

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील (एसएस) सं./I.T (SS).A. Nos. 264/Ahd/2014 &
164/Ahd/2014

(निर्धारण वर्ष / Assessment Year : Block Period: 02/08/1996 to
11/02/2000)

Dy. Commissioner of Income Tax Circle-8, Ahmedabad	बनाम/ Vs.	Yash Organics Ltd. A-27, Shriram Nagar Society, Vejalpur, Ahmedabad, Gujarat 389340
Yash Organics Ltd. 903,Sapphire Complex, C. G. Road, Navrangpura, Ahmedabad - 380009	&	Deputy Commissioner of Income Tax Circle-8, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY0532A		
(Appellant)	..	(Respondent)

Revenue by :	Shri Sudhendu Das, CIT. DR
Assessee by :	Shri Ketan Shah & Shri Aman Shah, A.Rs.

Date of Hearing	28/08/2024
Date of Pronouncement	20/09/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These cross appeals are filed by the Revenue and the assessee against the order of the Commissioner of Income Tax (Appeals)-XIV, Ahmedabad, (in short ‘the CIT(A)’), dated

21.03.2014 for the Block Period 02.08.1996 to 11.02.2000 in the order passed under Section 143(3) r.w.s. 158BC r.w.s. 254 of the Income Tax Act, 1961 (in short 'the Act'). The issue involved in the two appeals are identical and emanate from the same order. Hence, both the appeals were heard together and are being disposed vide this common order.

2. This is the second round of appeal before us. The brief facts of the case are that the assessee was engaged in the production of industrial fuel oil and industrial solvent. In this case, the assessment proceeding was taken on the basis of action taken by the police authorities. The Revenue has requisitioned the documents seized by the police authorities under Section 132A of the Act and the proceeding under Section 158BC of the Act was completed on the basis of the documents so requisitioned from Police department. The original order u/s. 158BC of the Act was passed on 22nd February, 2000 determining undisclosed income of Rs.20,38,17,981/- for the block period. The assessee had filed appeal against the said order which was dismissed by the Ld. CIT(A) and the ITAT in the first round of appeal had set aside the matter to the file of the AO with the following directions:

“5. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that the assessment proceedings were taken on the basis of action of the police authorities. In fact the Revenue has requisitioned the documents seized by the police authorities under Section 132A. Proceedings u/s. 158BC were taken against the assessee on the basis

of documents requisitioned u/s.132A from Police Department. The AO in para 4.4 of the assessment has also recorded the following findings:

“4.4 The Police authorities, namely, DSP, Rural, Ahmedabad seize done tanker containing 8000 litres of solvent in the third week of January, 2000 The solvent was issued by Ms. Yash Organics Ltd. and was supposed to be delivered to one M/s. Raj Chemicals at Agra. But instead of going to Agra, it was suspected that this tanker was going to deliver the solvent somewhere in Gujarat only. During the course of their proceedings, the police seized the ledger and invoices of F.Y. 1999-2000 of the assessee. Also, one suitcase full of documents was seized. The same was handed over to the Revenue during the course of requisition proceedings on 11.2 2000 They therefore form the seized material in the case of the assessee. Since the original ledger and sale invoices were required by the police, copies of the same were handed over. The police conducted certain preliminary enquiries and all the directors of the assessee namely Shri Paras DS Savla, Shri Rupesh K. Savla and Shir Manoj S. Savla as well as other responsible persons of the group were detained under the Prevention of Black Marketing Act. A charge sheet has also been filed by the police against the main persons managing the affairs of the assessee.”

From the fact, it is evident that the order of the Judicial Magistrate would be relevant while adjudicating the income of the assessee for the year under consideration. We also find that the order of the Judicial Magistrate is dated 11-6-2004 while the assessment order is dated 22-2-2002 and the order of the CIT(A) is dated 4-7-2004. Thus, the order of the Judicial Magistrate was not available when the assessment proceedings or the appellate proceedings before the first appellate authority was taken up. Considering totality of the above facts, in our opinion, it would be in the interest of justice to admit additional evidence in the form of order of the learned Fifth Judicial Magistrate First Class, Ahmedabad (Rural) at Ahmedabad. However we accept the alternate request of the learned DR that if the additional evidence is admitted, then the matter needs to be re-examined by the A.O. Admittedly the order of learned Judicial Magistrate was not available when the AO completed the assessment. It would be proper if the AO examines the issue afresh in the light of the order of the learned Judicial Magistrate. We therefore, set aside the order of the authorities below and restore the matter back to the file of the AO. We direct the assessee to

produce order of the learned Judicial Magistrate before the AO and thereafter the AO is directed to make the assessment de novo in accordance with law. Needless to mention that the AO will give adequate opportunity of being heard to the assessee."

3. The set aside proceeding was completed by the AO vide order u/s.143(3) r.w.s. 158BC r.w.s. 254 of the Act dated 26.03.2013, wherein undisclosed income of Rs.20,38,17,981/- as determined in the original order was reiterated. The assessee had filed an appeal against this order which has been decided by the Ld. CIT(A) vide the impugned order and certain relief was allowed to the assessee.

4. Both the Revenue as well as assessee are in appeal before us against the order of the CIT(A).

5. The grounds taken by the Revenue are as under:

- "1). The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs. 17,60,44,843/- made on account of suppression of sales of Naptha @Rs.14 to Rs.18 per litre as per evidence found in the case of Rishi Petrochem Pvt. Ltd.*
- 2). On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad ought to have upheld the order of the Assessing Officer.*
- 3). It is therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad may be set-a-side and that of the order of the Assessing Officer be restored."*

6. The grounds raised by the assessee are as under:

In view of the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred-

- “1. In confirming the addition in reference to sales made by appellant to M/s. Raj Chemicals at Rs.3,55,53,117/-*
- 2. In not appreciating the facts and circumstances of the case therefore erred in applying section 68 of the income tax act.*
- 3. In not appreciating the facts that no Incriminating document found place u/s.132A which support the case of Department to make any addition to the returned Income.*
- 4. Without prejudice to the above it is prayed that in any case the addition cannot exceeds net profit disclose by the assessee, In reference to the addition made of M/s. Raj Chemicals.*
- 5. It is prayed that the CIT(A) ought to have deleted the whole addition.”*

7. Shri Sudhendu Das, Ld. CIT.DR and Shri Ketan Shah, learned counsel of the assessee have explained the facts of the case in detail. The relevant facts of the case which led to the additions in this case are that the Police authorities had seized one tanker containing 8000 litre of solvent issued by the assessee which was supposed to be delivered to M/s. Raj Chemicals in Agra. However, in place of going to Agra, the tanker was proceeding to deliver the solvent somewhere in Gujarat only. The Police authorities had seized various documents, books of accounts & floppies and these documents along with the investigation folder regarding enquiries carried out by the Police was requisitioned u/s.132A of the Act. Further the ledger account of the sale invoices of the assessee for F.Y. 1999-2000 was also seized by the Police from the assessee, which was handed over to the Department. The

Police had conducted enquiries in this regard and the concerned persons of the assessee were detained under the Prevention of Black Marketing Act and a charge sheet was also filed against them. It had transpired that the RTO, Ahmedabad had not issued any temporary permit to the seized tanker for travel outside the State. On the basis of these evidences and pursuant to subsequent enquiries conducted in this regard, the Revenue has concluded that the assessee was selling the solvent in black market. The actual selling price of the product in the market was Rs.14 to 18 per litre. The AO had, therefore, applied sale price at Rs.18 per litre on the total quantity of 2,06,04,239 liters of solvent sold during A.Y. 1998-1999, 1999-2000 & 2000-2001 and had worked out the total sale proceeds at Rs.37,08,76,302/-. After giving the credit to the sale of Rs.19,48,31,489/- as disclosed in the books of accounts, the AO had made treated the difference amount of Rs.17,60,44,843/- as undisclosed income from sale of solvent. Further, an addition of Rs.2,77,73,138/- was also made on account of unexplained cash credit u/s.68 of the Act in respect of transactions with M/s. Raj Chemicals which was enhanced to Rs.3,55,53,117/- by the ld. CIT(A).

8. The Ld. CIT.DR submitted that the entire addition was made on the basis of incriminating evidence found during the search and subsequent enquiries conducted in this respect by the AO. Therefore, the Ld. CIT(A) was not correct in deleting the addition of estimated income of Rs.17,60,44,843/-. As regarding addition

under Section 68 of the Act, the Ld. CIT.DR submitted that the CIT(A) had rightly enhanced the addition as the actual sale to M/s. Raj Chemicals as disclosed in the books of the assessee was Rs.3,55,53,117/- which remained unexplained in view of the adverse evidences as collected in the course of search. The Ld. CIT.DR further submitted that the proprietor of M/s. Raj Chemicals was absconding which itself was an evidence that sales made to the said party were not genuine. He strongly relied upon the order of the Ld. CIT(A) in support of his contention that the addition as made u/s.68 of the Act, was correct.

9. Per Contra, Shri Ketan Shah, Ld. AR appearing for the assessee submitted that the addition of Rs.17,60,44,843/- in respect of suppression of sales was not based on any incriminating material found during search. Therefore, the same was rightly deleted by the Ld. CIT(A). As regarding addition u/s.68 of the Act, the Ld. AR submitted that the Ld. CIT(A) was not correct in holding that the sales made to M/s. Raj Chemicals was non-genuine. The entire sale made to M/s. Raj Chemicals was duly accounted for in the books of account of the assessee. Further, the sales were not held as non-genuine by the Judicial Magistrate as well. He further submitted that no enquiry was conducted by the Department in respect of evidences for sales made to M/s. Raj Chemicals to establish that any of the sale was not genuine. In this regard, he has drawn our attention to the

paper book wherein all the evidences in respect of sales made to M/s. Raj Chemicals were brought on record.

10. We have carefully considered the rival submissions. It is found that the addition of Rs.17,60,44,843/- in respect of suppression of sales was made on the basis of presumption of practice prevalent in the industry rather than on any concrete evidence found in the course of search. The AO has not brought on record any evidence in support of his contention that the actual sale price of the solvent was Rs.14 per litre to Rs.18 per litre. In fact, no such evidence was found in the course of search at all. The only incriminating material found/requisitioned in the course of search was in respect of transaction with a single party i.e. M/s. Raj Chemicals and the Revenue has already held the entire transactions made with the said party as non-genuine and made the addition u/s.68 of the Act. No evidence regarding bogus sale of solvent to any other party was found in the course of search. Therefore, the AO was not correct in extrapolating the incriminating evidence found in respect of M/s. Raj Chemicals to all other parties. It is a settled position that in the course of block assessment proceeding u/s.158BC of the Act, addition can be made only on the basis of incriminating evidence. There is no scope for extrapolating the evidence or making any addition on estimation basis in the block assessment proceeding u/s.158BC of the Act. In the absence of any incriminating evidence in respect of suppression of sales found during the search (other

than Raj Chemicals), the addition of Rs.17,60,44,843/- as made by the AO in respect of suppression of sales cannot be sustained.

11. We deem it proper to reproduce the finding of the Ld. CIT(A) in this respect which is as under:

*“5.2 Now coming to adjudication of grounds of appeal as follows:
(A) Ground No. 1 is against the A.O.'s consideration of recorded sales for estimated suppressed sale and cash credit. This was contended to be not covered under proceedings u/s 158 BC of the Act. As discussed in details above, there are incriminating material in respect of M/s Raj Chemicals as found during search as well as the post search inquiries. Further I am partly inclined with appellant that there is no incriminating material to justify for estimation of suppressed sale least such estimation is based on recorded sale.*

Books of accounts as per Annexure - A and floppies as per Annexure A-1 to the panchnama dt. 11/02/2000 were requisitioned from police authorities u/s 132A of the Act. It is verifiable that the Ld. Fifth Magistrate in his order dt. 11/06/04 at para 3 enlisted all the witnesses who were examined by the complainant i.e. The police authorities. Further at para 4 of this order, all the documentary evidences produced by police authorities are mentioned. It is therefore all these statement and documentary evidences are in furtherance of search by police authorities which forms part of incriminating material for the block period. No independent search was done by department and it is only requisitioning of these material, proceedings for assessment of undisclosed income were completed for block period. The most important aspect is that the appellant was given copies of police investigation papers and the Ld. Fifth magistrate recorded statement of all accessed as mentioned at para 2 of this order. Besides this material, department also made post search inquiries and the material so gathered was duly confronted to appellant. In fact, all these issue had already been considered by Hon'ble ITAT Ahmedabad while setting aside this case to A.O. to consider the decision of Ld. Magistrate in the case for denovo framing the assessment. It is therefore, the technical objections about no incriminating material found, no such material was confronted to appellant, no proper opportunity given to appellant etc. are not justified as evident from these facts. When in compliance of Hon'ble ITAT direction to consider the Ld.

Magistrate decision in framing assessment denovo is the subject matter of grounds of appeal, it interlia already considered/implied that all such incriminating material as that was before Ld. Magistrate was considered by A.O.. It is mentioned by A.O. at para 1 of the impugned order that police also seized ledger account, sale invoices of the appellant for FY 1999-2000

I am inclined with A.O. that there is substantial difference between nature of evidence, admissibility of evidence, treatment of evidences and strength of evidence in Income tax and criminal proceedings. There are various presumption in reference to evidences/explanation and there are deeming provisions but this does not exclude/dilute the findings of criminal proceedings by a magistrate. The Hon'ble ITAT therefore aptly directed to admit the order of Ld. Magistrate as an additional evidence to denovo complete the assessment. If the evidences (incriminating or not), statement failed the test of credibility in criminal proceedings then such evidences cannot be taken adversely unless & until so provided in the provisions of Income tax Act. Two important aspect from the order of the Magistrate has to be looked into as follows:

(a) The appellant was relieved from various criminal charges u/s 420, 467, 471, 468 read with section 114 of I.P. Code and u/s 3 and 7 of Essential Commodities Act.

(b) The Ld. Magistrate has not acquitted Shri Rajesh Kapoor Prop. of Raj Chemical, Agra from the criminal case No. 5352/02 since he was absconding. It is important & relevant that the principal incriminating material found by police authority is in respect of m/s Raj Chemicals i.e. DSP Rural, Ahmedabad seized the solvent dispatched by appellant purported to be delivered to M/s Raj Chemicals at Agra but the tanker was found to be off routed and alleged to be delivering such solvent somewhere in Gujarat itself.

It is therefore, the above two important decision by Ld. Magistrate has to kept in view while considering the evidences so impounded, statement so recorded during search & thereafter while framing block assessment order for block period for assessment of undisclosed income. The close interlinking of incriminating material impounded by police authorities which were passed on to department u/s 132A of the Act forming the basis of framing of block assessment order u/s 158 BC of the Act as well as post search evidences in the form of inquiries, statement recorded by police authority etc. were utilized by the policy authority for the criminal case against appellant under various sections of IPC and Essential commodity Act. The foundation of these evidences were tested by Ld. Magistrate in the Trial through examining of evidences, recording of statement of witness and cross examination. It is

therefore the observation of Ld. Magistrate on the credibility of such evidences has a direct bearing on the proceedings of block assessment u/s 158BC of the Act because the A.O. is also a quasi judicial authority and has to consider such evidences, statement & cross examination not from the angle of IPC or essential commodity Act but from the angle of whether any adverse inference can be drawn as per the I.T. Act and more specifically as per the provisions of section 158BB of the Act le. Block assessment provisions?

As recorded by A.O. at para 13 of the impugned order and discussed above, at page 49 of the order, the judicial Magistrate made important observation which can be summarized as follows:

(i) The purchasing parties have admitted in their affidavit that they have purchased goods from M/s Yash Organics Ltd. and that they have made payment of goods through bank and no such evidence is brought on attention by which benami transactions between parties may have been made by which it can be so inferred that all the transactions made in this matter are illegal.

(ii) In spite of defect of complainant & investigator is same person, The P.S.I. in his own deposition stated contradictory facts and such contradictory facts create doubts and when the evidence of prosecution side is doubt full than the proper benefit of such a rising doubts should be given to the accused, which is also an important established principle of law.

(iii) During the whole evidence the prosecution side has not proved beyond reasonable doubt as to which accused had committed forgery by making bogus & false documents.

As per the settled legal proposition as discussed already in respect of block assessment proceedings, it is the incriminating material and post search inquiries on such material which will form basis for computing undisclosed income of block period u/s 158BC of the Act. This is because the assessment of regular / normal income as per books of account are separately, independently is required to be assessed. It is therefore I am not inclined with A.O. that observation & findings as given by judicial magistrate in the case of appellant on the basis of seized / impounded material and post search inquiry is not relevant in income tax proceedings. Hon'ble ITAT Ahmedabad in fact accepted such proposition and considered the importance & relevance of such findings & observations before setting aside the case by admitting the order of judicial Magistrate as additional evidences. As discussed in earlier para, Hon'ble ITAT in the Narayan Tukaram Baddi Prop. Mis Atlas petrochemicals order dt 30/10/01 had substantially considered such evidences in respect of various parties to whom appellant also sold the solvent. This statement and other evidences i.e. bills, Form 45, C Form etc. were considered and held in favour of the assessee. The Judicial Magistrate also further examined such evidences with reference to

further post search inquiry made by police from RTO, concerned parties, evidences & statement of these parties etc. and the credibility of such evidences and inference as per Evidences Act cannot be brushed aside on the ground that the same will be differently interpreted in Income tax Act proceedings particularly when the same form the basis of block assessment proceedings. The A.O. has not brought on record or made further inquiry over & above such findings to differentiate the interpretation and admissibility as credible evidences.

As evident from the show cause notice para 18 that A.O. himself treated the bill, invoices seized by police department as basis of incriminating material for block assessment proceedings. It is mentioned that one suitcase full of documents was seized and handed over but A.O. neither in the original assessment order nor in this impugned assessment order mentioned about details of such document and whether any incriminating material was there or not. In fact A.O. on the basis of alleged modus operandi as discussed at para 16 of such notice and referring to search conducted by department on M/s Atlas Petroleum considered the party wise recorded sale of appellant with a view to verify & examine the genuineness with various inquiries from different source. It is important to note here that except in the case of M/s Raj Chemical, Agra, such inquiries in respect of other parties had already been considered by judicial Magistrate in the case of appellant as well as by Hon'ble ITAT Ahmedabad itself in the case of Shri Narayan Tukaram Baddi Prop. M/s Atlas Petro chemicals. Once Judicial Magistrate after examination of such evidences in the form of police inquiry, RTO inquiry and statement of concerned parties with cross examination was concluded as non-incriminating, then consideration of same by A.O. for the recorded sale cannot be justified. Further, Hon'ble Ahmedabad also examined such evidences in the case of Shri Narayan Tukaram Baddi Prop. of M/s Atlas Petro Chemicals and found not worth credible to draw any adverse inference. The Judicial Magistrate duly dispelled the controversy about form 45C C Form etc. as gathered by police from RTO inquiry as well as adopting of route by different Tanker to deliver the material and no benami transaction were found to be established. It is therefore, A.O. when reconsider the same evidence and held that such transaction are paper transaction cannot be held proper or as per legal interpretation. The benami transactions are not different as far as IPC or Essential Commodity Act. are concerned and Income Tax Act. The Hon'ble ITAT Ahmedabad had also examined such transactions in the case of Shri Narayan Tukaram Baddi for the same parties in block assessment proceedings itself of that assessee.

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The A. O. though computed such suppression of sale of Rs. 9,36,27,857, and Rs. 17,60.44,843/- but no separate addition were made. The A.O. impugned order made addition of suppression of sale of Rs. 17,60,44,843. and for balance amount of recorded sale of such party i.e. Rs. 2,77,73,138/- as u/s 68 of the Act which is interalia making addition of total recorded sale of Rs. 20,38.17,981/- but in two component. In my view such addition of suppressed sale of Rs. 17,60,44,843/- out of Rs. 20,38,17,981/- is not justified on any reason. The A.O. failed to substantiate with any seized incriminating material that there was suppression of sale or receipt of on money. There is error in taking total sale recorded of Rs. 19,48,31,459/- at the place of sale of such party considered as non genuine of Rs. 20,38,17,981/- How the suppression of sale i.e. receipt of on money can be reduced from recorded sale of Rs. 20,38,17,981/- to arrive at balance non genuine sale le addition u/s 68 of the Act for Rs. 2,77,73,138/-. It is therefore such presumption of A.O. is neither based on proper logic nor sustainable as per preposition of law for block asstt. proceedings. In my view, with the available evidences, Ld. Judicial Magistrate order, order of Hon'ble ITAT Ahmedabad in the case of Shri Narayan Tukaram Baddi, The sales as reflected by appellant to M/s Raj Chemicals, Agra can only be held non genuine and not supported by corroborative evidences. It is therefore the same sale consideration as fond credited in the books of appellant can only be held as not satisfactorily explained and required to be added u/s 68 of the Act. There is no evidences to support that such sale is made by appellant in open market and premium is received. It is only the application of provision of section 68 of the Act in block asstt. proceedings and evidences so found, such amount of sale consideration required addition. I am also not inclined with appellant that gross profit on such sale is required to be added because this also defeat the basic purpose & procedure of Block asstt. proceedings as envisaged chapter XIV of the I.T. Act. It is note worthy that appellant's books of accounts are audited, the A.O. neither in original asstt. nor in set aside proceedings rejected books of account of appellant, hence estimation of any such suppression of sale is other wise also not as per legal proposition.

12. It is, thus, found that the Ld. CIT(A) has passed a detailed order considering the evidences found during the search, findings given by the Ld. Judicial Magistrate, properly analyzing the provisions of section 158BC of the Act and, thereafter, has deleted

the addition of Rs.17,60,44,843/- on account of suppression of sales. He has not only taken into account the evidences collected in the course of search but also the evidences as considered by the Ld. Judicial Magistrate. We, therefore, do not find any reason to interfere with the order of the Ld. CIT(A). **The deletion of Rs.17,60,44,843/- on account of suppression of sales as made by the Ld. CIT(A) is confirmed and the ground taken by the Revenue in this respect is rejected.**

13. The assessee's grievance is in respect of addition of Rs.3,55,53,117/- u/s 68 of the Act in respect of sales made to M/s. Raj Chemical, as confirmed by Id. CIT(A). As already discussed earlier, the entire incriminating evidence found during the search was in respect of sales made to M/s. Raj Chemicals, Agra. The Ld. CIT(A) has given the following findings while upholding the addition in this respect:

It is only in the case of M/s Raj Chemical, Agra, where it can be considered in view of the fact that the police authority in its search proceedings detained a tanker with invoices which was purportedly carrying the solvent from appellant to M/s Raj Chemicals. The Judicial Magistrate in his order kept criminal case against him open since Shri Rajesh Kapor Proprietor of M/s Raj Chemicals is absconding and importantly A current account of M/s Raj Chemicals bearing no. 100844 at main branch of the Allahabad bank, Jaipur for the period 05/10/98 to 29/03/2000 reflect that cash has been deposited in this account and on the very same day, drafts of the same or nearly same amount have been issued in the form of draft in the name of appellant. The total sale as reflected by appellant from M/s Raj Chemical is as follows:

A.Y. 1999-2000	Rs.1,08,04,838/-
A.Y.2000-2002	Rs.2,47,48,279/-
	Rs.3,55,53,117/-

It is therefore, it is only in the case of M/s Raj Chemicals, Agra that sale made by appellant to M/s Raj Chemicals is not substantiated i.e. the sale consideration received and recorded by appellant in its books of account from M/s Raj Chemicals is not properly explained and as per provisions of block assessment, section 68 of the Act is applicable to such amount. As far as another part of allegation that the same were sold to other parties at premium is not supported by any evidences and not found in the form of incriminating material. The judicial Magistrate also rejected such theory on the basis of inquiries from RTO, sales tax officer for the Form 45, "C" Form or any permit issued to such tanker and whether such tanker crossed the border or not. The statement given by other parties as considered by Judicial Magistrate as well as by Hon'ble ITAT in the case of Shri Narayan Tukaram Baddi were not found credible enough to draw such adverse findings. Further, no such incriminating material was found during search proceedings and for the recorded sales such statement & inquiry cannot form basis & part of block asstt. proceedings as per legal proposition.

It is important that appellant him self in reply dt. 04/03/13 before A.O. in response to show cause while referring the observation made in second appeal No. 319 & 320 of 2006 in case of Yash Organics Vs. The State of Gujarat dt. 16/06/2009 in the Gujarat Value Added Tax Tribunal at Ahmedabad where Hon'ble tribunal confirmed the OGS sales to the various parties by appellant except the Raj Chemicals because the "C" From issued was found to be defective and fraudulent.

It is therefore, only for addition of suppressed sale on estimated basis, the whole order cannot be held as bad in law, void ab initio and illegal. As discussed in details that there are incriminating evidences as far as sale of appellant to M/s Raj Chemicals are concerned and there is addition u/s 68 of the Act though for Rs. 2,77,73,138/- at the place of addition u/s 68 of the Act in original asstt. of Rs. 20,38,17,981/- and as per the provisions of chapter XIV of the I.T. Act for block asstt., the addition of Rs. 3,55,53,117/- being unexplained sale consideration credited in book of account of appellant in respect of sale being undisclosed income u/s 68 of the Act, this ground is therefore treated as partly allowed to the extent of relief from the estimation of suppression of sales but addition u/s 68 of the Act to the extent of Rs. 3,55,53,117/- is upheld and confirmed. This ground is partly allowed."

14. The Ld. CIT(A) has correctly appreciated the facts of the case and confirmed the addition in respect of sales made to M/s. Raj Chemicals. The assessee was unable to bring on record any evidence to establish the genuineness of the credits appearing in its books of accounts in the name of M/s. Raj Chemicals. Merely because the entries were made in the books of accounts of the assessee, this doesn't make the transaction genuine. The genesis of this addition was the incriminating evidences found in the course of search which has not been disputed. The truck destined to M/s. Raj Chemicals, Agra was seized from a location in Gujarat and the said truck didn't have the permit to travel outside the State. Further, "C" Form issued to Raj Chemicals were found to be defective and fraudulent. Thus the evidences collected during the search and subsequent enquiries established that the solvent allegedly sold by the assessee to Raj Chemical were not delivered to him but were dispatched somewhere else. In view of these facts the Revenue had rightly doubted the genuineness of sales as appearing in the assessee's books of accounts appearing in the name of Raj Chemicals. Further, the proprietor of M/s. Raj Chemicals was not only absconding but the bank account of M/s. Raj Chemicals reflected cash deposits prior to issue of draft to the assessee. Thus, the genuineness and the creditworthiness of the transaction with M/s. Raj Chemicals was not established. The assessee had failed to bring on record any evidence on record to establish the genuineness of these transactions. Merely because the sales to M/s Raj Chemicals are debited to books of accounts

of the assessee, the transaction can't be held as genuine, considering the adverse evidences as collected by the Revenue. In view of these facts as well as the facts as discussed in the order of Ld. CIT(A), we don't find any reason to interfere with the order of the Ld. CIT(A) on this issue. **The addition of Rs.3,55,53,117/- made u/s.68 of the Act in respect of cash credit in the name of M/s. Raj Chemicals, as upheld by Ld. CIT(A), is, therefore, confirmed and the grounds of the assessee are rejected.**

15. In the result, both the appeals filed by the Revenue and as well as by the assessee are dismissed.

This Order pronounced on 20/09/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
Ahmedabad; Dated 20/09/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

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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 फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad