

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.888/SRT/2024**

**Assessment Year: 2011-12**

**(Hybrid hearing)**

Anil Radheshyam Sharma, 73, Shyamal Dham Row House, Godadara, Surat – 395 012	<b>बनाम/ Vs.</b>	Income Tax Officer, Ward – 2(3)(1), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BDHPS8135D</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>निर्धारिती की ओर से/Appellant by</b>	Shri Sapnesh R Sheth, CA
<b>राजस्वकीओरसे /Respondent by</b>	Shri Ajay Uke (Sr. DR)
<b>सुनवाई की तारीख/Date of Hearing</b>	09/07/2025
<b>उद्घोषणा की तारीख/Date of Pronouncement</b>	26/09/2025

**आदेश / ORDER**

**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 21.06.2024 by the Addl/JCIT (A) – 12, Mumbai [in short, 'the CIT(A)'] for the assessment year (AY) 2011-12, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) r.w.s. 147 of the Act on 13.11.2018.

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

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income tax(A), Addl/JCIT(A) has erred in confirming the action of AO in reopening assessment by issuing notice u/s.148 of the IT Act, 1961.*

*2.On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income tax (A), Addl/JCIT(A) has*

*erred in confirming the action of assessing officer in making addition of Rs.20,60,445/- as income from unexplained source.*

*3. It is therefore, prayed that addition made by assessing officer & confirmed by Commissioner of Income tax (A), Addl/JCIT(A) may kindly be deleted.*

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

3. Brief facts of the case are that the assessee had not filed his return of income u/s.139(1) of the Act for the AY 2011-12. As per the information available with the department, the assessee had deposited cash of Rs.19,84,675/- in his savings bank account with SBI. Subsequently, after recording reasons for reopening and getting prior approval of the competent authority, notice u/s.148 of the Act was issued on 23.03.2018. In response to the same, the assessee e-filed his return of income for AY 2011-12 on 04.05.2018 declaring total income at Rs.1,28,600/- on presumptive basis u/s.44AD of the Act. Thereafter, notices u/s.143(2) and 142(1) of the Act along with questionnaire were issued by the AO requiring the assessee to furnish specific details. In response, the AR of the assessee submitted that the assessee was engaged in the business of trading of sarees in the name of M/s. Om Sai Tex. He further submitted that the assessee sold goods to customers within and outside city only on cash basis and that the customers used to pay for sale of goods generally in cash only and had a practice of depositing the cash in assessee's account directly from their places.

3.1 During assessment proceedings, bank statements of the assessee for the relevant period were obtained from the banks. On perusal of the same, it was noticed that the credit entries in both the bank accounts (maintained with SBI

and Financial Cooperative Bank Ltd.) during the year under consideration by way of cash deposits amounted to Rs.19,84,675/- and Rs.75,770/-, respectively. However, the assessee failed to furnish any supporting evidence with regard to source of cash deposits and existence of business of textile trading. For want of evidentiary proof with regard to source of cash deposits, existence of business of textile trading and the returned income declared u/s.44AD of the Act remained unexplained on the part of the assessee. The claim of the assessee about the cash deposits totalling to Rs.20,60,445/- in the bank accounts also remained unexplained and therefore, the same was treated as unexplained income of the assessee. Accordingly, order u/s.143(3) rws 147 of the Act was passed by the AO on 13.11.2018 determining total income of the assessee for the year under consideration at Rs.20,60,445/-.

4. Aggrieved by the assessment order, assessee preferred appeal before CIT(A) on 13.11.2018. In the said appeal, assessee raised various grounds challenging the reopening of the assessment and against the addition of Rs.20,60,445/- as income from unexplained source. Regarding the ground of appeal challenging the reopening of the assessment, the CIT(A), relying on the decisions given in the case of Amsa India Pvt. Ltd by the Hon'ble Delhi High Court reported in 2017-TIOL-603-HC-DEL-IT and by the Hon'ble Supreme Court in the case of Aravali Infra Power Ltd. in 2017-TIOL-42-SC-IT held that the AO was fully within his jurisdiction to reopen the assessment of the appellant.

4.1 As regards the addition of Rs.20,60,445/- made by AO as income of assessee from unexplained sources, apart from reiterating the submission made

by him before AO during assessment proceeding, the appellant stated that majority of cash deposits were made in Maharashtra and that he had duly shown profit of Rs.1,62,850/- u/s.44AD of the Act which is more than 8% of the turnover of Rs.20,35,400/-. The appellant further stated that sale and purchase bills were matching with the corresponding bank statements and hence he maintained that cash deposits were explained.

4.2 During appellate proceedings, remand report was sought by CIT(A) from the AO regarding the additional evidence, being the bank statements along with vouchers of sale made to substantiate the cash deposit made in bank account. The remand report dated 07.06.2024 was submitted by the AO wherein it was submitted that although the appellant had deposited cash from the sale of sarees, the appellant had not filed any return of income earlier and only in response to notice u/s.148 of the Act, he filed his ROI on 04.05.2018 declaring total income at Rs.1,28,600/-. This made it clear that assessee had never intended to file his return of income and did so only after receiving notice from the AO. It is further observed by CIT(A) that the appellant's claim that he is covered under 44AD and that his turnover of Rs.20,35,400/- can be charged at 8% is an afterthought and a cover-up technique. It was, therefore, held by CIT(A) that in the absence of any supporting evidence, viz., ledger of purchase and sale of goods and cash book, AO was fully justified in making the addition of Rs.20,60,445/- as income of assessee from unexplained sources. Accordingly, CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the assessee has preferred appeal before this Tribunal. The Ld. A.R. of the appellant submitted the paper book

consisting of copy of written submission filed before CIT(A), purchase bills issued by suppliers, reply filed before AO, bank statements of the Financial Coop Bank Ltd. and the State Bank of India, objections against reopening of assessment, balance sheet and capital account for AY 2011-12, copy of ITR and computation of income for AY 2011-12, copy of ITRs of AY 2010-11 and AY 2009-10.

5.1 The Ld. AR submitted that the AO grossly erred in making the addition of Rs.20,60,445/-. The AR further submitted that during the year under consideration, assessee purchased sarees from various parties and assessee is consistently depositing the sale proceeds realized in cash as the same was required to make the payments for purchases made from them. The Ld. AR also stated that it is evident on perusal of bank statements of assessee that the names of various suppliers are reflected on various dates and hence, the contention of assessee that he had done business of trading in sarees stands proved. It is further submitted that majority of cash deposits were made in Maharashtra as sales were made in that state and parties have deposited cash in SBI branch at Maharashtra and therefore, bank had levied charges whenever cash deposits were made. This clearly proves that assessee had done business activity. The Ld. AR stated that the assessee had duly shown profit of Rs.1,62,850/- u/s.44AD of the Act, which was more than 8% of the total turnover of Rs.20,35,400/-. It is, therefore, requested that addition made by Ld. AO be deleted. The Ld. AR placed reliance on the decisions given in following cases :

- (i) Kailashnath Arunkumar Dube Vs. ITO ITA No.623/SRT/2024
- (ii) CIT Vs. Pradeep Shantilal Patel (42 taxmann.com 2 (Guj)

- (iii) CIT Vs. Gurubachhan Singh J. Juneja ( 302 ITR 63 (Guj))
- (iv) CIT Vs. President Industries (158 CTR 372 (Guj))

6. On the other hand, the Ld. Sr. DR, relied on the orders passed by the lower authorities. He submitted that the case of the assessee was reopened on the basis of information about the huge cash credit in the bank accounts. The assessee had not filed return of income u/s.139 of the Act despite the fact that the assessee was engaged in the business. At the time of reopening, a *prima facie* view that income of the assessee had escaped assessment is sufficient and no conclusive satisfaction of the AO is required. So far as addition on merit is concerned, the Ld. Sr. DR for the revenue submitted that since the assessee failed to substantiate the nature and source of cash deposits, the AO rightly treated them as unexplained income u/s 69 of the Act and therefore, requested to uphold the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied on by the Ld. AR. We have also perused the reasons recorded for reopening. It is well-settled law that at the stage of reopening, only a *prima facie* belief is required and not conclusive evidence regarding the escaped income. In this case, the AO received information about substantial cash deposits in the bank account of the assessee who had not filed his return of income. It has been held by the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500 that the expression "reason to believe" would mean cause or justification and cannot be read to mean that the Assessing Officer should

have finally ascertained the fact by legal evidence or conclusion. Whether material would conclusively prove escapement of income is not the concern at that stage. This information in the present case constitutes "tangible material" justifying reopening u/s 147 of the Act. Thus, we uphold the action of the AO in reopening the assessment. Ground No. 1 is dismissed.

8. Regarding the merits of addition of Rs. 20,60,445/- as unexplained income, the core issue is whether the cash deposits of Rs.20,60,445/- in the bank accounts of the assessee represent unaccounted income or are explained business receipts eligible for presumptive taxation u/s. 44AD of the Act. It is an undisputed fact that the assessee had deposited this amount during the year and later filed return u/s.44AD declaring gross turnover of Rs. 20,35,400/- with net income of Rs. 1,62,850/-, exceeding the threshold of 8%. The AO's rejection of this claim is mainly on the ground that the assessee did not file the return voluntarily and did not maintain books of account. However, u/s 44AD of the Act, an assessee engaged in an eligible business is not required to maintain books of account u/s 44AA or get them audited under section 44AB, provided income is declared at the presumptive rate.

8.1 The existence of business in case of assessee has been corroborated through copies of purchase bills, reflection of suppliers' names in bank statements, regular pattern of cash deposits from Maharashtra with deposit charges, filing of earlier years' ITRs establishing continuity of business, return for AY 2011-12, though filed in response to notice u/s.148 of the Act.

8.2 The Hon'ble jurisdictional High Court in *CIT vs. President Industries (258 ITR 654)* held that the amount of sales by itself cannot represent the

income of the assessee who had not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales.

8.3 In case of '*Gurubachhan Singh Juneja (302 ITR 63)*', the Hon'ble jurisdictional High Court held that in absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged unaccounted sales, only the gross profit on the said amount can be brought to tax.

8.4 In the present case, the AO failed to disprove the existence of business or bring any material to show that the deposits were from sources other than business. There is no evidence of income from alternate sources or accommodation entries. Therefore, the assessee's turnover of Rs.20,35,400/- is to be accepted as business receipt. However, in absence of complete details, profit is estimated @ 15% of the turnover instead of 8% declared by assessee. The AO is accordingly directed to make addition of Rs.3,09,067/- and delete the remaining addition. The ground Nos. 2 and 3 are partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 26/09/2025 in the open court.

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 26/09/2025

**Dkp Outsourcing Sr.P.S\***

आदेश की प्रतिलिपि अद्योषित/ 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 आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत