

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'SMC'
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.442/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2010-2011

Shri Daxesh Kumar Ratilal Patel At & Post Padra Navi Pansharwad, Navbapara Tal. Padra Dist-Baroda PAN : AWOPP 7885 J	Vs.	ITO, Ward-3(1) Baroda.
--	-----	---------------------------

अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
-----------------------	--	-------------------------

Assessee by :	Shri Suchit Patel, AR
Revenue by :	Shri Virendra Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 04/03/2019

घोषणा की तारीख/Date of Pronouncement: 05/03/2019

आदेश ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Vadodara dated 17.11.2016 passed for the Asstt.Year 2010-11.

2. The assessee has taken four grounds of appeal, but his grievance revolves around a single issue viz. the Id.CIT(A) has erred in confirming the estimation of net profit at 10% of the gross receipt of Rs.2,77,41,535/-.

3. Brief facts of the case are that the assessee is an individual. He was engaged in the business of labour contract. According to the AO, he has not filed return of income. A notice under section 148 of the Income Tax Act was issued on the basis of TDS statement communicated to the AO as per information in Form

No.26AS. The Id.AO has confronted the assessee as to why on receipt total receipt, on which TDS of Rs.4,08,731/- has been deducted, profit should not be estimated. In response to the query of the AO, it was contended by the assessee that quantification of gross receipt at Rs.2,77,41,535/- is not justifiable because it contained cost of material supplied by the contractee at Rs.57,27,900/-. In other words, the assessee submitted that this amount of Rs.57,27,900/- be excluded from the gross receipts worked out by the AO on the basis of TDS certificate. This contention of the assessee was rejected by the Id.AO. He estimated the profit at 10% of the gross receipt. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

4. The Id.counsel for the assessee contended that though the application for production of additional evidence was submitted before the Id.CIT(A), but these evidences have not been taken on record. The tax consultant has not properly prosecuted the appeal before the Id.CIT(A) and sought various adjournments. He prayed that he assessee is possessing bills raised on Dineshchandra R. Agrawal Infracon P.Ltd. for whom, he has worked as a labor contractor. The Id.DR opposed the contentions of the assessee on the ground that before the AO he should have produced these bills. His case does not fall within any of the clauses of (1) to (4) of Rule 46A of the Income Tax Rules, 1962. Therefore, the Id.CIT(A) has rightly not permitted to place these documents on record.

5. I have duly considered rival submissions and gone through the record carefully. As far as determination of profit at the rate of 10% on the contractual receipt is concerned, the assessee did

not dispute adoption of this rate at 10%. Dispute relates to quantification of gross receipts, i.e. whether Rs.2,77,41,535/- on which TDS was deducted or Rs.1,92,89,404/- which has been received by the assessee, as per his stand. According to the assessee, material equivalent to value of Rs.57,27,900/- was supplied by the contractee i.e. Dineshchandra R. Agrawal Infracon P.Ltd. and M.V. Omni Projects (India) Ltd. for whom he has worked as a labour contractor. To my mind, the controversy could be silenced, had the Id.AO issued a show cause notice to both these concerns and obtain clarification/confirmation from these parties. Role of the AO is not only a prosecutor rather he works as an adjudicator also. He has to adopt a fair procedure for determining taxable income of the assessee. It is also pertinent to observe that *quasi* judicial authorities are being respected not on account of their power to legalise the injustice on technical grounds, rather for removing the injustice. The AO is expected to determine the correct receipts. Once a stand has been taken by an assessee, he should have verified that stand. Considering the above, I set aside both the orders of the Revenue and remit this issue to the file of AO. The Id.AO shall determine the correct contractual receipts after considering the stand of the assessee, and thereafter apply the rate of profit at 10% as adopted in the original assessment proceedings for working out the profit earned by the assessee.

6. Observation made by me will not impair or injure the case of the AO nor cause any prejudice to the defence/explanation of the assessee. The assessee will be at liberty to submit any material in support of his case that actual gross receipts received by him are of Rs.1,92,89,404/- and not Rs.2,77,4,535/-. With the above

observation, the appeal of the assessee is allowed for statistical purpose.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 5th March, 2019.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 05/03/2019