



IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT

BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM

**ITA No.1546/Ahd/2011
(Assessment Year 2006-07)**

M/s. United Brothers Stone & Miles Pvt.Ltd. House No. 24, At: B: Boriach, Post: ashtagam, Tal. & Dist Navsari.		DCIT, Navsari Circle, Navsari.
PAN/GIR No.AACU7344J		
Appellant)	..	Respondent)

Assessee by	Shri Sakar Sharma
Revenue by	Shri B. P. K. Panda (Sr. DR)
Date of Hearing	23/09/2019
Date of Pronouncement	23/09/2019

ORDER

PER AMARJIT SINGH (J.M):

The assessee has filed the present appeal against the order dated 28.01.2011 passed by the Commissioner of Income Tax (Appeals) -Valsad, Gujarat [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2006-07.

2. The assessee has raised the following grounds: -

1. *The Ld. CIT(A) erred on facts and in law in denying deduction u/s 10B of the Act.*
2. *The Ld. CIT(A) erred on facts and in law in confirming the addition on account of excess production amounting to Rs.46,44,684/-.*
The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of appeal."

3. The brief facts of the case are that the assessee filed its return of income on 30.12.2006 declaring total loss to the tune of Rs.17,40,921/- for the A.Y. 2006-07. The value of FBT was Rs.1,02,457/-. The return was processed u/s 143(1) of the I. T. Act, 1961 on 27.03.2008. Thereafter, the case was selected for scrutiny and notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The appellant company was a 100% Export Oriented Unit and was engaged in the business of manufacturing of Mosaics, Borders, Patterns of



Natural Stone Slates of different colors and claims to be eligible for exemption u/s 10B of the I. T. Act. On verification, Excess Stock of 31383 pieces assessee was found which was not explained, therefore, value of the same in sum of Rs.46,44,684/- was added to the income of the assessee. The assessee also failed to deposit the PF of the Employee's Contribution well in time in sum of Rs.1,09,280/-, therefore, the same was also disallowed and added to the income of the assessee. The claimed the exemption u/s 10B of the Act which was also not allowed. The total income of the assessee was assessed in sum of Rs.30,13,040/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds raised above, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, in the said circumstances, the order of the CIT(A) in question is wrong and against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order of the CIT(A) dated 28.01.2011, we noticed that the CIT(A) decided the matter of controversy in absence of the assessee without giving an opportunity of being heard to the assessee. It is against the principle of natural justice. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restored the matter before the AO to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.



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5. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.

Order pronounced in the open court on this 23/09/2019

Sd/-

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

सुरत/ **Surat**, दिनांक **Dated:** 23/09/2019/Vijay Pal Singh, Sr.PS

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

By order

Assistant Registrar, Surat