

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

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

आयकर अपील सं./ITA No.66/RJT/2025 &
C.O. No. 10/RJT/2025

निर्धारणवर्ष /Assessment Year: 2016-17

Deputy Commissioner of Income Tax, Circle-1, Jamnagar	बनाम Vs.	Sanjay Gulabrai Kundalia Jamnagar Khambhaliya Highway, Sikkarpatiya, Sikka, Jamnagar PAN: ACYPK3888Q
Sanjay Gulabrai Kundalia Jamnagar Khambhaliya Highway, Sikkarpatiya, Sikka, Jamnagar PAN: ACYPK3888Q	Vs.	Deputy Commissioner of Income Tax, Circle-1, Jamnagar
(अपीलार्थी/Appellant/Respondent)	:	(प्रत्यर्थी/Respondent/Cross Objector)

निर्धारिती की ओर से/Assessee by : Shri K.D. Sheth, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 30/06/2025

घोषणा की तारीख/Date of Pronouncement : 18/09/2025

ORDER

Per: Dr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the Revenue and Cross Objection filed by the Assessee, pertaining to Assessment Year (AY) 2016-17, are directed against the common orders passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 10.12.2024, which in turn arises out of an



assessment order passed by the Assessing Officer u/s 143(3) of the Act vide order dated 27.12 2018.

2. The ground of appeal raised by the Revenue in ITA No. 66/Ahd/2025, are as follows:

“(1) The Ld. CIT(A) has erred on facts and in law in deleting the addition to the tune of Rs. 1,84,25,538/

(2) The Ld. CIT(A) has erred in law and on facts is not appreciating the fact that the assessing officer has irrefutably demonstrated that the claim of expenditure amounting to Rs.2,30,31,923/ is bogus as the assessee has no material evidence to prove that the expenditure amounting to Rs. 2,30,31,923/- was genuinely incurred for business purposes despite providing adequate opportunity of being heard.

(3) The Ld. CIT(A) has erred in law and on facts in not appreciating the fact that the assessing officer during the assessment proceedings had proved that the persons to whom the assessee had made payment towards transportation and Cargo expenses and stevedoring expenses did not have capacity and resources to have made such transportation work to such an extent. The assessing officer during the assessment proceedings proved that the persons were managed by the assessee. The reply submitted by the parties were received in the Jamnagar Office's DAK counter while the assessee given addresses of these parties were of Mumbai. Further, upon inquiry, these parties were in fact residing in Jamnagar district. Assessee failed to substantiate its claim and failed to produce such persons for verification.

(4) The Ld. CIT(A) has erred in law and on facts by not upholding the addition on complete amount of Rs. 2,30,31,923/- and erred in reducing the same only to the 20%.

(5) On the basis of the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

(6) That the revenue craves leaves to add, amend, alter or withdraw any ground of appeal.

(7) It is therefore prayed that the order of the CIT(A) may kindly be set aside and that of Assessing Officer be restored.”

3. The Ground of appeal raised by the Assessee in Cross Objections (C.O.) are as follows:

“1. The Ld. CIT (A) erred on facts and law by disallowing adhoc expenditure despite there is an increase in GP Ratio and NP Ratio for the year under consideration.

2. The Ld. CIT (A) erred on facts and law by disallowing adhoc expenditure of 20% on the sum of expenditure of ₹ 2,30,31,932.

3. The assessee craves leave to add, alter and delete any of the grounds of appeal stated herein above.



4. Succinctly, the factual panorama of the case is that assessee before us is an Individual. The assessee is engaged in Cargo handling activities. The assessee does not have any fixed assets except one excavator. The assessee sub-contracted most of the work. The assessing officer, during the assessment proceedings, observed that the assessee has failed to furnish the evidence, as to how the expenditure claimed was exactly related to the income earned by the assessee. The contract work was executed by the assessee in Mumbai. Whereas the assessee claimed that his sub-contractors were based in Jamnagar. During the assessment proceedings, in response to the notice issued by the assessing officer, the assessee submitted explanations and documents regarding the expenditures, which are reproduced by the assessing officer in page number 4 to 6 of the assessment order. The assessing officer also sent notices u/s 133(6) of the Act to the sub-contractors and all sub-contractors filed identical replies in Dak in the office in Jamnagar. None of the sub-contractors filed any bank statements and hence assessing officer could not examine the genuineness of the transaction. Another observation of the assessing officer was that substantial payments were made by the assessee to the sub-contractors in cash. The sub-contractors also did not file any details that they owned any trucks or the machinery required for execution of the sub-contract work. The inspector deputed to make inquiries, submitted report to the assessing officer that the sub-contractors did not have the resources and capacity to transport the goods etc. Accordingly, the assessing officer disallowed the direct expenditure claimed by the assessee amounting to Rs.2,30,31,923/-.

5. Aggrieved by the said addition, of Rs.2,30,31,923/-, made by the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has partly allowed the appeal of the assessee. The Id.CIT(A), after doing analysis of the facts of assessee's case, observed that the assessing officer was wrong in disallowing the entire direct expenditure claimed. However, at the



same time, the Id.CIT(A) observed that assessee has not proved, beyond doubt that the expenditure claimed is fully genuine. Considering all these inconsistencies, the Id.CIT(A) had disallowed 20% of the expenditure claimed. Accordingly, out of the total disallowance made by the assessing officer of Rs.2,30,31,923/-, disallowance of Rs.46,06,385/- was sustained by Id.CIT(A),(being 20% of the total expenditure claimed) and deleted the addition of Rs.1,84,25,538/- (Rs.2,30,31,923- Rs.46,06,385).

6. Aggrieved by the order of the Id.CIT(A), the Revenue is in appeal before this Tribunal and Assessee has also filed Cross Objections before us.

7. The Ld. D.R. for the Revenue submitted that Assessing Officer has made 100% addition, however the Ld. CIT(A) restricted the addition of 20% of the expenditure, without going into merits of the case. The Assessing Officer has passed a reasoned and speaking order. The assessee has given the address of these parties of Mumbai whereas the fact is that all these parties are residing at Jamnagar. Further, the onus was on the assessee to prove that these expenses were genuinely incurred for the business of the assessee, as also that these expenses were related to the business of the assessee. During the assessment proceedings, the assessee has failed to prove that these expenses were genuinely related to the business of the assessee. The assessee has even failed to furnish evidence as to how these expenses were exactly related to the income so shown by the assessee. Considering the above facts of the assessee's case, the addition made by the Assessing Officer should be sustained.

8. The Ld. D.R. for the Revenue, also submitted that cross objection filed by the assessee should not be allowed, as the assessee has failed to prove that the expenditure were incurred for the purpose of business and necessary documents and evidences were not filed by the assessee.



9. On the other hand, Ld. Counsel for the assessee submitted that the assessee is engaged in the business of Cargo Handling activities. The return of income was filed by the assessee on 16th October, 2016 declaring Taxable Income of Rs. 1,24,24,560/-. The assessee was engaged in the activity of Cargo Handling of Imported Fertilizer of Rashtriya Chemical Fertilizer (RCF). The RCF had awarded the contract to M. Pallonji & Co. Pvt. Ltd. (Principal) and in turn the Principal had entrusted part of the work to the assessee, on a sub-contract basis. The RCF imports Fertilizer, the said cargo is shipped at Hay Bunder port of Mumbai. The assessee is engaged in this business since January, 2008. The assessee has only a primary Infrastructure to carry out the Job on his own. Therefore he had to depend on various support service providers. The job was bifurcated into four major areas namely, (a). Stevedoring and Port Handling, (b). Transportation from Hay Bunder Port to Stock Yard, (c). Unloading (Handling) of Cargo at RCF Premises and (d). Internal Transportation from Stock Yard to Plant. All these activities were handled by various support service providers. A confirmatory letter for scope of work issued by M. Pallonji & Co. Private Limited was submitted by the assessee before the lower authorities. During the assessment proceedings, the assessee had provided activity-wise Income & Expenditure Account, together with the Quantities handled. The above details were provided to the assessing officer also vide submission dated 24/12/2018. Apart from this, copies of Confirmation of Accounts together with the copies of Income Tax Return filed by the Sub-Contractors were on the record of the assessing officer, in response to the notices u/s 133(6) of the Act, served on the sub-contractors. The assessing officer has not disputed the above referred income, bills or quantities handled or the movement of the cargo or the income offered by the alleged sub-contractors. Considering all these facts, the learned CIT(A) passed the speaking order, which may be confirmed and appeal of the revenue may be dismissed.



10. About cross objections, learned Counsel for the assessee submitted that the assessing officer has accepted the movement of Cargo. The assessing officer has also accepted activity-wise income earned by the assessee. The assessing officer failed to appreciate the fact that the assessee, cannot render the services unless the same is sourced by him from outsiders, therefore, entire addition to the tune of Rs. 2,30,31,923/-, may be deleted, as the assessee has filed the relevant grounds in the cross objection raised by him, as all the expenditure were incurred by the assessee, for the purpose of business. Therefore, learned CIT(A) restricted the expenditure at the rate of 20% in the hands of the assessee, which may also be deleted entirely.

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 1d CIT(A) and other materials brought on record. We note that during the year under consideration, the assessee was deriving income from cargo handling activity of MOP Rock Phosphate from Pallonji & Co. Pvt. Ltd. Under the name and style of proprietary concern, namely, M/s Shree Balaji Enterprises. Apart from this, assessee has also shown rental income from the property rented to M/s. Krishna Stevedore Pvt Ltd. During the course of assessment proceedings, the Audit Report along with 3CD & 3CB were filed by the assessee. The assessee has also filed copy of income tax return along with computation of income. The assessee has requested the assessing officer for verification of these expenses by issuing notices u/s 133(6) of the Act, to the concerned parties. In response to notice under section 133(6) of the Act, the respective parties filed the confirmations before the assessing officer. The assessee also filed the bank statement before the assessing officer. The assessee also submitted before the assessing officer, that most of the transactions are through account payee cheques and also stated the in appropriate cases TDS



were deducted. However, assessing officer rejected the contention of the assessee and made addition. On appeal, learned CIT(A) restricted disallowance up to 20% of such expenditure, therefore, Revenue as well as Assessee, both are in appeal before us. The revenue's main stand is that addition made by the assessing officer should be sustained. However, in the cross objection filed by the assessee, the stand of the assessee is that 20% disallowance, restricted by the CIT(A) may also be deleted.

12. We note that the assessee has debited expenses in the profit and loss account under the head of direct expenses. The assessee was asked to submit the details of direct expenses head- wise, nature of expenses and name and address of the parties along with their PAN. The assessee submitted the details along with name and address- wise. For verification of these expenses, notices u/s. 133(6) of the Act were also issued to these parties. It was also gathered from verification from PAN data that though in these cases, the address of Mumbai was given but all these parties were found to be residing in Jamnagar. It was also gathered that these parties were prima facie not having resources to deliver transport services to the assessee. Therefore, because of these inherent defects in the documents and evidences and explanations of the assessee, the learned CIT(A) restricted the disallowance up to 20% of such expenditure. We also find that to carryout inland transport activities, the assessee do not own transportation vehicles, nor have sufficient manpower to carry out such activity. Therefore, this work was being undertaken by various contractors. The assessee does not have any fixed assets except one excavator. The assessee sub-contracted most of the work. The assessing officer has held that the assessee has failed to furnish the evidence as to how the expenditure claimed was exactly related to the income earned by the assessee. The contract work was executed by the assessee in Mumbai. Whereas the assessee claimed that his sub-contractors were based in Jamnagar. The assessing officer sent notices u/s.



133(6) of the Act to the sub-contractors and all sub-contractors filed identical replies in Dak in the office in Jamnagar. None of the sub-contractors filed any bank statements and hence assessing officer could not examine the genuineness of the transaction. Another observation of the assessing officer is that substantial payments were made by the assessee to the sub-contractors in cash. The sub-contractors also did not file any details that they owned any trucks or the machinery required for execution of the subcontract. The inspector deputed to make inquiries submitted report to the assessing officer that the sub-contractors did not have the resources and capacity to transport the goods etc. Accordingly, the assessing officer disallowed the direct expenditure claimed by the assessee amounting to Rs.2,30,31,923/-.

13. During the appellate proceedings, before learned CIT(A), the assessee submitted that he was engaged in activity of Cargo handling of Imported fertilizers for RCF, Mumbai through its main agents M Pallonji & Company Pvt. Ltd. The said job consisted of stevedoring and port handling, transportation from port to stockyard, unloading at RCF premises and internal transportation. The assessee has produced a letter from M/s. Pallonji & Company Pvt. Ltd. stating that all the above referred activities were being executed by the assessee for the said company. The assessee submits that he has incurred Rs.37,93,549/- on stevedoring and Rs.1,92,38,374/- on internal transportation. It was submitted that without this expenditure, earning of the revenue of Rs.18.55 Crore would not have been possible. The assessee further submitted that even though the sub-contractors executed the work in Mumbai but their PAN address was in Jamnagar. So to say, the persons originally belonging to Jamnagar have executed the work in Mumbai. The assessee also stated that the activity-wise income earned and expenditure incurred was produced before the assessing officer during assessment proceedings. The assessee expressed surprise as to how all the sub-contractors filed identical replies. The assessee accepted the fact



that part of the expenditure incurred in cash which was the requirement in the transport sector. As regards the agreements with sub-contractors, it was stated that the assessee entered into oral rate contract with the sub-contractors and payments were made accordingly. The assessee also submits that ownership of the vehicles by the assessee or his sub-contractors cannot be the criteria for disallowance for the reason that the contracts can be executed with hired vehicles and machineries.

14. Considering the above facts, the Id CIT(A) noted that the contracts can be executed without owning the vehicles or machineries with the help of sub-contractors. However, there has to be proper documentation on agreements in support of the payments made to the sub-contractors. The assessee has been having a huge turnover, which he submits to execute with the help of oral agreements which does not sound to be quite realistic, considering the quantum of turnover. Especially when the payments are also made in cash there is scope for inflation of expenditure. The report of the Inspector shows that the sub-contractors who claimed to have executed the contract do not have the capacity and resources to execute the contracts for the assessee go to show that there is a possibility that the sub-contracts are actually executed by some other persons and bills/ invoices are submitted by some other persons. In this modus-operandi too, there is a scope for inflation of expenditure. From this analysis of the facts of assessee's case, the Id.CIT(A) held that the assessing officer was wrong in disallowing the entire direct expenditure claimed and at the same time, the assessee has not proved beyond doubt that the expenditure claimed is fully genuine. Considering all these inconsistencies, the Id.CIT(A) disallowed 20% of the expenditure claimed. Accordingly, out of the total disallowance made by the assessing officer of Rs.2,30,31,923/-, disallowance of Rs.46,06,385/- was sustained by Id.CIT(A). We have gone through the above findings of the learned CIT(A) and do not find any infirmity in the conclusion so reached by the



learned CIT(A). That being so, we decline to interfere with the order of ld. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed. We also dismiss the cross objection filed by the assessee, as the assessee failed to file entire documentary evidences to prove his claim.

15. In the result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is also dismissed.

Order is pronounced in the open court on 18/09/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

राजकोट /Rajkot

दिनांक/ Date: 18/09/2025

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
6. गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot