

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.258 & 259/AHD/2015

निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

Surbhi Developers, AA-1, Shubham Bungalows, Nr.Narmada Project Colony, Dist. Bharuch – 392 001. [PAN: AAZFS 8090 F]	Vs.	DCIT, Bharuch Circle-1, Bharuch.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by:	Shri Mukund Bakshi - CA
राजस्व की ओर से /Revenue by:	Smt.Anupama Singla - Ld.Sr.DR

सुनवाई की तारीख/ Date of hearing:	02.05.2019
उद्घोषणा की तारीख/Pronouncement on:	02.05.2019

आदेश / O R D E R

PER H.S.SIDHU, JM:

1. The Assessee has filed these two appeals against the separate impugned orders dated 01.11.2013 and 12.11.2013 respectively, passed by the Learned Commissioner of Income (Appeals)-VI, Baroda for the assessment years 2005-06 and 2006-07 respectively on the following grounds year wise respectively.

2. The assessee raised following ground in ITA No.258/Ahd/2015 read as under:-

- “1. The Ld. Commissioner of Income Tax (Appeals)-VI, Baroda has erred in law and in facts in passing an ex-parte order dated 01.11.2013 without affording reasonable opportunity of being heard and is, therefore, prayed to be set aside.
2. The Ld. Commissioner of Income Tax (Appeals)-VI, Baroda has erred in law and in facts in confirming the action of the Ld. A.O. in the reopening of the assessment originally completed u/s.143(3) r.w.s. 153A. The Ld.

CIT(A) ought to have held that the reopening itself was unjustified and illegal.

3. *The Ld.CIT(A)-VI, Baroda has erred in law and in facts in confirming an estimated addition of Rs.13,44,504/- made by applying a rate of profit of 10% on total turnover. The addition made by the Ld. A.O., being adhoc and having no basis, deserves to be deleted.*
4. *Your appellant craves the liberty to add, alter, amend or delete any or all of the above ground(s) of appeal."*

3. The assessee raised following grounds in ITA No.259/Ahd/2015 read as under :-

- "1. The Ld. Commissioner of Income Tax (Appeals)-VI, Baroda has erred in law and in facts in passing an ex-parte order dated 12.11.2013 without affording reasonable opportunity of being heard and is, therefore, prayed to be set aside.*
- 2. The Ld. Commissioner of Income Tax (Appeals)-VI, Baroda has erred in law and in facts in confirming the action of the Ld. A.O. in the reopening of the assessment originally completed u/s.143(3) r.w.s. 153A. The Ld. CIT(A) ought to have held that the reopening itself was unjustified and illegal.*
- 3. The Ld.CIT(A)-VI, Baroda has erred in law and in facts in confirming an estimated addition of Rs.6,35,416/- made by applying a rate of profit of 10% on total turnover. The addition made by the Ld. A.O., being adhoc and having no basis, deserves to be deleted.*
- 4. Your appellant craves the liberty to add, alter, amend or delete any or all of the above ground(s) of appeal."*

4. At the time hearing, the Learned Counsel for the assessee stated that the Learned First Appellate Authority had decided the appeal against the assessee without giving opportunity of hearing to the assessee. He further stated that the addition in dispute is very small, it may decided by this Bench, may not be set-aside to the Learned CIT(A). He, finally stated that the Revenue Authority has estimated the rate of profit at 10% on the total turnover which is on very higher side. He requested that reasonable estimation be made and appeal of the assessee may be disposed.

5. The Learned Departmental Representative relied on the order passed by the Revenue Authorities and did not raise any rejection on the disposal of the appeal by the Tribunal by estimating the profit on the total turnover.

6. We have gone through the order passed by the Assessing Officer and Learned First Appellate Authority has not given reasonable opportunity to the assessee and estimated net profit at 10% which is on very higher side. The Learned First Appellate Authority had decided the appeal of the assessee ex-parte without providing opportunity to the assessee which is against the principle of natural justice.

7. Keeping in view of the facts and circumstances of the present case as well as the smaller issue and older appeal, we are of the considered view that it would be in the interest of justice if we decide in the appeal where and reasonable estimated the net profit under the circumstances of the case of assessee. Therefore in the interest of justice, we are of the view that it would be in the interest of justice if we estimated the net profit of the assessee @6% on the total turnover. The Assessing Officer is directed to apply the rate of net profit of 6% on the total turnover. No other point has been argued by the assessee.

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

ITA No.259/Ahd/2015 for A.Y. 2006-07 :

9. As regards to the issue involved in this appeal, the Learned Counsel for the assessee mainly argued that the Revenue Authorities has estimated addition of Rs.6,35,416/- made by applying the rate of profit of 10% of

total turnover without any basis. He requested that whatever the estimated by the Bench in ITA No.258/Ahd/2015 for A.Y.2005-06 may be applied in this case also.

10. The Learned Departmental Representative has not raised any serious rejection on the reasons of the assessee.

11. Keeping in view of the facts and circumstances of the present case and the issue in dispute as well as the older appeal and smaller addition for the reason mentioned in ITA No.258/Ahd/2015 in assessee's own case for assessment year 2005-06 in which we have estimated net profit of 6% on the total turnover of the assessee. We apply the same net profit of 6% in this case also with a direction to the Assessing Officer to apply 6% net profit on the total turnover of the assessee.

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

13. In the result, both appeals of the Assessee for A.Y.2005-06 and 2006-07 are partly allowed.

14. The order pronounced in the open court on 02.05.2019.

Sd/-
(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER) (न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated: 2nd May , 2019** /S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat