

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 877 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     | ✓  |

SHREEJI GAS AGENCY

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-2

Appearance:

MR BS SOPARKAR for MRS SWATI SOPARKAR(870) for the Appellant(s) No. 1

MAUNIL G YAJNIK(9346) for the Opponent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 29/06/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. B.S. Soparkar for learned advocate Mrs. Swati Soparkar appearing for the appellant and learned Senior Standing Counsel Mr. Maunil Yajnik appearing for the respondent.

2. This Tax Appeal is preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961(for short 'the Act') being aggrieved by the order dated 10.11.2006 passed by the Income Tax

Appellate Tribunal, "D" Bench, Ahmedabad (for short 'the Tribunal')  
in ITA No. 2203/Ahd/1996 for Assessment Year 1992-93

3. This Tax Appeal was admitted by order dated 17.09.2009 for consideration of following substantial questions of law :-

*"Heard learned counsel for the appellant.  
Admit.*

*Issue notice of admission to the respondent on the following substantial questions of law.*

*"(i) Whether, in the facts and under the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that Rs.1,50,000 was unexplained income only on the basis of a statement of a Partner of the Appellant which was subsequently retracted by him?*

*(ii) Whether, in the facts and under the circumstances of the case, the statement recorded at the time of Search can be retracted?*

*(iii) Whether, in the facts and under the circumstances of the case, the decision of the Income Tax Appellate Tribunal was not perverse in as much as:*

*(a) the decision reversed the order of the CIT(A) without giving any cogent factual reasons and without controverting findings given in the said order, and*

*(b) the decision does not appreciate undisputed facts placed on record ?"*

4. So far as question nos. (i) and (ii) are concerned, they are not pressed by learned advocate Mr. B.S. Soparkar and, therefore, the same are not answered. So far as question no. (iii) is concerned, it is in two parts. Part (a) refers to the decision of the Commissioner of Income Tax (Appeals) being reversed by the Tribunal, without giving any cogent factual reasons and without controverting findings of the

Commissioner of Income Tax (Appeals) given in the order and Part (b) which refers to the decision which does not appreciate undisputed facts placed on record.

5. On perusal of the order passed by the Tribunal, it is evident that the Tribunal has considered the addition of Rs.1,50,000/-, as under :-

*"14. There was a search action u/s.132 was carried out at the residential premises of the partners on 28/29.7.1992. During the course of search operation, statement of Shri Pradyman M. Patel was recorded on 29.7.1992 u/s.132(4) wherein Shri Patel had disclosed Rs.1,50,000 as unaccounted income for the F.Y. 1991-92. It was admitted by him that the amount of Rs. 1,50,000 was received by way of "Excess Sales value by way of suppression of trading receipts in the matter of under invoicing". He had further admitted that the unaccounted income of the firm is lying with his trustworthy persons as his deposits. While filing the return, the assessee has not disclosed this amount of Rs.1,50,000 in the return of income. Therefore, the Assessing Officer, after considering the reply of the assessee, made the impugned addition of Rs. 1,50,000 to the total income. Matter was carried to the CIT(A) and the CIT(A) has deleted the same.*

*"3.2. I have considered the rival submissions. It is an admitted fact that there was no search under section 132 of the Act at the business premises of the appellant firm. The disclosure of Rs.1,50,000 had been made by the partner and the same had been accepted by the Assessing Officer as willful and truthful disclosure without giving any chance of rebuttal to the appellant (Ambikadevi vs. Balmukund Pandey AIT 1981 PAT 111,114). Thus, admission by a partner which clouds the business affairs of the appellant cannot be taken as the gospel truth or infallible. It is also true that no incriminating documents relating to the business affairs of the appellant firm were found. It is also true that no money, bullion, jewellery or other valuable articles were found at the residential premises of the partners. The disclosure in question was made merely stating that the amount in question had been kept with one of the trustworthy person of the partner. This itself shows that no person knowing well that nothing incriminating had been found would commit voluntarily stating*

*that there is an unaccounted income of specific amount lying elsewhere. Also it is seen from the assessment order that the same person further stated that henceforth he will deposit such amount in the bank account. This type of statement clearly show incoherent state of mind of the person making such statement. In the case of Maganbhai Becharbhai Patel & Co. v. ITO in ITA 1346/Ahd/1992 dated 7.9.1994, it was held that when there is a retraction, the matter has to be decided on the basis of clear independent, cogent and reliable evidence and material to be brought on record. IN the present case, this exercise has not been done by the Assessing Officer. Therefore, looking to the totality of facts, in my opinion, the addition is not sustainable. The Assessing Officer is, therefore, directed to delete the same."*

*14. The learned DR submitted before us that the assessee has made a disclosure of Rs.1,50,000 and the statement was recorded u/s.132(4) of the Act. In his statement, Mr. Pradyman M.Patel, has disclosed Rs.1,50,000 as unaccounted income for Assessment Year 1991-92 and this income was earned by way of suppressing trading receipt in the matter of invoicing. This unaccounted income of the firm was lying with the trustworthy person and he has to deposit this amount in the bank. The learned DR submitted that from the statement of Shri Patel, there is a confession of this income. Therefore, the CTT(A) is not justified in deleting the impugned addition.*

*15. The learned AR on the other hand, submitted that Hon'ble Gujarat in Tax Appeal No 1409 of 2005 dt 49.2006 has dealt with similar issue wherein the Hon'ble High Court has confirmed the deletion of Rs.4 lakhs made of the basis of disclosure made as 132(4) of the Act. The learned AR submitted that Mr. Pradyman Patel, a partner of the assessee firm has made the statement, but there was no evidence on record to show that the assessee was having this income. Therefore, as per the decision of Hon'ble Gujarat High Court in Tax No. 1409 of 205 dt.4.9.2006, the CIT(A) is justified in deleting the impugned addition.*

*16. We have heard the rival contentions of both the parties. Looking to the facts and and circumstances of the case, we find that Hon'ble Gujarat High Court in Tax Appeal No.1409 of 2005 dt.4.9.2006 in the case of ACIT v. Shyamlal Developers has dealt with the issue in respect of statement recorded u/s.132(4) during the survey proceedings. In that case, the ITAT had observed as follows:*

*"We have duly considered the rival contentions and gone through the authoritative pronouncements relied upon by both*

*the sides. It is true any disclosure made u/s 132(4) during the survey proceedings is admissible evidence against the person making the disclosure. However, a presumption of rebuttal is also attached with such disclosure and, if any, person able to demonstrate with the help of material, that such admission was either mistaken or untrue, then solely on the basis of such admission, addition is not required to be made. The Assessing Officer should take the aid of some corroborative material. In the present case, no doubt, disclosure was made but it was retracted within two days and alleged entries appearing in Annexure 13 have duly been explained before the Assessing Officer. These entries have duly been accounted in the books of account except the disclosure, the Assessing Officer could not bring any material on record indicating the unexplained investment by or possession of assessee even unexplained assets. The assessee has demonstrated before us that declarant was semi-literate person could not understand the complexity of question as well as the implication of the Disclosure. The alleged disclosure of Rs 4 lacs by Shri Jayeshbhai Patel and Rs. 4 lakhs by Shri Babubhai C. Chauhan were made under the mistaken belief of facts. Otherwise, all the entries have been duly explained by the assessee. It would not be safe to reverse the finding of the CIT (Appeals) and confirm the addition purely on the basis of disclosure made by these two persons who come from a rural background having lack of sufficient knowledge and more particularly such disclosure was retracted within just two days. The learned CIT (Appeals) has examined this in detail. The learned DR except harping upon the admissibility of the disclosure made u/s 132(4) of the Act could not draw our attention towards any other material for substantiating the addition based on such disclosure. In our opinion in the facts of the present case before making the addition on the basis of retracted disclosure, the Assessing Officer ought to have corroborated this admission by some other independent evidence either direct or circumstantial. We do not see any good reason to interfere in the finding of the learned CIT (Appeals) and uphold the same."*

*Department preferred appeal before Hon'ble Gujarat High Court dismissed the appeal by observing as under:*

*"The CIT (Appeal) as well as the Tribunal both have found that after retracting from earlier statement, no efforts were made to bring on record any material to justify this addition.*

*Considering the concurrent findings of CIT (Appeals)*

*and the tribunal, we find no justification to interfere with the impugned judgment. We see no substance in the appeal. No substantial question of law does arise. The appeal stands dismissed"*

*From the above, we find that in the case of ACIT v. Shyamlal developers (supra), though disclosure was made but the assessee has made retraction within two days. Therefore, the CIT(A) has examined the issue and deleted the addition. But, we find in the present at hand that Mr. Pradyman M. Patel has made the disclosure u/s.132 (4) and it was never retracted and the assessee has not shown this disclosure in his return of income. We find that the statement was recorded on 20.07.1992 while the return was filed on 28.10.1992. Therefore, the assessee had sufficient time to retract the said disclosure. But while filing the return the assessee has not disclosed the same in the return. Therefore, we find that the facts of the present case are not similar to that of the case decided by the Hon'ble Court referred to earlier. Considering the facts and circumstance of the case in entirety, we are of considered view that the Assessing Officer was justified in making the impugned addition of Rs. 1,50,000 on this count and the CIT(A) is not Justified in deleting the same. Therefore, we reverse the order of the CIT(A) and restore that of the Assessing Officer in this regard.*

*In the result, ITA No.2203/Ahd/1996 for the Assessment Year 1992- is partly allowed."*

6. In view of the detailed discussion made by the Tribunal, with regards to the order passed by Commissioner of Income Tax (Appeals), which is reproduced hereinabove, we decline to answer the question no.(iii) being factual question. The appeal is accordingly, dismissed.

**(BHARGAV D. KARIA, J)**

**(PRANAV TRIVEDI, J)**

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Original copy of this order has been signed by the Hon'ble Judges.  
Digitally signed by: PHALGUNI VISHRAMBHAI PATEL(HC00175), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 03/07/2026 15:59:48