



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

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 524 & 529/RJT/2025
(निर्धारणवर्ष/Assessment Year: (2017-18))

Vallabhbai Bhagwanjibhai Kathriya Khitadia, Jamnagar – 361006	Vs.	Income Tax Officer, Wd –2(10), Aayakar Bhavan, Jamnagar 361006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AYTPK7716N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR
Respondent by : Shri Dheeraj Kumar Gupta, Ld. Sr. DR
Date of Hearing : 09/09/2025
Date of Pronouncement : 24/11/2025

ORDER

Per, Dr. Arjun Lal Saini, A.M.:

Captioned two appeals filed by the same assessee, pertaining to same Assessment Year (AY) 2017-18, are directed against the separate orders passed by the Learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (hereinafter referred to as "Ld.CIT(A)/NFAC") which in turn arise out of separate order passed by the assessing officer u/s. 147/144 of the Act and a penalty order u/s. 271A of the Act.



2. Since these two appeals filed by the same assessee and identical and common issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well as grounds of appeal raised by the assessee in ITA 524/Rjt/2025, have been taken into account consideration for deciding these two appeals *en-masse*.

3. The Grounds of appeal raised by the assessee in ITA 524/Rjt/2025 for Assessment Year 2017-18, are follows;

“1. The Ld. CIT(A) erred in law as well as on fact in upholding profit rate of 10% without any basis and disregarding comparative cases.

2. The Ld. CIT(A) erred in law as well as on fact in upholding an addition of Rs. 18,67,044/- made by Ld. AO u/s 69A of the Act.”

4. Brief facts of the issue in dispute are stated as under. The assessee before us is an individual and had not filed his return of income for the assessment year (A.Y.) 2017-18. The assessee is engaged in purchasing and selling of brass components on commission basis. As per the information there are total credits of Rs. 1,95,82,197/-, which were observed by the assessing officer, during F.Y. 2016-17 in the bank accounts of the assessee with the ICICI bank bearing nos. 072605000749, 072601504936 and 072605500333. The assessee's case was opened for re-assessment u/s 147 of the Act after getting approval. Accordingly, notice u/s 148 of the Act dated 21/04/2021 was issued in assessee's case. In response, the assessee has submitted reply and in response to above notice u/s 148, the assessee has filed his income tax return (ITR) on 18.10.2022, declaring total income of Rs.4,65,910/-. During the assessment proceedings, the notices u/s 142(1) of the Act, were issued to the assessee to furnish the details of the credits to the bank account nos. 072605000749, 072605500333, 072601504936 held with ICICI



Bank. In response assessee furnished copy of bank statement and submitted that the assessee is engaged in business of trading in Brass items on commission basis for the year under consideration. The relevant part of the reply is reproduced as under:

"Your honour may appreciate that as such there is no method to derive our profit percentage in our business and it varies from 0.5% to 5% as per brass part products and we have not maintained records in relation to purchase of raw materials and due to same we have declared profit at market rate which is very lower than what we declared as per our product since we have engaged in just providing materials as per requirement of customer and there is no such roll in production and it can be considered that we have acted as agent of our customer and as agent in brass parts it is hard to earn commission @ 2% on sale as the prices of products are open in the market."

5. However, the assessing officer rejected the above contention of the assessee and observed that the assessee in response to notice u/s 148 of the Act, filed his return of income, declaring total income at Rs. 4,65,910/-, being 2% of the total credit entries of Rs.2,32,95,484/-. After perusal of the submissions made by the assessee during the assessment proceedings, it was found by the assessing officer that assessee has failed to establish that he was engaged in business of trading in brass item on commission basis and has failed to establish that he has received commission on sales. Further, assessee itself submitted that he is engaged in sales and purchase of Brass items and the credit entries are from sale and withdrawals are for the purchase of Brass items. Therefore, after considering the above-mentioned facts, the credits entries to the tune of Rs.2,32,95,484/- was considered by the assessing officer, as turnover of the assessee and the net profit was to be considered at Rs.23,32,954/- (being 10% of the Total Credits), by the assessing officer. However, while filing Income Tax return in response to Notice u/s 148 of the Act, assessee declared net of profit of Rs.4,65,910/-. Therefore, the difference



Rs.18,67,044/- (Rs.23,32,954- Rs.4,65,910) was added back to the total income of the assessee on account of undisclosed business income.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the assessing officer. During the course of appellate proceedings, before the learned CIT(A), the assessee filed sample invoices and other details authenticating existence of business. The assessee also gave some comparable instances of profitability in the same line of business. However, even though, the assessee had done such huge business transactions, but did not bother to maintain books of accounts / audit the books of accounts/file Return of Income which shows grave negligence. Even though, substantial cash deposits/credits in the bank accounts of ICICI Bank were from business transactions, it is not possible to make one-to-one correlation at this juncture. Therefore, the addition made by the AO i.e., treating 10% of cash deposits/credits appearing in the bank accounts of the assessee as profit from business appears reasonable and was confirmed by Id.CIT(A).

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

8. At the outset, the Ld. Counsel for the assessee submitted that in quantum appeal, the assessing officer made the estimated addition and since the assessee is in business of Brass Items/Sanitary Items, in which a commission based income, to be taken. However, addition sustained by the assessing officer @10% and confirmed before the Ld. CIT(A), is very higher side. Therefore, Ld. Counsel prays the Bench that @ 2% on the total cash deposited in the Bank, may be added, as a commission income, in the hands of the assessee.



9. On the other hand, the Ld. DR for the revenue submitted that in the assessee's case under consideration, the assessing officer has already given appropriate relief and made the estimated addition @10% of the cash deposited in the Bank account, therefore further relief should not be given to the assessee.

10. I have heard both the parties and perused the material available on record. I note that issue under consideration is squarely covered by the order of Co-ordinate Bench of ITAT, Rajkot in assessee's own case in ITA No. 510,511,512, 517, 518, 527 and 530/Rjt/2025 for AY 2013-14 to 2015-16, wherein the findings of the Tribunal are as follows:

"29. At the cost of repetition, we state that during the assessment proceedings, the assessee submitted bank statements, copy of sample bills, detail of the transactions, name of parties, and the evidence that assessee is engaged at retail level, in selling the brass components, and the purchasers, are depositing the amount in the bank account of the assessee. The assessee withdraw the amount from the bank to make the payment to his suppliers of brass components. These facts were not denied by the assessing officer. Besides, the assessee, is getting only Commission on sale of brass components. During the assessment proceedings, the assessee has submitted before the assessing officer, relevant evidences and written submissions stating that he is doing business of sale of brass items on Commission basis for the assessment year under consideration. The assessee submitted the copy of the bank statement and stated that the cash have deposited from various locations of India and the withdrawals have been made at Jamnagar and assessee, therefore, requested the assessing officer to treat the credits in the bank account, as a total turnover of the assessee, in order to make a reasonable estimation of net profit. However, the assessing officer has not made reasonable estimated addition. However, on appeal by the assessee, the ld.CIT(A) estimated the profit at the rate of 5% for assessment year 2013-14 and estimated the profit at the rate of 10% in assessment year 2014-15 and other assessment years. The assessee is in appeal before us, raising the main grievance that addition sustained by the learned CIT(A) in various assessment years, varies from 5% to 10%, whereas the assessee is a commission agent and earning only commission at the rate of 2% of the amount deposited in the bank account/ turnover. Therefore, learned Counsel for the assessee, prayed the Bench that estimated addition should be sustained at the rate of 2% of the turnover, taking into account the trading activities of the assessee and the industry norms. Considering the above facts, we find that assessing officer has not denied this fact that assessee is not a commission agent. The assessing officer, as well as learned CIT(A) both accepted that assessee is a commission agent and doing business on commission basis. We note that assessee has



raised factual objections before the lower authorities, that credit entries in the bank account, represents, sale proceeds in respect of his business, which were received from purchasers, and deposited at various stations/cities and all such amounts were withdrawn at Jamnagar for making payment of purchases. The assessee also submitted the relevant documents and evidences to demonstrate that these facts were correct. The assessee also argued before the learned CIT(A) that in similar cases, the learned CIT(A) himself estimated profit at the rate of 5% and Hon`ble ITAT has estimated income at the rate of 2% to 5% of all such bank credits. The learned CIT(A) accepted the above submissions of the assessee and therefore sustained the estimated addition at the rate of 5% in some years and at the rate of 10% of cash deposit/ credit in the bank account, in some other years. We also find that the assessing officer, had not specifically identified any specific defects in the purported evidences and also taking note of the fact that the assessing officer, has not held that these evidence filed by the assessee are bogus. Therefore, we find some merit in the contention of the ld. Counsel for the assessee. Therefore, we find that while the case of the assessee merits some relief, at the same time entire relief cannot be permitted to the assessee. In our view the ends of justice would be met, if a net profit rate of 3% is adopted on the amount of cash deposited in the bank accounts, since the same would take care of the inconsistencies, in the various documents and evidences submitted before the lower authorities. Therefore, we direct the assessing officer to adopt net profit rate of 3% of cash deposited/credits in bank accounts and should be taxable under the normal rate of Income-tax. It is also made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

30. In the result, the appeal filed by the assessee, in ITA No.525/Rjt/2025 for A.Y. 2016-17, is partly allowed.”

11. Respectfully following the above binding judgement, of the Co-ordinate Bench, in the assessee`s own case (supra), we direct the assessing officer to adopt net profit rate of 3% of cash deposited/credits in bank accounts and should be taxable under the normal rate of Income-tax.

12. In the result, the appeal of the assessee, in ITA No. 524/Rjt/2025 for AY 2017-18, is partly allowed, in above terms.

13. Now, we shall take assessee`s appeal in ITA No.529/RJT/2025, (Penalty appeal under section 271A of the Act). I note that issue under consideration in



respect of penalty, under section 271A of the Act, is also squarely covered by the order of Co-ordinate Bench of ITAT, Rajkot in assessee's own case in ITA No. 510,511,512, 517, 518, 527 and 530/Rjt/2025 for AY 2013-14 to 2015-16, wherein the findings of the Tribunal are as follows:

“37. Now we shall take, remaining penalty appeal of the assessee in ITA, No.511/Rjt/2025, for A.Y. 2013-14, Penalty u/s. 271A of the Act, on account of non-maintenance of books of accounts. We note that the above penalty was imposed by the assessing officer, on account of failure to keep, maintain or retain books of accounts, documents etc. If any person fails to keep and maintain any such books of account and other documents as required by section 44AA of the Act or rules made thereunder, then the assessing officer may direct that person to pay the penalty. The necessary facts of the assessee's case have already been narrated by us in this order, therefore, we do not repeat them for the sake of brevity. Learned Counsel for the assessee submitted before us that assessee under consideration is a small category, assessee, who files the return of income, under section 44AD of the Act and therefore, the assessee need not to maintain books of accounts. On the other hand, learned DR for the revenue submitted that penalty should be imposed on the assessee, as there is credit in bank account, which is considered by the assessing officer, as a turnover of the assessee.

38. We have considered submissions of both the parties and noted that assessee falls in the category of a small tax-payer, who is not maintaining books of accounts, as he filed the return of income, under presumptive income scheme, under section 44AD of the Act, therefore, penalty should not be imposed on the assessee. We note that an eligible assessee opting for presumptive taxation under Section 44AD is not required to maintain books of accounts as prescribed under Section 44AA of the Act. When an assessee chooses to declare income under Section 44AD, income is computed at 8% (or 6% for digital receipts) of turnover, regardless of actual profits. Because the income is presumed, the law exempts the assessee from the obligation to maintain books of accounts under Section 44AA(2) of the Act. Considering these facts and circumstances, we delete the penalty u/s. 271A of the Act, imposed by the assessing officer.

14. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in assessee's own case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). I find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding



judgment of the Coordinate Bench in assessee's own case, I delete the penalty under section 271A of the Act.

15. In the result, appeal filed by the assessee, in ITA No.529/RJT/2025, is allowed.

Order is pronounced in the open court on 24/11/2025.

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

राजकोट/Rajkot

//True Copy//

दिनांक/ Date: 24/11/2025

Copy of the order forwarded to :

1. The assessee
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, RAJKOT
6. Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot