

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER
(Virtual Court-Virtual Hearing)
आ.अ.सं./I.T.A No.3224/AHD/2015
निर्धारण वर्ष/Assessment Year: 2011-12

Smt. Purnima Sunil Agrawala, 902, Orchid Tower, Chharwada Road, Vapi Dist. Valsad-396195. [PAN: AAVPA 0055 E]	Vs.	The Income Tax Officer, Vapi Ward-2, Vapi.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri A.Gopalakrishnan – AR
राजस्वकीओरसे /Revenue by	Ms. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	30.09.2020
उद्घोषणाकीतारीख/Pronouncement on:	22.10.2020

आदेश /ORDER

PER DR. ARJUN LAL SAINI, AM:

The captioned appeal filed by the assessee pertaining to assessment year 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals), Valsad in appeal no. CIT(A)/VLS/59/14-15 dated 18.08.2015, which in turn arises out of an assessment order passed by the Id. Assessing Officer(AO) under section143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 21.03.2014.

1. Ground of appeal raised by the assessee are as follows:

- “1. On appreciation of the facts and circumstances of the case and law the Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Learned Assessing Officer in treating the entire amount of sundry creditors to the tune of Rs.56,68,960/- as cash credit Under section 68 of the Act. The action of the Learned

Commissioner of Income Tax (Appeals) is based on presumptions only, contrary to the facts of the case and deserves to be deleted.

2. *On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in estimating 2% of the turnover as taxable income in the case of the appellant as against 1.07% as disclosed by the appellant in his return of income for the year under consideration.*
3. *The appellant craves leave to add, amend, modify or alter the above grounds of appeal at any stage of appellate proceedings.”*

2. The brief facts qua the issue are that assessee before us is an individual and engaged in the business of scrap trading. The assessee has filed her Return of Income for assessment year 2011-12 on 26.09.2011 declaring total income at Rs.4,20,170/-. The Return of Income of the assessee was processed by the Department under section 143(1) of the Income Tax Act, 1961. Later on, the assessee's case was selected for scrutiny under section 143(3) of the Act. During the assessment proceedings, the assessee has appeared from time to time before the Assessing Officer and submitted details and documents such as Auditors Report in form no.3CB, form no.3CD, Balance Sheet, Profit and Loss Account etc. On verification of Balance Sheet of the assessee, it was noticed by the Assessing Officer that assessee has shown sundry creditors to the tune of Rs.52,68,960/-. In order to verify the genuineness of the sundry creditors, the assessee was asked to furnish complete names and addresses of the sundry creditors and therefore, letters under section 133(6) of the Act, were issued to ten creditors on the addresses provided by the assessee on random basis. However, all the ten notices were returned unserved. Further the assessee was also asked during the assessment proceedings to produce the books of accounts including sale bills, purchase bills

vouchers etc., for verification. However, the assessee failed to produce the same. Therefore, Assessing Officer issued a show cause notice to the assessee on 07.03.2014 asking the assessee to furnish the details about sundry creditors shown by him in the Balance Sheet.

3. In response to the said show cause notice the assessee submitted his reply before the Assessing Officer, which is reproduced below:

“The above show cause notice fixing the hearing on 14/03/2014 has been received by me only on 19/03/2014. In this regard I would like to humbly submit before your good self as under:-

The assessee is carrying on business in trading of waste paper. Waste paper is collected from small vendors who belong to the poorest sections of the society. They are generally illiterate and of poor means, without even proper housing to live. This may be reason that the notices send by your good self returned un-served. The assessee has purchased such scrap material and supplied the same to the paper mills.

During the subsequent year as soon as the money is received from the paper mills the amount is paid to such small time vendors. This is the nature of business and invariably payments are made to the creditors for supply of waste paper only after the same is received from the paper mills. Owing to the peculiar nature of business wherein the poorest and illiterate section of the society is involved the assessee could not furnish a confirmation in the proper form. The assessee is only an intermediary in this business wherein she collects essential raw material from sources which are not organized and supplies it to the organized paper mills. The assessee gets only a small middleman’s margin as benefit in this whole process.

Hence we humbly submit before your good self not to reject the book result Under section 145(3) of the Act as proposed by your good self.

We humbly request to your good self to consider my case in view of the above modus operandi of the business as submitted before your good self and complete the assessment accepting the return of income filed by me in toto and oblige.”

4. After going through the reply of the assessee, the Assessing Officer observed that assessee had not produced the books of accounts for verification. Therefore,

without verification of books of accounts, bills, vouchers, invoices, cash book etc. the veracity of business activity carried out and the book result shown by the assessee cannot be relied upon. Therefore, in the absence of the same, the book results shown by the assessee was rejected under section 145(3) of the Act.

5. After rejecting the books of accounts, the Assessing Officer made addition on account of sundry creditors. The Assessing Officer noted that in order to verify the creditors, the books of accounts together purchase bills, sales bills, supporting evidence and credit worthiness of the creditors is required. However, in spite of sufficient opportunities granted to the assessee, the assessee failed to produce these evidences, therefore sundry creditors amounting to Rs.56,68,960/- was added by the Assessing Officer under section 68 of the Act treating as bogus creditors/unexplained creditors.

6. During the course of assessment proceedings, the assessee was repeatedly requested to produce the books of accounts including purchase bills, purchase register, vouchers etc., but the assessee failed to do so. In the audit report at point No.9(b) Annexure-I) the auditor has specifically mentioned that the assessee maintained Computer generated cash book, bank book, sales purchase register, journal, ledger etc. and he had audited the same after examining the said books. Then what element prevented the assessee to produce such audited books of accounts before the Assessing Officer for verification, even when the auditor has specifically mentioned in the audit report that he had audited the books after examining the same. Under the above stated circumstances, the Assessing Officer held that the veracity of the purchases made by the assessee cannot be verified with

reference to the purchase bills and other related details and therefore, Assessing Officer has left with no option but to disallow 15% of the total purchases of Rs.2,66,81,562/- and added to the total income of the assessee which came to Rs.40,02,234/-.

7. This way, the assessing officer had rejected books of accounts of the assessee and made estimated disallowance @ 15% of the total purchases at Rs. 40,02,234/- (15% of Rs.2,66,81,562). Over and above, the assessing officer also made addition on account of bogus creditors at Rs.56,68,960/-, as noted above.

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id.CIT(A) who has confirmed the addition made by the Assessing Officer. Aggrieved by the order of Id.CIT(A), the assessee is in appeal before this Tribunal.

9. 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. Before us, Id. Counsel for the assessee reiterated the submissions made before the authorities below. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. The first issue relates to estimated addition to the tune of Rs.40,02,234/- being 15% of the total purchases of waste paper which were treated as non-genuine and unverifiable by the assessing officer. On appeal, Id CIT(A) held as follows:

“Briefly stated the facts of this issue are that the appellant is engaged in the business of trading in waste paper. Besides this, the other items traded are scraps like core pipe, duplex kraft waste, paper tube and the like unusable products as disposed off by the end users. As these items are purchased from small time vendors popularly known as Raddiwalas who are mostly illiterate and belong to the lower strata of the society. Their transactions are mostly in cash due to the nature of their work. The appellant is mediator between the raddiwalas and the papaermills. As and when the stock of waste papers, etc. Piles up, the same is sold to different paper mills on the rates determined by the group of paper mills. Similar issue also cropped up in a number of cases in the Central Circle of Surat where the assessing authorities estimated the gross profit by making an addition of Rs.0.75% of the turnover. This type of addition was also made in the appellant’s own case for the AY 2006-07 to 2008-09. My predecessors while adjudicating these cases restricted the addition as net profit @ 2% of the turnover. During the year the appellant has disclosed net profit @1.79% which is enhanced to 2% keeping in view the principle of consistency. The assessing officer is directed to make addition in net profit @ 2% of the turnover and the balance addition made is deleted and the ground of the appeal of the appellant is partly allowed.”

We note that assessing officer, having rejected the books of accounts made estimated disallowance @ 15% of the total purchases at Rs. 40,02,234/- (15% of Rs.2,66,81,562). On appeal, Id CIT(A) restricted the estimated addition in net profit @ 2% of the turnover, as noted above. Over and above, the Id CIT(A) also confirmed the addition made by assessing officer on account of bogus creditors at Rs.56,68,960/-, to which, the Id Counsel has objected. We note that since the Assessing Officer has rejected the books of accounts, therefore, he cannot make separate addition on account of bogus creditors, that is, after rejection of books of account the alternative remains with the Assessing Officer is to estimate the profit. We note that Id CIT(A) has also confirmed the addition on account of bogus creditors at Rs.56,68,960/- under section 68 of the Income Tax Act, 1961, which he should not have done, as the books of accounts of the assessee were rejected and

estimated addition as net profit @ 2% of the turnover has been confirmed by him(Commissioner of Income-tax (Appeals)).

Thus, we note that where the assessing officer himself rejected the books of account of the assessee after holding that the transaction shown in the names of the sundry creditors were not genuine yet the assessing officer instead of proceeding to determine the assessment under section 144 of the Act proceeded to add the sundry creditors amount in the income of the assessee under s. 68 of the IT Act, which is not acceptable. At this juncture it is appropriate to quote the judgment of Hon'ble High Court of Gujarat, Ahmedabad in PCIT Vs. TAYAB YUNUS BARUDGAR in R/TAX Appeal No.81 of 2019 dated 18.06.2019 wherein it was held that when assessing officer rejected books of accounts, the separate addition by relying the said books of accounts should not be made. The findings of the Hon'ble Court is as follows:

“10. Ms.Kalpana Raval, the learned senior standing counsel appearing for the Revenue, vehemently submitted that the Tribunal committed an error in interpreting Section 68 of the Act. The learned counsel would submit that the Tribunal committed an error in directing the Assessing Officer in deleting the addition. The learned counsel submitted that although the assessee was given an opportunity to prove the genuineness of sundry creditors, yet no evidence was led in that regard. The learned counsel submitted that in such circumstances the Assessing Officer as well as the CIT(A) were justified in treating the entire amount of sundry creditors as cash-credit and rejected the same under Section 143(3) of the Act. The learned counsel pointed out that the same was added back to the total income of the assessee as per the provisions of Section 68 of the Income Tax Act. Ms.Raval submitted that the assessee is obliged to prove three important conditions, namely, identity of the person, the genuineness of the transaction and the capability of the person. She submitted that all that Section 68 of the Act requires is an acceptable proof in a matter like this. Apart from the identity, the satisfaction has to be with reference to a bundle of facts including the capacity to pay for proving the genuineness of the transaction. The income has to be explained in terms of Section 68 of the Act. It was submitted that in the case on hand the Assessing Officer and the Commissioner rightly ruled that the assessee was unable to explain the genuineness of the

transaction. In such circumstances, the Tribunal ought not to have disturbed the findings by drawing presumptions.

11. In such circumstances referred to above, the learned counsel submits that a substantial question of law is involved in the present Appeal as regards the account of unverified sundry creditors as well as on the issue of deleting the addition made on account of the unverifiable purchase.

12. On the other hand, Mr.Darshan Patel, the learned counsel appearing for the assessee on caveat, has vehemently opposed this Appeal. He submitted that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in passing the impugned order. The principal argument of Mr.Patel is that the Assessing Officer, having once rejected the books of accounts, could not have made further additions by relying upon the same books. The Assessing Officer ought to have estimated a reasonable profit of the assessee considering the history and nature of business. Mr.Patel pointed out that the CIT(A) took notice of the fact that the Assessing Officer had already made addition of net profit @ 2% of the turnover. In such circumstances, the amount of Rs. 1,17,31,334=00 could not have been added relying on the same books of accounts which were rejected under Section 145(3) of the Income Tax Act. Mr.Patel pointed out that this aspect has been well-considered by the Tribunal.

13. Mr.Patel, in support of his submissions, has placed strong reliance on a decision of this Court in the case of Commissioner of Income-tax-II v. Dhiraj R.Rungta (Tax Appeal No. 1152 of 2011, decided on 26th September 2012), wherein this Court has taken the view that the Assessing Officer, having taken notice of the glaring mistake and having rejected the books of accounts, could not have made additions by relying upon the same books of accounts. The ratio of the decision of this Court is that the Assessing Officer once having rejected the books of accounts could not have made further additions by relying upon the same books of accounts and the Assessing Officer should calculate the estimated reasonable profit of the assessee considering the history and nature of the business.

14. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that none of the two questions formulated in the memorandum of the Tax Appeal could be termed as the substantial question so f law. At best, they could be termed as the mixed questions of law and fact.”

10. On the identical facts, our view is fortified by the judgment of the Hon`ble High Court of Jharkhand in the case of AMITABH CONSTRUCTION (P) LTD. Vs.

ADDITIONAL COMMISSIONER OF INCOME TAX 335 ITR 523 wherein it was held as follows:

“5. In the alternative, it has been submitted that once the AO has rejected the books of account after appreciation of the evidence of the alleged materials suppliers then the AO should have proceeded to assess the income of the assessee under s. 144(3) of the Act of 1961. It is submitted that non-proving of the genuineness of the transaction shown by the assessee in his books of account itself cannot be a ground to treat those entries to be a taxable sum under s. 68 of the Act of 1961 as it has not been held that the said amount is cash credit in terms of s. 68. It is submitted that s. 68(1) has been enacted for taxing the sum where there are entries of sum in the books of account of the assessee and those transactions have not been proved genuine transactions to the satisfaction of the AO then such transactions only could have been taxed under s. 68A.

6. Learned counsel for the appellant in support of his contention relied upon the two judgments of the Division Bench. The first judgment is dt. 28th Jan., 2009, passed by the Division Bench of the Rajasthan High Court in the case of CIT vs. G.K. Contractor & Anr. (2009) 19 DTR (Raj) 305 judgment is passed by the Division Bench of the Allahabad High Court in the case of CIT vs. Pancham Dass Jain (2006) 205 CTR (All) 444 : (2006) 156 Taxman 507 (All).

7. Learned counsel for the Revenue submitted that from the evidence of the persons whose identities have been disclosed by the assessee himself it is fully proved that the transaction recorded in the books of account of the assessee was not genuine transaction and for this the AO as well as the Tribunal has given cogent reasons and that finding of fact may not be interfered with by this Court.

8. However, it is submitted that since the transactions were in the form of cash entry only though having been described in the head of amount of persons alleged to have supplied the material to the assessee but when the transactions were found not to be genuine then that entry can be treated to be a cash amount in the hands of the assessee for the purpose of taxing under s. 68 of the Act of 1961.

9. We have considered the submissions of the learned counsel for the parties and perused the above judgments. It is not in dispute that the names of the persons, who were alleged to have supplied the materials to the assessee, were disclosed by the assessee and the AO summoned 8 persons out of 12 persons and they gave their statements before the AO and we after perusal of the reasons given in the assessment order and after considering the reasons given by the CIT(A) and reasons given by the Tribunal while considering the credibility of those persons and the genuineness of the transactions we are of the firm opinion that the transactions shown in the books of account were not genuine in the light of the statements given by those persons who were examined by the AO. We may mention a few facts which have been taken by the AO as well as by the Tribunal that none of the alleged suppliers of the materials was maintaining the books of account, none of them have filed any return of income, none of them have any evidence regarding purchase of goods supplied by them, none of them have any evidence regarding transport of goods supplied by them and even though a number of them had claimed to have bank accounts, none of the payments was ever received by those persons for the goods from the assessee's bank account and even though the transaction of each of the sundry creditors run into several lakhs not even 'a single

rupee out of the cash (bearer cheque) received was deposited into their bank accounts.

10. We have mentioned these reasons only because of the reason that the learned counsel for the assessee tried to assail the findings of fact recorded by the Tribunal but we are satisfied that the findings of fact recorded by the AO and the Tribunal were based on some reasons and cannot be interfered with.

11. However, so far as the assessment of the income of the assessee is concerned, for that purpose a few facts are very relevant and which are that the total gross receipts of the assessee were Rs. 4,51,01,011 the disclosure of his income is Rs. 14,13,624 and interestingly this income was accepted by the AO himself which is apparent from the assessment order. Then the AO added the amount shown in the accounts of the sundry creditors to the tune of Rs. 1,59,90,274 and assessed the total income as Rs. 1,74,03,900 meaning thereby by this order of assessment the AO accepted the books of account for the purpose of finding out the profit shown by the assessee to be correct as disclosed in the return and thereafter added the amount of the credits shown in the account of the sundry creditors. In view of the above, it appears that the AO has passed the contradictory order by holding that the books of account are not reliable while deciding the issue of the sundry creditors but relied upon the return for accepting the profit shown to be correct which is supported by the books of account. The other fact relevant is that for gross receipts of Rs. 4,51,01,011 the AO has not declared that the gross receipt is the correct figure and yet added the income of Rs. 1,59,90,274 merely on account of cash entries.

12. In the facts of the case, the AO has committed an error of law by adding that amount under s. 68 of the Act of 1961 straight-away merely because of the reason that the genuineness of the transaction shown in the heading of the sundry creditors was not found genuine.

13. In view of the above reasons, following s. 145(3) the AO should have proceeded under s. 144 and should have followed the procedure of assessment of the tax.

14. In view of the above reasons the question is answered that the Tribunal and the AO though recorded finding of fact correctly that the transaction of sundry creditors were not genuine but so far as the assessment order is concerned that deserved to be set aside and the AO should assess the income afresh under s. 145(3).

15. The appeal is accordingly allowed and the order of the Tribunal, Circuit Bench, Ranchi and the AO are set aside. The matter is remanded back to the AO for passing a fresh assessment order and the parties are directed to appear before the concerned authority on 13th June, 2011."

11. Thus, it is abundantly clear that the Assessing Officer, having once rejected the books of accounts, could not have made further additions on account of bogus sundry creditors at Rs.56,68,960/- under section 68 of the Income Tax Act, 1961, by relying upon the same books of accounts. Therefore, respectfully following the

judgment of the Hon'ble High Court of Gujarat, Ahmedabad in the case of PCIT Vs. TAYAB YUNUS BARUDGAR(supra) and Hon`ble High Court of Jharkhand in the case of AMITABH CONSTRUCTION (P) LTD (supra), we deleted the addition on account of bogus sundry creditors at Rs.56,68,960/-.

12. Next grievance of the Id Counsel is that since assessee has disclosed net profit @1.79% of turnover (which was enhanced by Id CIT(A) to 2%), therefore, after rejection of books of accounts the profit may be estimated @1.79% of turnover instead of @ 2% of turnover. For that Id Counsel relied on the following judgment of the Co-ordinate Bench of ITAT, Surat in the case of Shri Tayab Yunus Barudgar in ITA No.1063/Ahd/2015/SRT, A.Y. 200-11 order dated 31.08.2018 wherein it was held as follows:

“4. Apropos sole ground of Revenue, we have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The ld. Departmental Representative (DR) submitted that the AO was right in making disallowance of 15% of total URD purchases treated as non-genuine and verifiable and the ld. CIT(A) reduce the disallowance directing the AO to adopt NP @ 2% of total turnover without any reasonable basis therefore, impugned order may kindly be set aside by restoring that of the Assessing Office (AO).

5. Replying to the above, the ld. Assessee's Representative (AR) submitted that for the immediately preceding year AY 2009-10, the ITAT, Ahmedabad 'B' Bench dismissing the appeal of the Revenue has upheld the conclusion drawn by the ld. CIT(A) to estimate NP @ 2% on the purchases from Un-Registered Dealers (URD) and in the subsequent present AY the ld. CIT(A) has followed the same line directing the AO to estimate the NP @2% of turnover. The ld. AR almost submitted that from relevant para at pg. 24 of the impugned first appellate order, it is clear that the ld.CIT(A) has also taken into account orders of his predecessor for AY 2006-07 to 2008-09 for the same estimation of 2%. Therefore, the ld. AR submitted that the issue is covered in favour of the assessee by the order of the Tribunal dated 27.05.2016 in assessee's own case for AY 2009-10, wherein appeal of the Revenue ITA No.1351/Ahd/2012 has been dismissed on ground No.1.

6. On careful consideration of the above rival submissions, we are of the view that from the relevant part of first appellate order at pg. 24, we

observe that the ld. CIT(A) has taken cognizance of the order of his predecessor on the same issue on the identical facts and circumstances from AY 2006-07 to 2008-09, wherein NP @ 2% has been directed to be estimated to the AO on URD purchases. Further, from the copy of the order of the Tribunal for AY 2009-10 dated 27.05.2016 at para 4, it is also discernable that the Tribunal uphold the conclusion of the first appellate authority with following observations and conclusion.:

“4. We have heard’ the Ld.DR, perused the material available on record and gone through the orders of the authorities below. We find that the ld.CIT(A) while deciding the issue in favour of assessee has given a finding that though the AO has doubted the purchases but has not brought on record any instance of bogus or inflated purchase and has also not doubted the sales “figure disclosed by the assessee. He has further given a finding that Paper Mill Association and fixed the price for purchases of waste-paper from the traders and, therefore, the scope of scope of manipulated sales price was not established and there was no evidence to conclude that waste-paper supplier have higher gross margin on sales only because their purchases are from small type vendors. He has further given a finding that 15% margin of profit is not possible in the case of assessee. He has further given a finding that Central Circle Surat had competed the assessment of small traders by estimating the Gross Profit and had considered the gross profit rate between 0.5% to 0.75% on similar facts as that of assessee. He thereafter after considering the Gross Profit and Net Profit ratio shown by the assessee, estimated the Net Profit at 2% as against 1.10% disclosed by the assessee. Before us, Revenue has not brought any material on record to controvert the findings of ld.CIT(A). Looking to the totality of the facts of the present case, we do not see any reason to interfere with the order of the ld. CIT(A). Thus, this ground of Revenue is dismissed.

7. In view of above, we are unable to see any reason to interfere with the findings and collusion arrived by the ld. CIT(A) in directing the AO to estimate NP @ 2% of total URD purchases as this view has been consistently adopted and followed by the Department from AY 2006-07 to 2008-09 and for AY 2009-10 same view has been uphold and confirmed by the Tribunal in assessee’s own case order dated 27.05.2016 (supra). Consequently, sole ground of Revenue in AY 2009-110 being devoid of merits and being covered in favour of the assessee by the earlier Tribunal order is dismissed.”

13. We note that ld Counsel has himself accepted the estimate NP @ 2% of total URD purchases by relying on the above judgment of the Coodicate Bench in the case of Shri Tayab Yunus Barudgar (supra).

14. We note that Hon'ble High Court of Gujarat, Ahmedabad in PCIT Vs. TAYAB YUNUS BARUDGAR in R/TAX Appeal No.81 of 2019 dated 18.06.2019

has confirmed the estimate NP @ 2% of total URD purchases. Findings of the Hon`ble Court is given below:

“15. With regard to the first question, i.e. addition made on account of the unverifiable purchases, the CIT(A) held as under :

“The third ground of appeal is the disallowance made to the tune of Rs.1,05,08,822/- being 15% of the total purchases of waste paper which were treated as non genuine and unverifiable by the assessing officer. Briefly stated the facts of this issue are that the appellant is engaged in the business of trading in waste paper. Besides this, the other items traded are scraps like core pipe, duplex craft waste, paper tube and the like unusable products as disposed off by the end users. As these items are purchased from small time vendors popularly known as Raddiwalas who are mostly illiterate and belong to the lower strata of the society. Their transactions are mostly in cash due to the nature of their work. The appellant is a mediator between the Raddiwalas and the paper mills. As and when the stock of waste papers, etc. piles up, the same is sold to different paper mills on the rates determined by the group of paper mills. Similar issue also cropped up in a number of cases in the Central Circle of Surat where the assessing authorities estimated the gross profit by making an addition of Rs.0.75% of the turnover. This type of addition was also made in the appellant's own case for the AY 2006-07 to 2008-09. My predecessors while adjudicating these cases restricted the addition as net profit @ 2% of the turnover. During the year the appellant has disclosed net profit @ 1.07% which is enhanced to 2% keeping in view the principle of consistency. The assessing officer is directed to make addition in net profit @ 2% of the turnover and the balance addition made is deleted and the ground of the appeal of the appellant is partly allowed.”

16. The aforesaid finding recorded by the CIT(A) came to be affirmed by the Tribunal, holding as under :

“In view of above, we are unable to see any reason to interfere with the findings and conclusion arrived by the Id. CIT(A) in directing the AO to estimate NP @ 2% of total URD purchases as this view has been consistently adopted and followed by the Department from AY 2006-07 to 2008-09 and for AY 2009-10 same view has been uphold and confirmed by the Tribunal in assessee's own case order dated 27.05.2016 (supra). Consequently, sole ground of Revenue in AY 2009-10 being devoid of merits and being covered in favour of the assessee by the earlier Tribunal order is dismissed.”

17. In the overall view of the matter, we do not find any error, much less an error of law, said to have been committed by the Tribunal in passing the impugned order. We see no good reason to disturb the same.

18. In the result, this Appeal fails and is hereby dismissed. “

15. In the light of the judgment of the jurisdictional High Court in the case of TAYAB YUNUS BARUDGAR (supra), wherein it was held that to estimate net profit @ 2% of total URD purchases is proper and fair, hence we dismiss ground No. 2 raised by the assessee, and we confirm the order of Id. CIT(A) so far ground no.2 is to estimate the net profit @ 2% on the turnover of the assessee.

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

Order pronounced in the open court on 22-10-2020.

Sd/-
(PAWAN SINGH)
(न्यायिक सदस्यकेसमक्ष /JUDICIAL MEMBER) (लेखा सदस्यतथा/ACCOUNTANT MEMBER)
सुरत/ Surat, दिनांक Dated: 22nd Oct, 2020/S.Gangadhara Rao, Sr.PS
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

// True Copy //

By order

Assistant Registrar, Surat