunal. The Ld. AR has filed a paper book including written submissions before AO and CIT(A), ledger accounts of Nareshbhai S Patel & Maheshbhai Talashibhai Diyora for AYs 2017-18 and 2018-19. He submitted that appellant has made payments to the creditors subsequently and hence, no additions could be made. He also submitted that the CIT(A) made the enhancement without issuing any notice to the appellant. The Ld. AR also relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Sugauli Sugar Works (P.) Ltd. (1999) 102 Taxman 713 (SC).

6. On the other hand, Ld. Sr-DR for the Revenue supported order of lower authorities.

7. We have heard both the parties and perused the materials on record. We have also deliberated the case law relied on by Ld. AR of the appellant. The Ld. AR contended that the appellant made payments to the creditors in the subsequent AYs. In case of Diyora Maheshbhai Talashibhai, the entire amount was repaid in the subsequent AY 2018-19. In case of Nareshbhai S Patel, the appellant had made payment of Rs.3,89,800/- and only Rs.1,19,800/- was outstanding as on 31.03.2020. He submitted that the CIT(A) has deleted the addition u/s 68 but enhanced the same income u/s 41(1) of the Act without issuing notice for the said enhancement. We have again perused the facts of the case and have also gone through the relevant provisions of the Act. The power of enhancement is explicitly given to the CIT(A), which is clear from provisions of clause(a) of sub-section(1) of Section 251 of the Act. It reads as follows:

251. Power of the Joint Commissioner (Appeals) or the Commissioner (Appeals).- (1)
In disposing of an appeal, the [...] Commissioner (Appeals) shall have the following powers-
(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, ... (emphasis supplied)

7.1 The Hon'ble Supreme Court in case of CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) held that the competence of the CIT(A) ranges over the whole assessment and it is open to him to correct the AO not only with regard to a matter raised by the assessee but also with regard to a matter which has been considered by the AO and determined in the course of assessment. Further, the Hon'ble Court in case of CIT vs. Nirbheram Deluram (1997) 224 ITR 610 (SC) held that amounts relating to new

source of income of items not considered by the AO from the point of view of their assessability can be added by the CIT(A) in appeal before him. Therefore, it is clear from the word “**enhance**” used in Section 251 of the Act as well as the decisions of the Hon’ble Supreme Court cited supra that the CIT(A) has power to enhance the assessment. However, sub-section(2) of Section 251 requires prior opportunity of hearing before any enhancement. Provisions of sub-section(2) of Section 251 is reproduced for ready reference:

(2) The Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

7.2 In view of the clear statutory provisions reproduced above, the CIT(A) was statutorily required to grant a reasonable opportunity of hearing before enhancement of income in the appellate order. Since the CIT(A) has failed to follow the mandatory requirement of Section 251(2) of the Act, the enhancement is not liable to be sustained. Accordingly, ground raised by appellant is allowed.

8. In the result, appeal of the assessee is treated as allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 18/07/2025.

Sd/-
(SUCHITRA R. KAMBLE)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 18/07/2025

Dkp Outsourcing Sr.P.S*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत