

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

**BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND
SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 197/Ahd/2020
(निर्धारण वर्ष / Assessment Year : 2008-09)

Deputy Commissioner of Income-tax Central Circle-2, 608, 6 th Floor, Aaykar Bhavan, Race Course Circle, Vadodara - 390007	बनाम/ Vs.	M/s. Sigma Institute of Technology & Engineering At + Post- Bakrol, Near Madhavnagar, Ajwa Nimeta Road, Taluka- Waghodia, Dist.- Vadodara, Gujarat - 391760
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJTS7182G		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Alpesh Parmar, CIT.DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR

Date of Hearing	07/08/2025
Date of Pronouncement	30/10/2025

(आदेश)/ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Ahmedabad, (hereinafter referred to as “CIT(A), dated 12.12.2019 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2008-09.

2. The grounds of appeal raised by the Revenue as under:

- “1. On the facts and in the circumstances of the case and in law, the id CIT(A) has erred in deleting the addition of Rs.1,40,357,65/ on account of unaccounted donation without appreciating the fact involved in I'm case that several instances of receipt of unaccounted donation were found in the criminating documents seized during the search proceeding.
2. On the facts and in the circumstances of the case and in law, the id. CIT(A) has erred in deleting the addition of Rs.1,40,357,65/ on account of unaccounted donation without appreciating the fact involved in this case that several donors have accepted on oath in affidavits of giving donations.
3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.54,86,947/ on account of disallowance of salary expenses without appreciating the fact involved in this case that seized documents substantiate that salary payments were made to the staff/employees through cheque/RTGS and theses were returning a portion of their salary to the trustee in cash, for which, even bears cheque were handed over by these employees to the accountant of the assessee.
4. On the facts and in the circumstances of the case and in law, the id CITIA) has erred in deleting the addition of Rs.54,86,947/- on account of disallowance of salary expenses without appreciating the fact involved in this case that the assessee had offered additional income on account of salary income received in cash for the A.Y. 2009-10 to 2015-16 before the Hon'ble Settlement Commission.
5. On the facts and in the circumstances of the case and in law, the id. CIT(A) has erred in restricting the addition of Rs.77,82,892/- to Rs 30,78,498/- on account of undisclosed bank receipt without appreciating the fact involved in this case that the transactions of these bank accounts were unaccounted and the assessee neither during the assessment proceeding nor during the remand proceeding could explain the source of such deposits in bank accounts.
6. It is, therefore, prayed that the order the Ld. CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.

7. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

3. Brief facts relating to the case are that a search action u/s.132 of the Act was initiated on 12.11.2014 on Sigma group of Institutes which included the assessee. During search, various incriminating documents regarding unaccounted donations, received by the trust, salary paid received back and various undisclosed bank accounts in the name of the assessee trust/institutions were found. Accordingly, the case of the assessee was reopened by issuing notice u/s.148 of the Act. The assessee filed return of income declaring Nil income. During assessment proceedings several inquiries were made from the assessee. Thereafter show cause notice was issued proposing additions on account of 30% of salary received back from staff, unaccounted donations and deposits in various undisclosed bank accounts. Due reply was filed by the assessee, considering which, the AO made addition on account of unaccounted donations received by the assessee, salary received back and not recorded in the books of the assessee, unaccounted deposits in bank account not disclosed and disallowance of various expenses. The AO noted that the registration of the assessee trust had been cancelled on 05.11.2015 by Ld.PCIT and accordingly, thereafter he computed the income of the assessee at Rs.2,31,77,093/- after adding the unaccounted donations, salary expenses and undisclosed bank receipts to the income of the assessee and deducting there from the

expenses incurred by the assessee as reduced by the expense disallowed by the AO.

4. The addition on account of unaccounted donations and salary received back was made by the AO by extrapolation .Basis the evidences found during search, he estimated unaccounted donations to have been received from other students also of the same category as those with respect to whom evidences were found during search. Extrapolation was exercised with respect to salaries received back for the impugned year on the basis of evidences found for the succeeding year.

The Ld. CIT(A) rejected the extrapolation resorted to by the AO and restricted the addition, both on account of unaccounted donations and salary received back, to the extent revealed from evidences found during search. The deposits in the undisclosed bank accounts was also restricted by the Ld. CIT(A) accepting the evidences filed by the assessee explaining the source of deposits made in the said bank account.

5. Aggrieved by the above order of the Ld. CIT(A), the Revenue is in appeal before us challenging the restriction of addition made on account of unaccounted donations and salary received back to the extent of evidences found during search and that on account of credits in the undisclosed bank account of the assessee by accepting the explanation of the assessee.

6. Ground Nos. 1 to 4 raised by the Revenue relate to the issue of unaccounted donations and salary received back in cash. As stated above, the CIT(A) has rejected the extrapolation resorted to by the AO with respect to both the additions made and, therefore, it is the exercise of extrapolation by the AO, which is primarily in dispute before us, with the Revenue contending that it was rightly exercised and the Ld. Counsel for the assessee contending that the Ld. CIT(A) had rightly rejected the same. The AO had relied on the decision of the Hon'ble Apex Court in the case of CST vs. H. M. Esufali H. M. Abdulali 90 ITR 271 (SC). The Ld. CIT(A) had relied on the following decisions while rejecting extrapolation; Rajnik & Co. vs. CIT, 117 Taxman 675 (AP), CIT vs. Maheshwari Synthetics (P) Ltd., 73 taxmann.com 253 (P&H), CIT vs. Gupta Abhushan (P) Ltd., 178 Taxman 473 (Delhi).

7. We shall therefore be considering first the judicial view/stance on the exercise of extrapolation to evidences collected.

8. Extrapolation refers to the method where income discovered is projected over a wider period to estimate suppressed or undisclosed income. It is the projection of discovered income over the full assessment period using material found during search/survey/investigation pertaining to a specific period, presuming similar behaviour for the rest of the period. Extrapolation is an evidentiary inference and not a legal fiction. Courts have dealt with this issue in a number of decisions and the

principle laid down is that extrapolation , since it tantamounts to estimation, it must be anchored in reasonableness, co-relation and judicial prudence. Extrapolation has been held acceptable only where the material on record establishes a recurring *modus operandi* and a pattern of suppression which is systematic and continuous. Courts have held extrapolation to be permissible in the aforesaid circumstances only and have rejected the exercise of extrapolation where it was based purely on suspicion, probability and on seized materials relating to isolated or solitary transaction with no further nexus between sample and the total period. The landmark decision in this case is of the Hon'ble Apex Court in the case of H. M. Esufali H. M. Abdulali (supra), wherein the Hon'ble Apex Court held that where the AO had evidence of assessee having dealings outside its books of accounts for some days it was open to the officer to infer that the assessee had large scale dealings outside the books. The Apex Court noted that while in such situation it was not possible for the AO to find out precisely the suppressed turnover, he could make a fair estimate of the same. The Hon'ble apex court observed in the said case, that a certain amount of guesswork is involved in estimating the turnover, but, it must have a reasonable nexus to the available material.

Thus, it is amply clear that extrapolation can be exercised only when the books of accounts are found unreliable or incomplete, the seized material establishes a recurring modus

operandi and the pattern of suppression is found to be systematic and continuous.

9. We shall now apply the principle of extrapolation to the facts of the present case. In relation to unaccounted donation, the facts on record reveal that the evidences relating to unaccounted donations found during search, revealed donations to have been taken from students who had applied for admission through management quota. The evidences found revealed the *modus operandi* that the students seeking admissions were first required to fill in admission form. Once the forms were filled, the parents and students were required to meet the trustees of the trust i.e. Mr. Shailesh Shah, Mrs. Jyotsnaben Shah, Mr. Harsh Shah and Mr. Jigar Patel, who decided the amount of donation which was necessary to get admission. The decided donation was written on the back of the admission form in code language. The details of payments by the students were also mentioned on the back of the admission form as and when payments were received from students. Evidences found to this effect were:

- Admission forms and receipts corroborating the *modus operandi* adopted were found.
- List of students with decided amount, received amount and remaining amount was found (copies reproduced at page 8-10 of assessment order)

- Affidavits and letters from parents confirming the donation amount was found. (copies reproduced at page 11-17 of assessment order)
- Vouchers with respect to unaccounted donations were found from the residence of Mahesh Kachiya, employee of the trust, containing the details of donation amount decided and received. The voucher contained the name of the person who had received and then utilized the donation, mentioning either handing over of the donation to Shailesh Shah or utilization for some construction works. (copy reproduced at page 18 of assessment order)
- Notings found from Navjivan Kelvani Trust with respect to unaccounted donation received by the trust. (copy reproduced at page 19 of assessment order)
- Donations register maintained physically as well as in MS Excel in computers were found
- The entire modus operandi, of collection of unaccounted donations, mostly in cash, for granting admission in the various courses in the Institutes run by the Trusts of the group, was accepted and elaborated by Mr.Sanjay Hasmukhlal Parikh, the cashier of the college, in his statement on oath u/s 131(1A) of the Act recorded during search at Bakrol Campus of the assessee Institue on 13/11/2014.

- Shri Harsh Shah, son of Shri Shailesh Shah, trustee of Sigma Institute of Technology & Engineering, one of the key trustees managing affairs of the Group was confronted with the statement of Shri Sanjay Parikh. Shri Harsh Shah agreed with the statement of Shri Sanjay Parikh and he also signed on the statement of Shri Sanjay Parikh agreeing to the facts stated by Shri Sanjay Parikh
- Comprehensive documentary evidences were found during search revealing the undisclosed income generated through such unaccounted donation being used by trustees to make on-money payments towards purchase of land and real estate properties or deposited in the undisclosed bank accounts.

10. On considering all the above evidences, there is no doubt that it establishes a pattern of receiving donations by the assessee from students enrolled through the management quota. The evidences found with respect to some of the students exhibit the modus operandi followed by the assessee trust for taking donation on admission of students which is corroborated by the statement of the Cashier of the assessee college and of Shri Harsh Shah, son of trustee admitting to the said fact. The evidences establish *modus operandi*/ systematic and continuous pattern of receiving donations from management quota students and are not in relation to any isolated incidence of receipt of donation.

11. It is incomprehensible as to why the institute would enroll only some students in the management quota on receipt of donation while excluding others from the same. Ld. Counsel for the assessee was also unable to offer any plausible explanation for this distinction when asked at bar to explain as to why the institute would admit students without donation when the evidences found during search showed students being admitted in the institute in the management quota on payment of donation .

12. There is no doubt, therefore, that the documents found during search establish a pattern of suppression of donation received on admission of students through the management quota and the extrapolation, therefore, adopted by the AO we hold was correct.

13. At the same time, considering that the exercise of extrapolation has to be on a reasonable basis, we hold that extrapolation should not be exercised with respect to the entire management quota students. The possibility of some students managing to secure admission through the management quota by adoption of means other than donation cannot be completely ruled out. In view of the same, we consider it fit and reasonable for extrapolation to be exercised on 75% of the management quota students alone.

14. In the case of salary received back not recorded in the books of the assessee, the AO concluded from the various incriminating evidences found during search that the various trusts run by the Sigma group were involved in the practice of receiving back of

portion of salary paid by the trust to staff in cash. A sample of loose paper found during search listing in columnar form the name of employees alongwith their employee code. The mode of payment of salary to them the amount of salary paid as recorded in the books of accounts, the actual amount of salary to be paid to the employees and the difference between the salaries recorded in the books and actually payable, which was received back in cash is reproduced in the assessment order at page no.34.

- The *modus operandi*, which was revealed from the documents found was that salary payment was made through cheque / RTGS and the amount so paid were recorded in the books of accounts as salary expenses. Once the salary cheque/RTGS was cleared, the staff or the employees of the trust were asked to return back a portion of the salary to the trustees in cash. This amount, which was required to be returned back in cash was withdrawn by the staff/employees from the salary account using bearer cheques and was handed to the Accountant. The Accountant, in turn, would prepare a report of the amount received in cash from various employees and submit the report alongwith the unaccounted cash to the trustees at their residence. The cash was handed over to the trustees in the envelop on which a report about the total cash receipt was mentioned and the report was signed by the person handing over the cash. The evidences found during search were:

- Envelops in which cash were handed over, seized from the premises of Navjivan High School at Baghikhana, Rajmahal Road, Vadodara;
- Bearer cheques and withdrawal slips were found and seized from the Bakrol campus of the trust. All the bearers cheques and withdrawals slips were duly signed. Further, different covering letters were made to bifurcate the employees of different branches of Colleges run by the Trust.
- Seized documents, as above, when confronted to the Accountant of the assessee institute i.e. Mr. Mahesh Kachiya, he accepted the *modus operandi* in his statement recorded on oath u/s.131(1A) of the Act ,of employees giving self cheques which were encashed and he himself collecting the cash and giving it to the Chairman or his family members on monthly basis.
- The statement of Mr. Mahesh Kachiya when confronted with Mr. Harsh Shah who was the trustee in all the trust run by Sigma group, he agreed with his statement.
- Envelopes in which cash were handed over to the trustees, were also found. The contents of the envelopes i.e. the denomination of the cash and the total amount of cash as well as the working of the source of such cash was found pasted on the envelopes. Mrs. Jyotsnaben Shah, one of the trustees in all the trusts of the group, in her statement on oath u/s.132(4) of the Act accepted the documents so found

i.e. envelope, to contain the details of salary difference, which was sent by the Accountant of the institute. She admitted to the said details being pasted on envelopes and cash placed in envelopes.

- Evidence of cash directly being deposited in undisclosed bank account of the trustees was also found. Evidences establishing this method were found during the course of search at the residence of Mr. Mahesh Kachiya, a key employee of the Sigma group. Two pages seized from the residence of Mr. Mahesh Kachhiya stated clearly that salary difference for a month being received and the entire amount being deposited in the undisclosed bank accounts of the trustees. Even the slip number of cash deposit slip in the bank was mentioned.
- During post-search analysis cloned image of hard disk titled "Account room PC 8111AA945643", found and seized from the Accounts Section room of the Administrative building in Bakrol Campus of the Trust, revealed MS Excel files having pattern similar to loose papers seized and inventoried as "Annexure A3" from the Bakrol Campus of the trust, being the working of salary to be received back from the employees, the copy of bearer cheques, withdrawal slips etc.. This M S Excel file contained sheets which had details of salary as per books, actual salary, amount to be received back etc. in exactly the same pattern. The sheets contained

month-wise salary of the amount of salary received back from the employees of various colleges run within the Bakrol campus. It also contained the details of each and every employee from whom salary was received back. All the above evidences found were from April 2007 to March 2015.

15. On considering the above we completely agree with the AO that these evidences recorded and demonstrated the trust to be regularly engaged in the activity of generating unaccounted income by receiving salary back from its employees. These are not one of evidences found, pertaining to the unaccounted income being generated by the assessee, but reflecting a pattern being followed by the assessee regularly over the years. The extrapolation, therefore, done by the AO is justified in the impugned year. We see no reason to restrict the extrapolation to some employees alone, as done in the case of unaccounted donations above.

In view of the above Ground of appeal No.1-4 of the Revenue stand allowed in above terms.

16. Ground No.5 relates to the issue of addition made on account of deposits from the unaccounted banks of the assessee. The addition made by the AO was to the tune of Rs.77,82,892/-, which was restricted by the Ld. CIT(A) to the extent of Rs.30,78,498/-.

17. The facts relating to the issue are that during search one undisclosed bank account in the name of the assessee trust was

found. In its submission before the investigation wing of the Income Tax Department, the assessee accepted the transaction in this account be unaccounted but in reply to show cause notice issued during assessment proceedings the assessee confirmed that it had offered only difference of cash deposit and withdrawal as unaccounted income in the return of income filed. The submission was not accepted by the AO for the reason that no proof had been submitted by the assessee that the cash deposits were made from cash withdrawals from that account. The AO, in fact, noted that various evidences were found which showed that the assessee had been investing money from unaccounted sources for the purchase of property, gold and personal assets of the trustees. He, therefore, held that the entire deposits in the undisclosed bank account of the assessee was to be treated as its income amounting to Rs.25,75,620/- and added the same to the income of the assessee. Further, the AO noted that list of other bank accounts of the trustees and related parties with unaccounted transactions was furnished by the assessee before the Investigation Wing. The same are listed at page no.42 to 44 of the assessment order. In response to the explanation sought by the AO, the assessee gave general explanation contending that cash withdrawn or amounts from these bank accounts were recycled by withdrawal or further deposited in different accounts and due to large volume of transactions, as also the number of unaccounted bank accounts and in view of paucity of time, the assessee group was unable to prepare a detailed cash flow. The AO noted that in the absence of cash flow statement, it was not possible to verify the genuineness

and authenticity of the assessee's claim. As per the AO, the total deposits in these bank accounts as submitted by the assessee for the impugned year i.e. A.Y. 2008-09 was Rs.1.88 Crores, out of which, the amount in two undisclosed bank account of Shri Parishram Education and Medical Charitable Trust were Rs.58,55,244/- and in the bank account of the assessee was Rs.25,70,020/- and further, the total unaccounted money deposited in various other bank accounts was Rs.1,04,25,744/-. This entire amount of Rs.1.04 Crores was treated as unaccounted deposits, 50% of which was treated as unaccounted money of the assessee and the balance that of Shree Parishram Education and Medical Charitable Trust. Thus, total unaccounted deposits of Rs.77,82,892/- being aggregate of Rs.25,70,020/- and Rs.52,12,872/- was added to the total income of the assessee.

18. Before the Ld. CIT(A), the assessee submitted that out of the accounts listed as undisclosed, two accounts were in relation to entities which had accounted for the transactions in their books of accounts and were independently assessed to tax. The assessee pointed out the said entities as being Shah Associates and Shree Takshila Foundation in which total deposits of Rs.95,38,645/- was made. The assessee pointed out that Shah Associates was the firm which was independently assessed and the transactions were accounted for in its books of accounts. With respect to Shree Takshila Foundation also the assessee made identical submission and furnished certificate of the Auditor of the said entity certifying that the transactions of the bank account of this entity

were duly incorporated in the books of the assessee. The Ld. CIT(A) found merit in the contention of the assessee that the above two bank accounts pertaining to Shah Associates and Shree Takshila Foundation could not be attributed to the assessee and the amounts deposited therein needed to be excluded from the additions made in the hands of the assessee. He directed, therefore, the AO to delete the addition with respect to the deposits made in these bank accounts amounting to Rs.95,38,645/- . The assessee further submitted that an amount of Rs.21,75,367/- was cash deposits out of cash withdrawals made from the bank and Rs.9,80,000/- were transferred from one bank account to another bank account by inter-bank transfer contra entry. Ld. CIT(A) accepted the contention of the assessee subject to verification of claim of contra entries i.e. transfer from one unaccounted income to another unaccounted income. Accordingly, he held that out of the total deposits only an amount of Rs.61,56,996/- could be treated as unexplained and directed the AO to confirm the addition of 50% of the same amounting to Rs.30,77,498/-.

19. Before us, Ld. DR was unable to controvert the factual finding of the Ld. CIT(A) that two bank accounts pertain to entities which were separately assessed to tax and had accounted for entries in the said bank accounts in their bank accounts. He was unable to also point out any infirmity in the order of the Ld.CIT(A) directing deletion of cash deposits attributable to contra entries subject to verification by the AO. In view of the same, the order of the Ld. CIT(A) deleting the addition made on

account of deposits in these bank accounts are confirmed. The ground of appeal raised by the Revenue is, accordingly, dismissed.

20. In the result, appeal filed by the Revenue is partly allowed.

This Order pronounced on 30/10/2025

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Ahmedabad; Dated 30/10/2025
S. K. SINHA

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER