

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

I.T.A. No.1293/Ahd/2016
(Assessment Year: 2011-12)

Ganesh Ginning Factory Opp. TDD Farm, Palitana Road, Talaja, District Bhavnagar-364140	Vs.	ACIT Circle-2, Bhavnagar
[PAN No.AAHFG4924G]		
(Appellant)	..	(Respondent)

I.T.A. No. 1294/Ahd/2016
(Assessment Year: 2011-12)

Gajanand Ginning & Pressing Pvt. Ltd., Near Vegetable Market, At-Talaja, Dist. Bhavnagar-364140	Vs.	ITO Ward-1(2), Bhavnagar (Present Jurisdiction with ACIT, Circle-1, Bhavnagar- 364001)
[PAN No.AACCG6190L]		
(Appellant)	..	(Respondent)

I.T.A. No. 1296/Ahd/2016
(Assessment Year: 2011-12)

Premjibhai Vallabhbhai Kukadiya Prop. of Royal Cotton Co., Palitana Road, Near Palitana Chowdi, At-Talaja, Dist. Bhavnagar-364140	Vs.	ITO, Ward-2(4), Bhavnagar
[PAN No.ALYPK3843J]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sakar Sharma, A.R.
Respondent by :	Shri Dileep Kumar, Sr. D.R.

Date of Hearing	06.12.2022
Date of Pronouncement	20.01.2023

ORDER

PER SUCHITRA KAMBLE - JM:

This bunch of appeals filed by the assessee are filed against the orders passed by the Ld. CIT(A)-6, Ahmedabad on 30.03.2016 for Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee in ITA No. 1293/Ahd/2016 for A.Y. 2011-12 read as under:

- “1. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 1,48,29,750/- on account of alleged difference in stock notice on the date of survey.*
 - 2. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 12,03,545/- out of total addition of Rs. 21,30,687/- for alleged sales made out of books.*
 - 3. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 17,895/- by making disallowance of delayed payment of Provident Fund payments.*
 - 4. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 24,658/- on account of debit of cash discount pertaining to prior period without appreciating that such claim crystallized during the year only.*
- The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”*

Firstly we are taking ITA No. 1293/Ahd/2016

3. The assessee is engaged in the business of manufacturing cotton ginning and pressing mill under the name and style of Ganesh Ginning Factory. The assessee firm filed return of income declaring loss of Rs. 48,69,036/- on 20.09.2011 under the head profit & gains of business or professions. The case was selected for scrutiny and first statutory notice under Section 143(2) was issued on 07.08.2012. During the year under assessment, survey under Section 133A of the Act was carried out at the business premises of the assessee at 27.01.2022. The investigation team / survey team found that a difference of stock of Rs. 1,48,29,750/- between

stock as per books of accounts as on the date of survey and stock physically found on the date of survey was found. Statement of Shri Savjibhai Becharbhai Gangani working partner of the assessee firm was recorded on 27.01.2011. The Assessing Officer observed that the assessee firm agreed to the difference in stock of Rs. 1,48,29,750/- found between the stock as per books of accounts and stock as per physical inventory taken by the surveyor. However, the assessee firm did not give effect of such stock difference in its books of accounts. The assessee was show-caused in respect of the same treating the same amount as unexplained investment. The assessee filed the submissions which was taken into account by the Assessing Officer and thereafter addition of Rs. 1,48,29,750/- was made under Section 69 of the Act. The Assessing Officer further made addition of Rs. 21,30,687/- towards difference in sales comprising Gross Profit of Rs. 19,815/- and unaccounted purchases of Rs. 21,10,872/- as undisclosed income. The Assessing Officer further made disallowance of Rs. 17,895/- in respect of employees' contribution under Section 36(1)(va) of the Act. The Assessing Officer also made disallowance on account of prior period expenses to the extent of Rs. 24,658/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. A.R. submitted that Ground No. 3 is not pressed as the same is decided by the Jurisdictional High Court against the assessee. Hence, the Ground No. 3 is dismissed.

6. As regards, Ground No. 1 the Ld. A.R. submitted that the CIT(A) erred in confirming addition of Rs. 1,48,29,750/- on account of alleged difference in stock notice on the date of survey. The Ld. A.R. submitted that the reconciliation statement was filed before the CIT(A) and the shortage in three items comes to only Rs. 1,17,81,330/-. The Ld. A.R. further submitted that the valuer has not taken into account the actual stock and there was no difference / shortage in the stock or there was no excess stock. The Ld. A.R. further submitted that the valuation method was consistently followed by the assessee throughout the earlier year as well as subsequent years.

7. The Ld. D.R. relied upon the assessment order and the order of the CIT(A). The Ld. D.R. further submitted that the working partner of the assessee has admitted the said difference and therefore, the Assessing Officer as well as CIT(A) has rightly taken cognizance of the same. The Ld. D.R. further submitted that the report of stock surveyor team was never disputed before the authorities. The Ld. D.R. further submitted that the CIT(A) has already observed that tax paid on excess stock.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has not taken into account the conciliation statement which was filed before the authority. The assessee pointed out to the authorities that in view of existence of all the units in the common compound inter mingling of stock among the units was possible and the partner's statement cannot be the sole criteria for making addition to that extent. From the perusal of the records related to the reconciliation filed by the assessee it appears that the excess stock

claimed by the Revenue / Assessing Officer is not properly verified. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for proper adjudication of the issues after taking cognizance of the reconciliation filed by the assessee. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. Thus, Ground No. 1 is partly allowed for statistical purpose.

9. As regards Ground No. 2 relating to addition of Rs. 12,03,545/- for alleged sales made out of books, the Ld. A.R. submitted that when the purchases were fully accepted during the survey the sale cannot be doubted. In fact, sales are higher than the loose papers and in that respect correct Gross Profit should have been taken into account.

10. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

11. We have heard both the parties and perused all the relevant material available on record. From the perusal of records and the reconciliation filed by the assessee the CIT(A) has not taken the cognizance of the same, hence this issue also needs verification. Therefore, we remand back this issue to the file of the Assessing Officer for proper adjudication after taking into account all the evidences as well as reconciliation statement filed by the assessee and decide accordingly. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. Thus, Ground No. 2 is partly allowed for statistical purpose.

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12. As regards Ground No. 4 relating to addition of Rs. 24,658/- on account of debit of cash discount pertaining to prior period, the Ld. A.R. submitted that the CIT(A) as well as the Assessing Officer ignore this fact that said claim crystallized during the year only.

13. The Ld. D.R. relied upon the Assessing Officer and the order of the CIT(A).

14. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the debit of cash discount pertaining to prior period has been crystallized during the year only and not prior or any subsequent year, therefore, the addition made by the Assessing Officer and CIT(A) is not correct. Hence, Ground No. 4 is allowed.

15. Therefore, ITA No. 1293/Ahd/2016 is partly allowed for statistical purpose.

Now we are taking up ITA No. 1294/Ahd/2016

16. The grounds of appeal raised by the assessee in ITA No. 1294/Ahd/2016 for A.Y. 2011-12 read as under:

- “1. The Ld. CIT(A) erred on facts and in law in confirming action of Assessing Officer in rejecting book results by invoking provisions of section 145 of the Act.*
- 2. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 1,40,72,777/- by estimating gross profit rate.*
- 3. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 1,09,60,980/- on account of alleged unexplained credits/unaccounted sales noticed in the impounded material and not found recorded in the books of accounts.*
- 4. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 77,86,000/- on account of alleged discrepancy in stock found on the date of survey on the basis of statement of director and without appreciation of facts brought on record.*

5. *The Ld. CIT(A) erred on facts and in law in not granting telescoping benefit among the additions made resulting into double and unwarranted additions in the hands of the appellant.*

The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

17. The assessee filed its return of income on 14.09.2011 declaring total income at Rs. 9,27,249/- and deemed total income of Rs. 20,43,828/- under Section 115JB of the Act. The survey under Section 133A of the Act was carried on 27.01.2022 at the business premises. A statutory notice under Section 143(2) of the Act was issued on 03.08.2012 and was duly served upon the assessee on 13.09.2012. The Assessing Officer observed that the assessee derived income from business of cotton ginning and pressing and Gross Profit for A.Y. 2010-11 was 3.70% which is reduced to 1.51% for the year under consideration. Therefore, the closing stock value shown in trading account was not taken into account by the Assessing Officer and addition of Rs. 1,08,61,770/- was made separately on issue of inflation of purchases and same telescoped with Gross Profit addition. The Assessing Officer further made addition of Rs. 1,40,72,777/- in respect of G.P. addition at 2.19%. The Assessing Officer also made addition of Rs. 2,19,21,960/- towards addition account of unexplained credit/sales and addition of Rs. 1,09,60,980/- towards unaccounted sales. The Assessing Officer also made addition of Rs. 77,86,000/- towards disclosed amount during survey.

18. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

19. As regards Ground Nos. 1 & 2, the Ld. A.R. submitted that the Assessing Officer has taken into account assessment of profit and rejected the books of account without giving any cogent reason. The Ld. A.R. submitted that at one particular juncture the Assessing Officer is accepting the sales and the other elements of trading from the books of accounts and at the very next threshold rejected the books of accounts. The Ld. A.R. further submitted that the comparable also was not confronted by the Assessing Officer.

20. The Ld. D.R. relied upon the assessment order and the order of the CIT(A). The Ld. D.R. further submitted that the purchase of cotton registered and actual difference in books of accounts was pointed by the Assessing Officer and in fact telescoping benefit was given. Thus, the earlier G.P. ratio which was 3.7% was not taken into account is in this particular year the G.P. ratio was 1.15% only.

21. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has taken cognizance of the sales and the G.P. rate followed accordingly was taken into account by the assessee. The rejection of book was no proper as the assessee has already followed the method of accounting which was continuously followed in the previous and subsequent years. In fact, inflation brokerage and transportation brokerage not claimed separately so there was no reopening made on earlier occasions. The comparable which was cited by the Assessing Officer were never confronted to the assessee. Thus, this needs verification and therefore, the entire issue is remanded back to the file of the Assessing Officer for proper adjudication after taking

cognizance of all the evidences and adjudicate the case issue accordingly. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. Thus, Ground Nos. 1 & 2 are partly allowed for statistical purpose.

22. As regards Ground No. 3 related to addition of Rs. 1,09,60,980/- on account of unexplained credits / unaccounted sales noticed in the impounded material, the Ld. A.R. submitted that the same was not found recorded in the books of accounts as per the observation of the CIT(A), but the assessee has also offered Rs. 20,00,000/- which was not taken into account by the Assessing Officer as well as CIT(A). The valuation of sale was not at all properly made by both the authorities. Thus, the Ld. A.R. submitted that the CIT(A) as well as AO has not taken cognizance of the elements of purchase made by the assessee during the year and duly reflected in the books of account.

23. The Ld. D.R. relied upon the assessment order and the order of the CIT(A). The Ld. D.R. submitted that the unaccounted sale credited in cash and there was no supporting evidence provided by the assessee and therefore, only 50% of the same was added by the Assessing Officer.

24. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has given the details of purchase and the subsequent sales in entirety and the evidences placed before the Assessing Officer was not taken into account by both the authorities. Therefore, this issue needs verification and we remand back this issue to the file of the Assessing Officer for proper adjudication.

Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. Ground No. 3 is partly allowed for statistical purpose.

25. As regards Ground No. 4 relating to addition of Rs. 77,86,000/- on account of alleged discrepancy in stock found on the date of survey on the basis of statement of director. The Ld. A.R. submitted that this addition was contrary on the basis of statement and no proper adjudication was made by the assessee. The difference in stock has been explained and there was no discrepancy in the stock.

26. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

27. We have heard both parties and perused all the relevant material available on record. It is pertinent to note that the alleged discrepancy in the stock found on the date of survey on the basis of statement of director was never established by the Assessing Officer with the proper reasoning that the statement of director was verifiable from the said stocks available at a survey premises. There was no independent finding given by the Assessing Officer related to the said addition and therefore, this addition does not sustain. Ground No. 4 is allowed.

28. As regards alternate ground regarding telescoping the same is in respect of Ground Nos. 1 & 2 and hence not adjudicate at this juncture.

29. Therefore, ITA No. 1294/Ahd/2016 is partly allowed for statistical purpose.

Now we are taking up ITA No. 1296/Ahd/2016

30. The grounds of appeal raised by the assessee in ITA No. 1296/Ahd/2016 for A.Y. 2011-12 read as under:

“1. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 80,000/- u/s 68 for alleged unexplained credit in the name of Mehta Kantilal Nandalal.

2. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 15,00,000/- on account of alleged understatement of net profit without finding any defect in the books.

The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”

31. The assessee is deriving salary income, business income from trading and manufacturing of cotton and cotton products in the name and style of Royal Cotton Company. Survey under Section 133A was carried out on 27.01.2011 at the business premises of the assessee. The Assessing Officer made addition on account of investment of income towards Rs. 25,87,040/-. The Assessing Officer also made addition of Rs. 1,93,950/- in respect of unaccounted / unexplained brokerage expenses. The Assessing Officer also further made addition of Rs. 80,00,000/- towards unexplained credit. The Assessing Officer also made addition of Rs. 15,00,000/- towards understatement of Net Profit.

32. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

33. As regards Ground No. 1 relating to addition of Rs. 80,000/- under Section 68 for unexplained credit in the name of Mehta Kantilal Nandalal. The Ld. A.R. submitted that the assessee has already filed confirmation

related to the same and also filed repayment details. Both these evidences were not taking into account in the Assessing Officer as well as CIT(A).

34. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

35. We have heard both the parties and perused all the relevant material available on record. The assessee has also filed confirmation of the parties and also filed the repayment in respect of these credits of Rs. 80,000/- and the same was not taking into account by the Assessing Officer as well as CIT(A) while confirming the addition. Hence, Ground No. 1 is allowed.

36. As regards Ground No. 2 relating to addition of Rs. 15,00,000/- on account of understatement of Net Profit without finding any defect in the books, the Ld. A.R. submitted that the books were never rejected and the assessee has given all the details before the Assessing Officer as well as before the CIT(A). The Ld. A.R. submitted that the assessee incurred loss during the period prior to survey and working and reconciliation of Gross Profit as well as Net Profit, pre-survey as well as post survey period with audited account was duly reflected and submitted before the Assessing Officer.

37. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

38. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in similar type of addition in another group case involved relating to survey of the same date the Tribunal

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has deleted the similar addition (in ITA No. 1339/Ahd/2016 order dated 25.07.20217 Sanjay Savjibhai Gangani vs. ITO). Besides these books of accounts were never rejected by the Assessing Officer and the requisite trading account up to the date of survey was also before the Assessing Officer, therefore, the CIT(A) as well as Assessing Officer was right in making this addition. Hence, the Ground No. 2 is allowed.

39. In the combined result, ITA No. 1293/Ahd/2016 and 1294/Ahd/2016 are partly allowed for statistical purpose and ITA No. 1296/Ahd/2016 is allowed.

This Order pronounced in Open Court on

20/01/2023

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/01/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad