

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

समक्ष श्री जी.डी.अग्रवाल, उपाध्यक्ष (अहम. क्षेत्र) एवं श्री कुल भारत, न्यायिक सदस्य ।
BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT (AZ) And
SHRI KUL BHARAT, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1800/Ahd/2011
(निर्धारण वर्ष / Assessment Year : 2008-09)

ACIT (OSD) Circle-8 Ahmedabad	बनाम/ Vs.	Smarneev Fashions Pvt.Ltd. G-11, Aniket Building Nr.Navrangpura Municipal Market CG Road, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCS 8736 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Dinesh Singh, Sr.DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Vivek N. Chavda, AR

सुनवाई की तारीख / Date of Hearing	03/06/2015
घोषणा की तारीख /Date of Pronouncement	05/06/2015

आदेश / ORDER

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This appeal by the Revenue is directed against the order of the Ld.Commissioner of Income Tax(Appeals)-XIV, Ahmedabad ('CIT(A)' in short) dated 26/05/2011 pertaining to Assessment Year (AY) 2008-09. The Revenue has raised the following grounds of appeal:-

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- [1] *The Ld.CIT(A)-XIV, Ahmedabad erred in law and on facts in deleting the addition of Rs.12,81,112/- made by the Assessing Officer on account of suppression of closing stock.*
- [2] *On the facts and in the circumstances of the case, the ld.Commissioner of Income-tax[A], 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[A]-XIV, Ahmedabad may be set-aside and that of the Assessing Officer be restored.*

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as “the Act”) was framed vide order dated 07/10/2010, thereby the Assessing Officer (AO in short) rejected the trading result shown by the assessee and proceeded to make addition of Rs.12,81,112/-. Against the said assessment order, the assessee preferred an appeal before the ld.CIT(A), who after considering the submissions allowed the appeal and thereby deleted the addition as made by the AO.

3. The ld.Sr.DR supported the order of the AO and submitted that the ld.CIT(A) was not justified in deleting the addition. He submitted that the AO has observed that in earlier years, Gross Profit rate as declared by the assessee was at 22.99% in respect of the AY 2005-06, 22.75% in respect of AY 2006-07 and 25.18% in respect of AY 2007-08. The AO observed that despite the aforesaid trend of the Gross Profit percentage, the assessee has shown negative GP ratio in the year under appeal. It is

submitted that one of the Directors of the Company, Ms.Swati A.Shah has shown as creditor in the list of creditors. He submitted that under these facts, the addition should have been confirmed.

3.1. On the contrary, Id.counsel for the assessee supported the order of the Id.CIT(A).

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Id.CIT(A) has given an elaborate finding in para-2.3 of his order which reads as under:-

“2.3 Decision:

I have carefully perused the penalty order and the submission filed by the Id.AR of the appellant. The main points of the appellant's submission can be summarised as under:-

- i) He has been maintaining the same set of .books of accounts from last so many years, which were accepted by the Department.*
- ii) As he was dealing in large number of items which were small in value. There was no possibility of maintaining stock register on day to day basis.*
- iii) No specific finding regarding the defects in the books of account have been given by the assessing officer.*
- iv) A lower rate of gross profit in absence of any material, pointing towards falsehood of the books of account cannot by itself be a ground to reject the books of accounts.*

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- v) *The AO failed to recognize that the company had closed down its operation from November, 2007. It retrenched all its employees and sold/written off stocks and therefore there was no inventory as on 31/03/2008. The close of business was fully supported by the documentary evidence.*
- vi) *The assessing officer was not justified in comparing the GP ratio of normal working years with the year in which there was a close of business.*
- vii) *The GP ratio has been worked out by the AO without taking into account the discount sale, sales returns and writing back of credit balances which would have positively impacted the working of GP ratio.*
- viii) *The accounts were not prepared on the concept of going concern as the operations were close down during the year.*
- ix) *There was a physical verification of the stock.*
- x) *There were net losses in earlier years also.*

After going through the submissions of the appellant and the assessment order I am of the opinion that the books of accounts have not been correctly rejected by the assessing officer. The assessing officer has not pointed any material defect in the books of accounts of appellant. Since the appellant was closing down as business and has in fact closed down all the operations, the stock at the year-end was nil. All the abnormal facts pointed out by the assessing officer have been correctly explained by the appellant with the help of documentary evidence wherever required. Merely because there is a fall in gross profit or there is a NIL closing stock at the end of the year the books of accounts cannot be rejected. The appellant has also explained the reasons for fall in GP rate. He had to sell its goods at a huge discount as he had decided to close down the business all these facts have been properly recorded in books of accounts and supplementary documents. Accordingly, the addition made by the assessing officer after rejecting

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the books of accounts under section 145 (3) is hereby deleted and the appeal of the appellant is allowed.”

4.1. The above finding of the Id.CIT(A) is not rebutted by the Revenue by placing any contrary material on record. Therefore, we see no reason to interfere with the aforesaid finding of the Id.CIT(A), same is hereby upheld. Thus, ground No.1 of Revenue’s appeal is rejected.

5. Ground Nos.2 & 3 are general in nature which require no independent adjudication.

6. In the result, Revenue’s appeal is dismissed.

**Order pronounced in the Court on Friday, the 5th day of June, 2015
at Ahmedabad.**

Sd/-
(जी.डी.अग्रवाल)
उपाध्यक्ष(अहम. क्षेत्र)
(G.D. AGARWAL)
VICE PRESIDENT (AZ)

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 5/ 06 /2015
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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)-XIV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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