

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA Nos. 679 to 681/Ahd/2025 &
ITA Nos. 871 to 873/Ahd/2025
Asst. Years 2020-21 to 2022-23**

Faridabanu Faridmiya Shaikh Wife & Legal Heir of Late Faridmiya Hussenmiya Shaikh 3-4, Upper level, Maharana Pratap Complex B/h V.S. Hospital, Ahmedabad-380006, Gujarat PAN: AEAPS0625M	Vs	The ACIT, Central Circle-(1)(2), Ahmedabad (Respondent)
The DCIT, Central Circle-(1)(2), Ahmedabad (Appellant)	Vs	Faridabanu Faridmiya Shaikh Wife & Legal Heir of Late Faridmiya Hussenmiya Shaikh 3-4, Upper level, Maharana Pratap Complex B/h V.S. Hospital, Ahmedabad-380006, Gujarat PAN: AEAPS0625M (Respondent)

**Assessee Represented: Shri Anil Kshatriya, A.R.
Revenue Represented: Shri Rignesh Das, CIT-DR**

Date of hearing : 01-07-2025
Date of pronouncement : 23-07-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These Cross appeals are filed by the Legal Heir of the Assessee and the Revenue as against the common appellate order dated 26.02.2025 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad, arising out of the assessment orders passed under section 143[3] r.w.s. 147 and 143[3] of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2020-21 to 2022-23. Since common issue is involved in all these appeals the same are disposed by this common order for the sake of convenience.

2. The brief facts of the case are the assessee (Late Faridmiya Hussenmiya Shaikh) was a proprietor of M/s. Sojas Corporation, engaged in the business of wholesale trading of tobacco products and received income from house property and income from other sources. For the asst. year 2020-21 the assessee filed his original Return of Income u/s.139(1) of the Act on 16.12.2020 declaring total income of Rs.44,19,940/-. The assessee died on 06-05-2021 and is represented by his wife as the Legal representative. There was a search action u/s.132 of the Act carried out in the case of MHS group on 16.11.2021 and the key person of MHS group is Shri Mustufamiyan Hussenmiyan Shaikh. The group was the main distributor of Manekchand Gutkha (RMD) in Gujarat Circle and carried on the business of Manekchand Gutkha on wholesale basis. During the search and seizure action, the office premises of the assessee was also covered u/s.132 of the Act. Therefore, in the light of incriminating documents seized, satisfaction was drawn as per provisions of the Act and notice u/s.148 of the Act was issued on 24-07-2023.

2.1. In response to the notice u/s.148, the assessee filed return of income on 05-08-2023 declaring same total income of Rs.44,19,940/-. Thereafter, notice u/s.142(1) dated 18-10-2003 issued calling for detailed and specific questionnaire. The AO observed that during the course of search action at the office premises of the assessee, statement of Shri Wasim Shaikh an employee and Accountant of the assessee was recorded u/s.132(4) of the Act on 16.11.2021 vide which he deposed they received cash of Rs.19,500/- per cartoon for sale of RMD Sada Pan Masala 2GM, RMD Sada Pan masala 3.50 GM and M-Gold. He further deposed that they received cash and prepared Daily Sales Report [DSR] according to which the group was receiving Rs.19,500/- per cartoon. However, in the regular books of account the sales were under invoiced by Rs.300/-. Thus the AO concluded that MHS group sold RMD Sada Pan-Masala 2GM, RMD Sada Pan-Masala 3.50 GM and M-Gold in cash after reducing Rs.300/- per carton and derived such suppressed amount of sales at Rs.37,29,300/= and added u/s. 69A of the Act.

2.2. Further, during the post search proceedings, statement of Shri Rashmin M. Majithia was recorded on 03.02.2022 on oath u/s.131 of the Act. In Answer to Question No. 10, he categorically stated that Mustufa Sales Agency, Manali Sales Agency and Sojas Sales Corporation are buyers from M/s. Zen Industries Pvt. Ltd. and M/s. Zen Tobacco Pvt. Ltd. Therefore the AO observed that above evidences and statements of Shri Mayank Ashokbhai Khatri and Shri Rashminbhai M. Majithia clearly proved that transactions recorded in Page Nos. 156, 157, 158 & 159 were transactions of Sales to M/s. Mustufa Sales Agency and M/s. Sojas Corporation which were not recorded in the books of accounts of Zen Group. Thus the financial year wise total sales as

per Page Nos.156 to 159 are tabulated as under:

Total sales as per Page No. 156 & 157			Total sales as per Page No. 158 & 159		
Sr. No.	F.Y.	Amount in (Rs.)	Sr. No.	F.Y.	Amount (in Rs.)
1	2019-20	23,00,00,000	1	2019-20	21,00,000
2	2020-21	33,35,00,000	2	2020-21	25,89,00,000
			3	2021-22	5,20,000
	Total	56,35,00,000		Total	31,30,00,000

2.3. It was further observed by the AO that during the course of assessment proceedings, the assessee has filed his reply and contended that in pursuance of statements of Shri Mayank Ashokhbhai Khatri, Shri Rashminbhai Majithia in his statement recorded u/s.131 of the Act, had not only categorically disowned such documents i.e. page Nos. 156 to 159 and denied having any connection with financial transaction with the above stated entities from entire Zen Group of concerns, but also asserted and affirmed that they have not made any cash sales to Shri Mustufamiya Hussainmiya Shaikh, M/s. Sojas Corporation, M/s. Manali Sales Agency and M/s. Modern Sales Agency. Not only that but he has further affirmed that the papers are not related to his group and also that they do not have any practice to write figures in abbreviated code by omitting four zeroes (0000) in reply to question on referred pages nos. 156 to 159.

2.4. However, the Ld. AO had not accepted the plea of the assessee and rejected books of accounts of the assessee u/s.145(3) of the Act and made addition on account of estimated difference in GP while passing the assessment order. The working investment in unaccounted purchase are as under:

Particulars	F.Y. 2019-20 (in Rs.)	F.Y. 2020-21 (in Rs.)	F.Y. 2021-22 (in Rs.)
Total unaccounted purchase as per 6,1 (A)	23,21,00,000/-	59,24,00,000/-	5,20,00,000/-
Stock Turnover Ratio as per Para 6.3 (B)	20.40	16.09	4.02
Stock investment Rotates/Required at given point of during the year (A/B)	1,13,77,451/-	3,68,17,899/-	1,29,35,323

2.4. Thus, the Ld AO made addition of Rs.59,08,859/- on Protective basis out of total addition of Rs.1,13,77,451/- as the said amount was added in total income of Shri Mustufa Miya Hussenmiya Shaikh on substantive basis and the balance amount of Rs. 54,68,592/- (Rs. 1,13,77,451 - Rs.59,08,859/-) in the hands of the assessee on substantive basis.

2.5. Further the Ld AO made addition on account of estimation of GP and the working of the difference in GP as under:

A.Y.	Unaccounted purchase (in Rs.)	Purchase as per Books of Accounts (in Rs.)	Total purchase (in Rs.)	G.P % As per Books of Accounts	G.P.% considered for Calculation of GP	Final Gross Profit (in Rs.)	Already offered Gross Profit as per ITR (in Rs.)	Difference (To be added in Rs.)
	(A)	(B)	(C = A+B)	(D)	E	(F = C+E/100)	(G)	(H)
2020-21	23,21,00,000	21,93,30,477	45,14,30,477	3.48	10.00	4,51,43,048	76,32,896	3,75,10,152
2021-22	59,24,00,000	18,06,50,377	77,30,50,377	3.54	10.00	7,73,05,038	63,93,315	7,09,11,723
2022-23	5,20,00,000	2,22,29,773	7,42,29,773	5.09	10.00	74,22,977	11,33,565	62,89,412
	87,65,00,000	42,22,10,627	129,87,10,627	4.04	10.00	12,98,71,063	1,51,59,776	11,47,11,287

2.6. Thus, the AO made protective addition of Rs.3,75,10,152/- in the hands of assessee while passing the assessment order as substantive addition of Rs.11,16,31,500/- had already been made in the hands of Shri Mustufamiya H Shaikh.

2.7. The details of additions made by the Ld AO in all the three assessment years are as follows:

A.Y.	Date of order passed u/s. 147 r.w.s. 143(3), 143(3) of the Act	Amount of addition (in Rs.)	Nature of addition
2020-21	08/02/2024	37,29,300/- 1,13,77,451/- 3,75,10,152/-	1. On account of unaccounted receipt u/s. 69A of the Act. 2. On account of unaccounted/unexplained investment in Stock u/s. 69 of the (Rs.54,68,592/- on a substantive basis & Rs. 59,08,859/- on protective basis.) 3. On account of Estimation of Gross Profit of protective basis.
2021-22	31/12/2022	29,99,100/- 3,68,17,899/- 5,92,40,000/-	1. On account of unaccounted receipt u/s. 68 of the Act. 2. On account of unaccounted/unexplained investment in Stock u/s. 69 of the (Rs.2,21.10,849/- on a substantive basis & Rs.1,47,07,050/- on protective basis.) 3. On account of Estimation of Gross Profit
2022-23	12/02/2024	5,60,400/- 1,29,35,323/- 62,89,412/-	1. On account of unaccounted receipt u/s. 69A of the Act. 2. On account of unaccounted/unexplained investment in Stock u/s. 69 of the (Rs.1,21,51,482/- on a substantive basis & Rs. 7,83,841/- on protective basis.) 3. On account of Estimation of Gross Profit of protective basis. (as per 7)

3. Aggrieved against the assessment orders assessee filed appeals before Ld CIT[A], who deleted the alleged unaccounted purchases made by the assessee from M/s. Zen Industries Ltd since the alleged sales made by M/s. Zen Industries Ltd were already deleted by Ld CIT[A] vide his common order dated 03-02-

2025 and corresponding alleged purchases made by the assessee were deleted and also estimation of gross profit by observing as follows:

“5.7 Therefore, keeping in view of the contentions as discussed supra the submissions of the appellant and other relevant records, it can be concluded that the issue of alleged undisclosed purchases made by the appellant emerged from the fact that M/s. Zen Industries Pvt. Ltd. had allegedly sold the materials to the appellant. Since the entire sales in the hands of M/s. Zen Industries Pvt. Ltd. stands deleted, therefore, the corresponding purchases in the hands of the appellant also are deleted. Accordingly, the AO is directed to delete the additions of (i) Rs.1,13,77,451/-(Rs.54,68,592/- on substantive basis & Rs. 59,08,859/- on protective basis) made on account of unaccounted/unexplained investment in stock u/s.69 of the Act and (ii) Rs.3,75,10,152/- made on account of estimation of gross profit. Thus, the grounds no.4, 5 & 6 of appeal are allowed.”

3.1. On the addition made on account of unexplained receipts u/s.69A of the Act. Ld CIT[A] confirmed the addition made by the AO on account of suppression of sales made by the assessee by observing as follows:

“6.2 On careful perusal of assessment order, it appears that the above statement of Shri Wasim Shaikh was recorded on oath u/s. 132(4) of the Act on 16.11.2021. In the said statement, Shri Wasim Shaikh deposed that he looked after the selling of goods and collecting payment thereon. It also appears from the submission of the appellant as reproduced in the assessment order vide para 4.4. (3.1(1)) wherein the appellant seemed to have fairly admitted the fact that the materials seized in course of the search action are indeed pertain to retail sale made in Sanand-Viramgam which is considered to be as outside sale. On this account, I tend to agree with the AO that since no details/supporting evidences were furnished by the appellant, the unaccounted receipts of Rs.37,29,300/- calculated by the AO as suppression of sales at the rate of Rs.300/- carton appears to be justified and accordingly upheld. Therefore, the ground no.3 of appeal is dismissed.”

4. Aggrieved against the common appellate orders both assessee and Revenue are in cross appeals before us raising the following Grounds of Appeal:

Assessee's appeal in ITA No. 679/Ahd/2025 (A.Y. 2020-21)

1. On the facts and circumstances of the case and in law, the Order so passed by the Ld. AO is bad in law, illegal, invalid as passed without assuming a valid jurisdiction and also that of the Ld. CIT(A) inasmuch as that the relevant ground of appeals no. 1 & 2 as raised before him are summarily dismissed without narrating the grounds of decision, besides committing factual error of having not considered the arguments made in person by the authorized representative by observing as having not represented by the AR at all, as such having being passed arbitrarily.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has further erred in dismissing the legal grounds no.1 & 2 of the appeal filed before him challenging the impugned assessment order so passed by the A.O. being in violation of set procedure of law and thus being void ab initio.

3 On the facts and circumstances of the case and in law, the Ld. CITA) has further erred in denying Justice, without any justification and thereby further erred in sustaining addition of Rs.37,29,300/- representing unexplained receipt u/s 69A of the Act so made by the A.O.

5. Heard rival submissions at length and perused the materials available on record including the Paper Book and Case Laws relied by the assessee. First we deal with Assessee's appeal in ITA No. 679/Ahd/2025.

5.1. Regarding Ground Nos. 1 & 2 that no draft assessment order u/s. 144B(1)(xii)(b) of the Act was passed by the A.O. and reliance of Bombay High Court judgment in the case of Riknu R. Rai vs. ITO reported in [2023] 454 ITR 33 (Bom) for the proposition that the final assessment order is liable to be quashed, as no draft assessment order was issued to the assessee.

5.2. In our considered view, the above provisions is not applicable to the facts of the present case, since the provisions of section 144B namely "faceless assessment" is not done in the case of the

assessee. Whereas regular assessment was made by Deputy Commissioner of Income Tax, Central Circle-1(2), Ahmedabad. Therefore the provisions of faceless assessment are not applicable the facts of the present case. Thus the grounds 1 & 2 raised by the assessee are devoid of merits and the same are liable to be dismissed.

6. Regarding Ground no. 3 namely unexplained receipt of Rs.37,29,300/- made u/s. 69A of the Act. The Ld. CIT(A) deleted the above addition in the case of Shri Mustufamiya Hussainmiya Shaikh namely another related person of MHS Group. As against Ld. CIT(A) deleting the addition, Revenue filed further appeal before this Tribunal in ITA No. 1888 & 1889/Ahd/2024. The Co-ordinate Bench of this Tribunal vide order dated 30-04-2025 confirmed the deletion made by the Ld. CIT(A) by observing as follows:

“..... 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 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 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.

6.1. Respectfully following the Co-ordinate Bench decision, the addition made in the hands of the assessee is hereby deleted and Ground No. 3 raised by the assessee is allowed.

7. In the result, **the appeal filed by the Assessee in ITA No. 679/Ahd/2025 is partly allowed.**

ITA No. 871/Ahd/2025 (Revenue's appeal) (A.Y. 2020-21)

8. The Grounds of Appeal raised by the Revenue reads as under:

1) "In the facts and on the circumstances of the case, Ld. CIT(A) erred in deleting the addition of Rs 54,68,592/- on substantive basis & Rs.59,08,859/- on protective basis on account of unaccounted/unexplained investment in stock holding that entire sales in the hands of M/s. Zen Industries Pot Lid stands deleted, therefore the corresponding purchases in the hands of the appellant also are deleted."

2) "The Ld.CIT(A) has erred in deleting the Addition of Rs.3,75,10,152/- 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."

9. Ground No. 1 namely deletion of Rs. 54,68,592/- on substantive basis and Rs. 59,08,859/- on protective basis on account of unexplained investment in stock. Ground No. 2 namely deletion of Rs. 3,75,10,152/- on account of estimation of gross profit on unaccounted purchase.

10. Ld. Counsel for the assessee submitted that in the case of Shri Mustufamiya Hussainmiya Shaikh the very same assessing officer made addition of Rs.1,47,07,050/- u/s. 69 r.w.s. 115BBE of the Act on account of unexplained investment in stock as well as estimation of gross profit of Rs.5,92,40,000/- on alleged unaccounted purchase vide assessment order dated 31.12.2022 passed u/s. 143(3) of the Act. On appeal before Ld. CIT(A), who has deleted the aforesaid addition vide appellate order dated 03-02-2025 by observing as follows:

"4.6 It is also pertinent to mention here that based on the documents seized as per page nos.158 to 159 of Annexure-A/3, from the activa, two wheeler of Shri Mayank Ashokbhai Khatri, the AO held that the appellant made unaccounted sales to M/s. Mustufa Sales Agency (prop. Mustufamiyan H. Shaikh) and Ms. Sojas Corporation and accordingly, holding the unaccounted purchase in the hands of MHS Group, added Rs. 11,16,31,500/- & Rs.5,92,40,000/- on account of estimation of GP and Rs.59,08,859/- & Rs.1,47,07,050/- as unaccounted/unexplained investment in stock for the assessment years 2020-21 & 2021-22 respectively. My predecessor CIT (A) while adjudicating the appeals of the alleged purchaser on the basis of the seized page nos. 156 to 159 in the case of Mustufamiyan Hussenmiyan Shaikh (MHS) group in Appeal no: CIT (A) Ahmedabad-11/10688/2019-20, Dated 29.08.2024 held in favour of Mustufamiyan Hussenmiyan Shaikh (MHS) group, the alleged purchaser by deleting the entire additions. The findings of the Ld.CIT(A) as per the concluding para (Para no 4.6) of the order is as under:

"Keeping in view of the contentions as discussed supra and record available, it can be concluded that the AO had not brought any record which suggests that the said seized pages were related belonging/pertaining to unaccounted purchase made by M's Mustafa Sales Agency (Prop: Mustufamiyan H Shaikh) & Sojas Corporation group as there is no vital details 1.0. name of the appellant, quantity of product item, description of item, rate of item, details of delivery, dates of payments or cash trail was found either from the possession of Shri Mayank Ashokbhai Khatri or Shri Rashmin M. Majithla or any of the person of Mustufa Group etc. The above details are also not found mentioned on the seized documents. Thus the addition made on account of estimation of GP does not survive."

4.7 In view of the above discussion, factual matrix of the case, and also, In view of the decision of my predecessor Ld. CIT (A), deleting the entire addition of alleged purchase in the hands of M/s Mustafa Sale's Agency (Prop: Mustufamiyan H Shaikh) & M/s. Sojas Corporation group, the AO is directed to delete the addition made of Rs. 8,85,22,432/- on account of estimation of GP on alleged sale transactions based on the said seized page nos: 156 to 159. Since, the addition made by the AO has been deleted, therefore, the technical/legal plea taken by the appellant becomes infructuous, hence not adjudicated. Thus, the grounds nos. 1 to 7 of the appeal are allowed."

10.1. This appellate order was challenged by the Revenue before this Tribunal in ITA No. 1888 & 1889/Ahd/2024. The Co-ordinate Bench of this Tribunal vide order dated 30-04-2025 confirmed the deletion made by the Ld. CIT(A) and therefore Ld. Counsel requested to dismiss the grounds raised by the Revenue.

11. Ld. CIT-DR appearing for the Revenue could not dispute the above facts and orders passed by the Co-ordinate Bench of this Tribunal in ITA No. 1888 & 1889/Ahd/2024. Relevant portion of the order is already reproduced in paragraph 6 of this order, hence the same as repeated. There is no evidence related to unrecorded payment in cash to the Zen group by the assessee and the purchasers also not admitted having paid unaccounted cash for purchase of tobacco and other products. In the absence of necessary evidences the deletion made by the Ld. CIT(A) which is confirmed by the Co-ordinate Bench of this Tribunal does not require any interference. Thus Ground Nos. 1 & 2 raised by the Revenue are devoid of merits and the same are liable to be dismissed.

12. In the result, **the appeal filed by the Revenue in ITA No. 871/Ahd/2025 is hereby dismissed.**

ITA No. 680 & 681/Ahd/2025 (Assessee's appeal) (A.Ys. 2021-22 & 2022-23)

13. The Grounds of appeal raised by the assessee are identical with that of the appeal filed by the assessee relating to Asst. Year 2020-21 in ITA No. 679/Ahd/2025 except change in figures. Thus the orders passed by this Tribunal in Paragraph Nos. 5.1 to 6.1

are applicable *mutatis mutandis*.

14. In the result, the appeals filed by the Assessee are partly allowed.

ITA No. 872 & 873/Ahd/2025 (Revenue's appeal) (A.Ys. 2021-22 & 2022-23)

15. The Grounds of appeal raised by the Revenue are identical with that of the appeal filed by the Revenue relating to Asst. Year 2020-21 in ITA No. 871/Ahd/2025 except change in figures. Thus the orders passed by this Tribunal in Paragraph Nos. 9 to 11 are applicable *mutatis mutandis*.

16. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 23-07-2025

Sd/-

**(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER**

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad : Dated 23/07/2025

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