



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं/.ITA No.405/RJT/2025
निर्धारणवर्ष /Assessment Year: (2010-11)

Jigar Industries Plot No. 164/5, GIDC -2 Jamwadi, Gondal, Rajkot-360311	बनाम Vs.	Income Tax Officer Ward 1(2)(1), Rajkot, Income Tax Office, New Aayakar Bhawan, Vatika Rajkot-360007
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. AABFJ5914B		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Assessee by : Shri R.B. Shah, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Ld.Sr-DR

सुनवाईकीतारीख/Date of Hearing : 06/08/2025
घोषणाकीतारीख/Date of Pronouncement : 18/08/2025

आदेश/Order

PerDr. Arjun Lal Saini, A.M.:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2010-11, is directed against the order under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by the National Faceless Appeal Centre (NAC) Delhi/Commissioner of Income-tax (Appeals)[in short 'Ld.CIT(A)'], dated 16.05.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)r.w.s. 147 of the Act, dated 20.12.2017.

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

(1). The Ld.CIT(A) has erred both in law and on facts of the case in confirming the action of Assessing Officer in reopening of the assessment u/s 147 of the Income tax Act. 1961. In the facts and circumstances of the case, learned CIT(A) ought to have



held that the action of reopening as invalid and the same may kindly be held as invalid.

(2). The LdCIT(A), has erred in law and on facts in upholding the action of Assessing Officer that the Assessee has clandestinely removed goods amounting to Rs.1,91,35,820/-on completely relying upon the show cause notice and materials supplied by the excise department without finding any defect in books of accounts and without any new tangible material.

(3). The Ld CIT(A) erred in confirming the addition of Rs.52,09,784/- towards alleged undisclosed gross profit @ 24.02% on suppressed sales solely based on a show-cause notice issued by the Excise Department, without any independent finding of suppression or any defect in the books of accounts.

(4).The LdCIT(A) erred in confirming the addition of ₹15,00,849/-on account of alleged initial investment in raw material purchases without any material evidence or corroboration and purely on estimated basis.

Without Prejudice to the above grounds:

(5). The Ld CIT(A) and Ld/- assessing officer erred in not considering the net profit margin and considering the Gross Profit, as income from the alleged unaccounted sales, in accordance with the settled principles of income determined in cases involving suppressed turnover.

(6). The Ld assessing officer erred in making estimation of profit in arbitrary, excessive and without support of any cogent material or comparable data and the Ld CIT(A) has erred in upholding estimation of profit made by Ld assessing officer. Estimation of profit made without and cogent material deserves to be deleted or suitable reduced.

(7). The assessee craves leave to add, amend, alter, or withdraw any of the above grounds before or at the time of hearing.”

3. The facts necessary for disposal of the appeal, are stated in brief. As per the information available, with the Income Tax Department, the assessing officer observed that the assessee-firm has purchased a huge quantity of copper wires from M/s High Cop Manufacturing Company, Rajkot without bills and used the same to manufacture electric cable and wires and then cleared the same without preparing invoices and received the payment in cash. During the relevant previous year, the assessee has purchased raw material of Rs.1,73,96,200/-, without invoice and sold the finished goods and the sales consideration remains unaccounted in the books of the assessee. Therefore, the case of the assessee has been reopened by 10.03.2017, after recording reasons, and issuing notice u/s



148 of the Act, after obtaining necessary approval from the Pr.CIT-1, Rajkot. The said notice was served upon the assessee. In response to the notice, the assessee has requested to treat the return of income filed on 25/09/2010, declaring total income at Rs.97,060/-, as return of income (ROI) filed in response to notice u/s 148 of the Act. Notice u/s 143(2) was issued on 20.04.2017 and a notice u/s 142(1) of the Act, was issued on 07.06.2017 calling for required compliance in response to notice u/s 148 of the Act. In response to the notices u/s 143(2) and 142(1) of the Act, the assessee attended the hearing and submitted the required details from time to time. On perusal of the material on record & show cause notice dated 30.10.2014, issued by the Central Excise & Customs, it has been noticed by the assessing officer that the assessee has made total unaccounted purchases, that is, purchase without bills to the tune of Rs. 6,65,26,720/-, from M/s High Cop Manufacturing Company, during the F.Y. 2009-10 and 2010-11 and used the same to manufacture electric cable and wires which is also admitted by Shri Tarun G. Shingala, Partner of the firm, before the Central Excise Department, Rajkot on 19.04.2011 and 28.04.2011.

4. During the course of Assessment, the assessee was provided a copy of show cause notice, by the assessing officer, issued by the Excise Department in the case of assessee- firm, along with duty calculation sheet for evasion of excise duty for A.Y. 2010-11 and A.Y. 2011-12. As per the duty calculation sheet, it was observed by the assessing officer that assessee has evaded excise duty amounting to Rs. 85,65,315/-, on clandestine removal of finished goods having excisable value amounting to Rs.8,31,58,400/-(unaccounted purchase plus overhead expenses and profit) and relatable of unaccounted production and subsequent unaccounted sales. During the course of search conducted by the Excise Department, statement of Shri Tarunbhai G. Shingala, partner of the firm, was recorded who has accepted the excise evasion before the excise



department. Accordingly, after incorporating all the issues, a detailed show - cause notice dated 29.11.2017 was issued to the assessee.

5. In response to the notice of the Assessing Officer, the assessee submitted its reply before Assessing Officer. The assessee, asked the assessing officer that regarding the proposed addition of Rs. 52,09,784/-, on account of lower G.P. and Rs. 15,00,849/-, on account of suppressed raw material cost, including manufacturing overheads, requested to provide him, the copy of letter No. ITO/Wd. 1(1)(5)/REIC-II/2014-15/25 dated 21-01-2015 and the material available on record to support the alleged unaccounted purchase of Rs. 1,73,96,200/-without invoice. Further, the assessee have filed an appeal before customs, excise and service tax appellate tribunal against the impugned demand of excise duty which is pending for hearing. Therefore, the matter is under sub-judice and not finalized. Hence the proposed addition cannot be made till the decision of CESTAT-Ahmedbad.

6. However, the Assessing Officer rejected the above contention of the assessee and observed that the show cause notice issued to the assessee, was on the basis of material available on record, statement given by the partner of the firm. The assessing officer also noticed that appeal filed by the assessee before the CESTAT- Ahmedabad, is regarding the component of excise duty leviable and which has no barring over the Income-Tax Department. The I.T. department is concerned regarding the component of income earned and the assessing officer had material which itself substantiate the fact that the assessee-firm was engaged in the unaccounted purchase, manufacturing of electric cable and wires and clearance of goods without invoices which resulted in earning income which is not offered for taxation and resulting in concealment of income earned over unaccounted sales. Therefore, assessing officer made addition, on account of low Gross Profit, which comes to Rs.52,09,784/- (Actual G.P as discussed in



the show cause notice of Rs.79,29,772/- less Shown in the Books of Rs.27,19,988/-). The assessing officer also made addition to the total income of the assessee, on initial cost of investment, which comes to Rs.15,00,849/-, to the total income of the assessee.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before Ld.CIT(A), who has confirmed the action of the Assessing Officer. The Ld.CIT(A), on technical issue of reopening of assessment under section 147/148 of the Act, held that the case was reopened on the basis of tangible information received by the assessing officer indicating unaccounted purchases and unaccounted sales.

8. The Ld.CIT(A), on merit, observed that in the decision of Hon'ble Excise Tribunal, Ahmedabad dated 24/06/2024, in assessee's case under consideration, the matter was set aside to the Excise- Department for fresh adjudication, by Excise Tribunal, only on technical ground of not giving opportunity of cross examination, the no finding is given on main issue of unaccounted produced or unaccounted purchases. Further the assessee has not produced the fresh order of Excise Department in support of its contention that there was no unaccounted produced; unaccounted purchases or unaccounted sales. Therefore, the contention raised by the assessee was not found tenable by Ld.CIT(A). Moreover, as per learned CIT(A), the facts of the case laws relied upon by the assessee are not identical to the facts of the assessee's case, therefore, the same were not applicable to the assessee's case. In view of the above, the Ld.CIT(A) dismissed the appeal of the assessee.

9. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.



10. Learned Counsel for the assessee raised technical issue in ground No.1, in appeal memo, regarding reopening of assessment, which was made merely based on the notice of Excise Department. The learned Counsel stated that reopening of assessment was made by the assessing officer, only on the basis of notice issued by the excise department. The assessing officer did not have any material or tangible material in his possession, except notice of excise department, to reopen the assessment of the assessee. The Id. Counsel stated that there was no tangible material, to reopen the assessee`s assessment, and even the information mentioned in the notice of excise department, has not been examined by the assessing officer, that is, no any preliminary investigation done by the assessing officer, hence it is complete non-application of mind on the part of the assessing officer. Therefore, the reasons recorded by the Assessing Officer is bad in law and for that Ld. Counsel relied on the judgment of Hon`ble jurisdictional High Court of Gujarat, in the case of PCIT vs. Ganga Glazed Tiles Pvt, Ltd, in Tax Appeal No.206 of 2019, order, dated 25.06.2019, wherein Hon`ble Court quashed the reassessment proceeding, initiated merely on the basis of show- cause notice, of the excise department.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Ld CIT(A) and other materials brought on record. We note that during the course of assessment proceedings, the assessing officer noted that search operation was carried out by the Excise Department in the case of assessee and during search evidences of clandestine removal of stock of finished goods without payment of excise duty and was found to be involved in unaccounted production and unaccounted sales. During the search, the statement of ShriTarunbhai G. Shingala, partner of the assessee- firm was recorded, who had



admitted the excise evasion by way of unaccounted production, unaccounted purchases. In view of the above facts, assessee was requested to explain as to why the gross profit on the unaccounted sales and addition on account of related unaccounted purchases should not be made. In response, the assessee had stated that proposed addition should not be made till the decision on appeal filed by the assessee before CESTAT, Ahmedabad. Since the assessee had not given any reply on merit, the assessing officer had made the addition of Rs.52,09,784/- on account of gross profit on unaccounted sales and also made addition of Rs. 15,00,849/- on account of initial investment in the related unaccounted purchases.

12. We note that assessee's case was re-opened u/s 147 of the Act, on the basis of excise notice, issued by the Excise Department, therefore, issue under consideration is no longer *res-integra*, as the Hon'ble jurisdictional High Court of Gujarat, in the case of PCIT vs. Ganga Glazed Tiles Pvt, Ltd, in Tax Appeal No.206 of 2019, order, dated 25.06.2019, quashed the reassessment proceeding, under section 147/148, of the Act, initiated, merely on the basis of show- cause notice, of the excise department. The detained findings of the Hon'ble jurisdictional High Court of Gujarat, in the case of Ganga Glazed Tiles Pvt, Ltd(supra), are as follows:

"4. We also take notice of the fact that one Vrundavan Ceramics Pvt. Ltd. was also one of the assessee's before the Appellate Tribunal. The Appeal of Vrundavan Ceramics Pvt. Ltd. was ITA No. 117/Rjt/2013. The Revenue challenged the very same order passed by the Appellate Tribunal in the case of Vrundavan Ceramics Pvt. Ltd. We take notice of the fact that the coordinate bench by a common judgment disposed of a batch of tax appeals preferred by the Revenue. We quote the observations made by the coordinate bench in the case of Principal Commissioner of Income Tax, Rajkot-3 Vs. Vrundavan Ceramics (P.) Ltd. (2018) 95 taxmann.com 13 (Gujarat).

"1. These Tax Appeals involve identical questions of law arising out of similar factual parameters. Tax Appeal No. 78 of 2016 is treated as a lead mater. The respondent-assessee- M/s. Jaysun Ceramics is a partnership firm and is engaged in manufacture of ceramic tiles and other similar products. For the assessment year 2008-09, the assessee had filed the return of income showing total income of Rs. 1.09 crores (rounded off). Large number of ceramic units in the region were subjected to



central excise raid which resulted into issuance of show-cause notices by the Adjudicating authorities under the Central Excise Act. These show-cause notices were bulky containing voluminous materials. However, from the record and from the learned advocates appearing for the parties, the gist of the stand of the Central Excise department in such show cause notices appears to be that this assessee and other similar manufacturing units were clearing their excisable goods on a declared Retail Sale Price [RSP for short] on which, after adjusting the drawback at the prescribed rate, they would be required to pay excise duty. However, it was found that ultimately, such goods were sold to the consumer at a much higher price. In the process, there was tampering of printed RSP on the boxes and higher Maximum Retail Price [MRP for short] printed. According to the Excise Department, this excess sale price was diverted back to the manufacturer-seller by its dealer after adjustment of cost and may be a small commission. According to the show-cause notice, the pay back was through local aangadias or through bank accounts opened by the shroffs in different fictitious names. In case of the present assessee, according to the excise notice, the value of the suppressed sale came to Rs. 4.45 crores.

2. On the basis of such materials collected by the Excise Department, the Income Tax Authorities initiated steps for taxing the assessee for such unaccounted income. The Assessing Officer took the assessee's return under scrutiny. He supplied the copy of the show-cause notice to the assessee and called upon him to respond to the materials collected therein. The assessee's response in brief was that the contents of the show-cause notice issued by the Excise department were not true and correct. It merely contains statements collected behind the back of the assessee. Such statements are not yet verified. The makers of the statements have not been offered for cross-examination. It was also pointed out that the show-cause notice is yet to be adjudicated by the Excise Authorities. It was contended that even if the goods are ultimately sold at a price higher than the printed RSP, there cannot be any presumption that the assessee received the marginal price value.

3. The Assessing Officer was not convinced by such explanations. In the order of assessment, he referred to the contents of the show-cause notice at considerable length. He relied on the statements of the witnesses cited in such show cause notices. He noted, the manner of routing the excess cash sale price to the assessee. On such basis, he rejected the assessee's books of accounts. He estimated assessee's profit margin @ 25% of the suppressed sales. He added a sum of Rs. 1.11 crores (rounded off) being 1/4th of Rs. 1.45 crores (rounded off) to the total income of the assessee.

4. The assessee carried the matter in appeal before the CIT(A). CIT(A) substantially backed the Assessing Officer. He did not accept the assessee's contention that no addition at all could have been made. He, however gave partial relief to the assessee by reducing profit margin to 9% as compared to 25% projected by the Assessing Officer. Thereupon, both sides went in appeal. The Revenue as well as the assessee filed cross-appeals before the Tribunal. The Tribunal allowed the assessee's appeal and rejected that of the Revenue. Thereupon, the Revenue has filed two separate appeals before this Court concerning the present respondent-assessee. This is a scenario in all cases.

5. Earlier, these appeals were admitted on wrong questions and also once disposed of along with other group matters concerning the validity of the reassessment proceedings. Such orders were recalled and appeals were revived. For convenience, we may adopt the following question of law for the purpose of all appeals:



"Whether in the facts and circumstances of case, the Income Tax Appellate Tribunal was right in law in rejecting the Revenue's appeals and allowing the appeals of the assessee's and thereby totally deleting the additions made by the Assessing Officer and partially retained by the CIT(A)?"

6. *Having heard learned advocates for the parties at considerable length at the outset, we may straightaway agree with the suggestion of the counsel for the Revenue that the present group of cases do not fall in the same category as the judgement of this Court in case of Futura Ceramics (petitioner) Ltd v. State of Gujarat reported in [2013] 40 taxmann.com 404 (Gujarat). It was the case in which, the petitioner before the High Court was a registered dealer under the Gujarat Value Added Tax Act and was liable to pay tax on the basis of its turnover. The petitioner's return for the financial year 2006-07 was scrutinized by the Assistant Commissioner of Commercial Tax. The assessee was served with the show-cause notice by the said authority indicating that he has reason to believe that taxable turnover was suppressed. This was on the basis of a show-cause notice issued by the Excise department pursuant to the raid indicating that the petitioner had suppressed sales to the tune of Rs. 5.25 crores and thereby evaded tax duty to the extent of 73.55 lacs. The Assistant Commissioner of Commercial Tax therefore, prima facie held a belief that the assessee's sale of Rs. 5.97 crores (i.e. the suppressed sale of 5.25 crores coupled with excise duty element of 73.55 lacs) had escaped assessment. He accordingly, framed the assessment after rejecting the petitioner's objections. Such assessment order was challenged by the petitioner before the High Court on the ground that the Assistant Commissioner of Commercial Tax had proceeded merely on the show-cause notice issued by the Excise Department without any further verification. The Court noticed that the entire order of reassessment proceeded on the show-cause notice issued by the Excise department without any further material being brought on record. The Court held that merely because the Excise department issued such a notice, it cannot be a ground to presume that there was evasion of excise duty further implying evasion of value added tax. It was noticed that the show-cause notice issued by the Excise department had not yet culminated into final order against the petitioner and a piquant situation would arise if ultimately, such show-cause notice were to be dropped in favour of the petitioner. On this ground, the Court quashed the order of reassessment.*

7. *In the present case, the Assessing Officer has not proceeded on the basis of show-cause notice taking the proposals contained in such show-cause notice as having ving achieved finality. He has put the assessee's to notice with respect to the contents of such show-cause notice issued by the Excise department and also elicited assessee's response to the same. Whether this was sufficient to enable him to frame assessment is a question, which we will answer a while later.*

8. *Before proceeding further, we may discard the contention of the counsel for the assessee that since the excise proceedings had not yet been finalized, the Assessing Officer could not have passed the final order of assessment. This contention would have multiple objections from us. Firstly, as is wellknown, the adjudication proceedings under the Central Excise Act do not come with time barring provisions unlike as in the Income Tax Act. In fact, the Adjudicating authorities, under the Central Excise Act, enjoy much wider time period even for issuance of show-cause notice in case of the alleged nonpayment or short payment of duty is for any reason of*



fraud or collusion or willful misstatement or suppression of facts or contravention of the provisions of the Act with intent to evade payment of duty.

9. *Under the circumstances, the Assessing Officer cannot be expected to defer completion of assessment awaiting final order of adjudication in excise proceedings at the risk of his assessment getting time barred. Even otherwise, in a given case, the material that may be brought on record in excise proceedings may be different from that which may form part of the assessment proceedings though the both may, to some extent, be common.*

10. *Having thus cleared the peripheral issues, we may examine the central question viz. did the Assessing Officer have sufficient material at his command to believe evasion of tax? We have noticed the broad modus operandi stated to have been adopted by the assessee as per the excise show-cause notices. Admittedly, these show-cause notices are only at such stage without in any of these cases the final orders of adjudication have been passed by the Excise authorities. These show-cause notices thus merely present the material collected by the Excise department suggesting the view of the department that this is a case of large scale excise evasion. Before final order levying excise duty with interest and penalty can be passed, these facts have to be established through by parte proceedings. Till then, it only remains in the realm of the stand of the department which is yet to be tested.*

11. *In addition to confronting the assessee with the contents of the show-cause notice issued by the Excise department, the Assessing Officer has done little else. He of course called upon the assessee to respond to the allegations contained in the show-cause notice, to the statements and materials accompanying such show-cause notice. As noted, the assessee gave a brief reply denying the allegations and pointing out that the charges are yet to be proved. If the Assessing Officer thereafter wanted to make additions on the basis of such materials, the same had to be brought on record. By merely producing the copies of the statements of the witnesses accompanying the show-cause notices, such statements and the veracity thereof does not get automatically established. The Assessing Officer merely cosmetically gave an opportunity to the assessee to meet with such allegations, virtually, shifting the burden of proving the evasion of duty that had taken place on the assessee. We have perused the entire order of assessment. There is no independent material brought on record by the Assessing Officer other than those which were already collected by the Excise department and which, as noted earlier, are yet to be verified.*

12. *Counsel for the assessee drew our attention to a judgement of Customs, Excise and Service Tax Appellate Tribunal in which, the order of adjudication passed in case of one of the ceramic units (not an assessee before us) by the Adjudicating authority came to be set aside. However, for the following reasons we do not wish to place any reliance on this judgement:*

Firstly, the excise show-cause notices in case of the present assessee are yet to be adjudicated. What would be the material on record during such proceedings is not possible for us to foresee.

Secondly, the Tribunal has mainly proceeded on the basis of absence of section 4A of the Central Excise Act at the relevant time which, in the opinion of the Tribunal, alone could have permitted the department to substitute the sale price by the transaction value of the goods. Such is not the case in the present group of cases. We would, therefore, be well advised to clear such controversy.



13. When we find that the Assessing Officer did not have the basis for making additions, the question of percentage of the sales at which stage additions should be made would become redundant.

14. In the result, question is decided against the Revenue. All Tax Appeals are dismissed."

13. As the issue is squarely covered in favour of the assessee, by the judgment of Hon'ble jurisdictional High Court of Gujarat, in the case of Ganga Glazed Tiles Pvt, Ltd(supra) wherein the Hon'ble Court quashed the reassessment proceeding, under section 147/148, of the Act, initiated, merely on the basis of show- cause notice, of the excise department. The ld. DR for the Revenue is unable to produce any material to controvert the aforesaid findings of Hon'ble jurisdictional High Court of Gujarat, in the case of Ganga Glazed Tiles Pvt, Ltd(supra), therefore, respectfully following the above binding precedent, we quash the reassessment proceedings, and allow the appeal of the assessee.

14. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

15. In the result, the assessee's appeal is allowed.

Order is pronounced in the open court on 18/08/2025.

Sd/-

(DINESH MOHAN SINHA)

न्यायिक सदस्य/JUDICIAL MEMBER

राजकोट/Rajkot

दिनांक/ Date: 18/08/2025

DKP Outsourcing Sr.P.S

Sd/-

(DR.ARJUNLALSAINI)

लेखा सदस्य/ACCOUNTANT MEMBER



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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

सहायकपंजीकार
आयकरअपीलीयअधिकरण ,राजकोट