

3. We had carefully gone through the order of Tribunal in ITA No. 4660/Mum/2009 for the AY 2005-06, dt. 20/07/2016, wherein both the additions have been deleted by the Tribunal after having following observations:

"3.2 We find that statement made by the Manager at Ahmedabad inter alia stated that all sales at the Ahmedabad were being made through bank, whereas in para no. 19 of assessment order, the Assessing Officer himself has worked out the other disallowance based on the cash sales of Rs. 319.99 crores at Ahmedabad. Therefore to say that all sales at Ahmedabad was through cheques/banks is contrary to facts on record. Hence the statement given by the Manager at Ahmedabad cannot be taken as sacrosanct. Regarding the observation that driver of assessee had brought the cash from Ahmedabad was not corroborated by his driver or by his son. In this regard, stand of assessee has been that their statement recorded should not be relied and trusted because the driver and his son were not looking for his day to day business activities. They were not assigned business of assessee. They were not aware of the minute business affairs of assessee. Moreover, the assessee himself was nervous because he faced the search action first time. Regarding the observation of CIT (A) that the appellant had failed to furnish the names and particulars of the parties from whom the alleged cash of Rs. 1.5 crores was received at Ahmedabad, the Id. Authorized Representative for the assessee submitted that it was practically not possible to supply the name and addresses of those customers to whom cash sales were made because the assessee has not been maintaining the records of cash sale including the name of customers right from the beginning. In case of R.B. Jessaram Fetehechand (Sugar Dept) Vs. CIT 75 ITR 33 Bom wherein delivery of goods was being taken against the cash payment. It was held that the name and address of the purchasers are necessary to be maintained. Regarding findings of the assessing officer that entries of Rs. 1.5 crores was not found in the cash book on that day, the Id. Authorized Representative for the assessee submitted that in modern business environment it is difficult to maintain day to day sale record. For example, a business man who has 1000 customers, and some customers deposit the cash in the bank account directly and they inform the assessee after two days about their deposit of cash in the assessee's bank account, in that case the assessee cannot do entry of such transaction and it may be entered in the books after two days and sometimes he keeps the cash book open and does the entry on the same day, retrospectively as case may be. This is practical aspect of managing business affairs by businessman is his sole discretion. Regarding the belief of the huge loss of Rs. 4.81 crores approximately during the pre-search period, we find that there is no connection with cash flow of the assessee's business with net loss shown by the assessee. The Assessing Officer did not try any reconciliation between cash sales and loss. As per para 17 of assessment order the cash sales made at Ahmedabad was at Rs. 351.93 crores and out of this Rs. 319.99 crores are for the period 1/6/2004 to 31/3/2005. The addition of Rs. 1.5 crores is not

called for as the assessee is having turnover of Rs. 1200 crores and around Rs. 600 crores which is by way of cash sales. The percentage of seized cash Rs. 1.5 crores with Rs. 600 crores (that is $1.5 \text{ crore} / 600 \text{ crores} \times 100 = 0.25\%$). Thus Rs. 1.5 crores is not even 1% of total cash sales therefore it is not a material and significant figure for in comparison to cash sales Rs. 600 crores. According to materiality concept, trivial figures have to be state disregarded. The assessee in his statement always said to the income tax authorities that Rs. 1.5 crores belong to assessee's business. The Assessing officer did not bring any contrary material on the record that amount of Rs. 1.5 crores did not belong to assessee's business. The Assessing officer did not make reconciliation of total cash sales to justify whether Rs. 1.5 crore is part of business of assessee or not. The Assessing officer has not even rejected the books of the assessee at any stage. Neither cash sales nor total turnover of the assessee was objected by the Assessing officer in any manner. We find that addition is not based on cogent reasoning as discussed above, so same is not justified. Assessing Officer is directed to delete the same.

4. Assessing Officer made other addition of Rs. 1,75,55,450/- as undisclosed income out of cash sales @ 0.55% of cash sales. This addition was made by Assessing Officer due to differential rates of sales tax in Maharashtra (1%) and Gujarat (0.25%) and after deducting 0.20% on account of expenditure. The Assessing Officer added 0.55% of total cash sales at Ahmedabad amounting to Rs. 319.99 crores and thus worked out addition at Rs. 1,75,55,450/-

4.1 We have carefully considered the rival submissions and gone through the facts and circumstances of the case and perused the material available on record. The Id. Departmental Representative for revenue has reiterated the stand taken by the Assessing officer. On the other hand the Id. Authorized Representative for the assessee has stated that the said addition is on account of guess, surmise and conjecture without bringing any cogent material on record.

4.2 We find nothing on record to suggest that the Sales Tax Authorities have disturbed the sale result of assessee in any manner. At the time of search the Income Tax Authorities did not confront this information with the Sales tax authorities to justify their action. Sales tax is levied on sales, which is subject matter of Sales Tax Department and not the Income Tax Department. The Assessing officer did not make any reconciliation between the sales tax paid to the concerned sales tax authorities and sales tax recorded in the books of the assessee. The object of the Income Tax department is to levy the Income tax on net income. Estimating of difference of Sales Tax on turnover is not based on cogent evidence cannot be made basis of addition in question. Thus, addition in question is not well founded. Same is directed to be deleted.

5. In the result, appeal of assessee is allowed on both account as discussed above."

As the addition itself had been deleted, penalty order has no legs to stand with respect to the addition so deleted by the Tribunal. The Ld. DR has fairly

conceded that addition have been deleted by the Tribunal vide its order dt. 20/07/2016.

6. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 08/09/2016.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated: 08 /09/2016

AG (On Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER, //True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai

	Dictation pad attached	Date	Initial	
1.	Draft dictated on	08/09/2016	}	Sr.PS
2.	Draft placed before author	08/09/2016		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS		}	Sr.PS
6.	Date of pronouncement	08/09/2016		Sr.PS
7.	File sent to the Bench Clerk	12/09/2016		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			