



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 Nos. 275/RJT/2025
(Assessment Year: 2017-18)
(Hybrid Hearing)

Kumar Vanjani Block No. M-3 Room No. 221, Sadhna Colony, Ranjit Sagar Road, Jamnagar-361005	Vs.	Income Tax Officer Ward-2(7), Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGNPV5371J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Assessee by : Shri Chetan Agarwal, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Sr. DR
सुनवाईकीतारीख/ Date of Hearing : 27/08/2025
घोषणाकीतारीख/Date of Pronouncement : 20/11/2025

आदेश/ORDER

Per, Dr. A. L. Saini, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2017-18, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), (in short ‘CIT(A)’), dated 15/01/2025, which in turn arises out of an order passed by the Assessing Officer dated 31/12/2019, u/s. 144 of the Income Tax Act, 1961 (in short, ‘the Act’).



2. The appeal filed by the assessee for Assessment Year 2017-18, is barred by limitation by 29 days. The assessee has moved a petition requesting the Bench to condone the delay. We have gone through the petition for condonation of delay, and the sufficient cause explained by the assessee, in the petition for condonation of delay. The learned Counsel adverted our attention to the reasons for condonation of delay before this Tribunal and urged for a benign view and sought condonation of delay of 29 days in filing the appeal before this Tribunal. On the other hand, learned DR for the revenue, opposed the prayer of the assessee for condonation of delay. A perusal of the reasons and sufficient cause explained by the Id. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the minor delay of 29 days, is condoned in filing the appeal.

3. The Grounds of appeal raised by the assessee are as follows:

- “1. *The ld.CIT(A) erred in law as well on fact in upholding, addition made by ld.assessing officer by adopting profit rate of 4% without considering nature of business, facts and circumstances of the case and comparative cases.*
2. *The ld.CIT(A) erred in law as well on fact in setting aside the case to file of ld.assessing officer without deciding the issue on merits.”*

4. The facts of the case which can be stated quite shortly are as follows: In this case, as per instructions issued by CBDT, New Delhi, in the form of SOP dated 21/02/2017, verification was carried out, in respect of the transactions of cash deposits made in bank account relating to demonetization period and it was found that the assessee has not filed return of income for assessment year (A.Y.) 2017-18. Therefore, a notice u/s



142(1) of the Act was issued on 04.01.2018 by the ITO, Ward-3(5), Jamnagar, requesting the assessee to file the return of income, which was duly served to the assessee. In response to the notice, the assessee had not made any compliance. Accordingly, the case was selected for scrutiny, keeping in view the instruction issued as SOP for handling of cases related to substantial cash deposit during demonetization period. Further, in order to appropriately assess the income under verification, a letter u/s 133(6) of the Income Tax Act 1961, dated 24.05.2019 was also issued to the Jamnagar Peoples Co Operative Bank, Jamnagar, on 19/08/2019 to Commercial Co. Operative Bank, Jamnagar and on 26/08/2019 to Shree Digvijay Cement Co. Ltd. The reply received from the bank in response to the notice u/s 133(6) was verified by the Assessing Officer. In response of the notices of assessing officer, the AR of the assessee has submitted the required details through e-proceedings on 17.06.2019, 09.10.2019, 26.11.2019 and 24.12.2019 and furnished the details as called for vide the above notices. The details called for with explanation and reply submitted by the assessee has been gone through by assessing officer.

5. Having gone through the details and documents, submitted by the assessee, the assessing officer noticed that during the year under consideration, **the assessee was engaged in business of trading in cement on commission basis to various customers on behalf of Shree Digvijay Cement Company Ltd.** It was stated by the assessee, during the assessment proceedings that purchase and sale was made in routine course of business, in which agreement was not required. The assessee has not maintained books of accounts. Further, the assessee has earned only commission income of Rs.1 per bag of cement bag, after making purchases from Shree DCC Ltd.



6. However, assessing officer rejected the plea of the assessee to the effect that assessee only earned Rs.1/- per bag of cement, and it was found by the assessing officer that in the similar type of case Gordhandas Kamlani HUF carrying business of trading in cement and declared gross profit in audit report for AY 2016-17 & 2017-18 @ 4% & 3.91% respectively. The assessee is also in the same business of cement trading on commission basis and having total turnover of Rs.7,24,74,820/- during the year. Accordingly, 4% of total turnover of Rs. 7,24,74,820/- which comes to Rs.28,98,992/-, was added back by the assessing officer, to the total income of the assessee.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the CIT(A) who has remitted the issue back to the file of the assessing officer, directing the assessee to file supporting documents and evidences, before assessing officer.

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

9. Learned Counsel for the assessee, argued that learned CIT(A) has wrongly remitted the issue back to the file of the assessing officer, presuming that assessment order was framed under section 144 of the Act. In fact, during the assessment proceedings, the assessee submitted entire details and documents before the assessing officer, therefore it is the mistake, on the part of the assessing officer in quoting the section 144 of the Act in the assessment order.

10. The learned Counsel further submitted that the assessee is dealing in trade of cement where he supplies the cement on wholesale basis to end



users, after receiving the same from the manufacturers, on commission basis. Therefore, Id. Counsel submitted that addition made by the A.O. @ 4% is on higher side and it should be restricted to 1% of total turnover.

11. On the other hand, the Id. D.R. for the revenue submitted that estimation of profit should be at a reasonable rate and the A.O. has framed a detailed order, therefore the addition made by the A.O. should be confirmed.

12. 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 Id CIT(A) and other materials brought on record. We note that assessee is a commission agent in sale of cement bag, and this fact has not been disputed by the assessing officer. The assessing officer himself stated in the assessment order that assessee under consideration is a commission agent. The assessee got the cement from the manufacturer and transferred the cement to the end user and charged only commission @ 1% on the transaction. That is, the assessee was engaged in business of trading in cement on commission basis to various customers on behalf of Shree Digvijay Cement Company Ltd. It was stated by the assessee, during the assessment proceedings that purchase and sale was made in routine course of business, in which agreement was not required. The assessee has not maintained books of accounts also. Further, the assessee has earned only commission income of Rs.1 per bag of cement bag, after making purchases from Shree DCC Ltd. Therefore, we find that assessee is acting as a commission agent between the manufacturer and end user and the margin in this business is only 1% to 1.25%, however, the A.O.



made addition @ 4%. We note that in similar type of business, the ITAT, Rajkot Bench has estimated 2% profit rate/commission rate, vide ITA No.651/Rjt/2014, order dated 20.09.2019. Under the Income Tax Act, 1961, commission income is taxable under the appropriate head of income. For a commission agent of cement, the commission received for facilitating sales is treated as business income and only commission income is taxable. The assessee, under consideration, maintains records only for his commission income to substantiate the commission income and related expenses, hence, the assessee is not maintaining books of accounts. Therefore, considering these facts, we direct the assessing officer to make addition @ 2% of the total amount/turnover of assessee. Hence, the assessee's appeal is partly allowed.

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

Order pronounced in the open court on 20-11-2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

Dated: 20/11/2025

//True Copy//

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

By order/आदेश से,

Assistant Registrar/ Sr. PS/ PS
ITAT, Rajkot