

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.20/SRT/2017
निर्धारणवर्ष/Assessment Year: 2013-14**

Pradeep Kumar Biyani, Shop No.28/29, Vardhman Complex, Bhatar Road, Surat-395 017.	V.	Deputy Commissioner of Income Tax, Circle-1(3), Surat.
[PAN: AASPB 9593 R]		
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितकीओरसे /Assessee by		Shri Ramesh Malpani, CA
राजस्वकीओरसे /Revenue by		Ms. Anupama Singla, Sr. DR
सुनवाईकीतारीख/ Date of hearing:		12.02.2020
उद्घोषणाकीतारीख/Pronouncement on:		13.02.2020

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals)-II, Surat [in short “the CIT(A)”] dated 07-06-2017, for the assessment year 2013-14.
2. Ground No.1 is not pressed before us, hence, treated as dismissed as not pressed.
3. Ground No.2 relates to estimating of gross profit at 35% to the Income Tax Appellate Tribunal in similar case of Shri Dineshbhai Dhansukhlal Mithawala held as net profit to be 35% whereas the assessee has shown 6.7% net profit.
4. At the outset, the Id. counsel for the assessee submitted that this issue is identical and covered by the decision of Tribunal in assessee’s own case in

ITA No.3098/AHD/2015 and ITA No.2637/AHD/2016 for the assessment year 2013-14. After considering the findings the gross profit at the rate of 35% was reduced to 32% as discussed and the same was upheld.

5. *Per contra*, the ld. counsel supported the order of the lower authorities.

6. We have heard the rival submissions and perused the relevant matter available on record. We find that the issue is squarely covered by the order of the decision of the ITAT in the case of assessee for the assessment year 2011-12 & 2012-13 in order dated 14-07-2017, wherein the ITAT as held in Para 10 & 11 are reproduced as under:-

"10. We observed that the contention of the assessee was that issuing sale bills was not possible on account of heavy rush and the sales bills were issued if it was demanded by the customers. He also contended that because of number of ingredients used for various items, it was difficult to arrive at cost of each such item.

11. After considering the above facts and findings we observed that the assessee has been selling various kinds of items on the basis of issuing of different kinds of tokens. It was found that sales bills are not regularly issued to the customers, material like milk used to be purchased without the proper bill as a result correct manufacturing cost could not be ascertained. In view of the above, we are of the view that the gross profit @32% on the disclosed sales as per the audit report is reasonable and appropriate in the case of the assessee. Therefore, the appeal of the assessee is allowed partly."

7. Therefore, in the above findings respectfully following to the same and the addition was sustained at the rate of 32% of gross profit on sale disclosed as per audit report as held by the Tribunal in the case of the assessee. Therefore, AO is directed to recalculate additions by falling GP rate @32% of disclosed sales. Accordingly, this ground of appeal is partly allowed.

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

9. The order pronounced in the open Court on 13-02-2020

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 13th Feb, 2020/Samanta, PS

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

// TRUE COPY //

By order

Assistant Registrar, Surat