

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

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

S. No.	आ.अ.सं./I.T(SS)A/ I.T.A No.	निर्धारणव र्ष/A Y:	अपीलार्थी Appellant	V	प्रत्यर्थी/Respondent
1 to 5 & 6	IT(SS)A 06/SRT/2019 07/SRT/2019 08/SRT/2019 09/SRT/2019 10/SRT/2019 & ITA 166/SRT/2019	2009-10 2011-12 2012-13 2013-14 2014-15 & 2015-16	Valjibhai B Vaghasiya, B/10, Matruchhaya Row House, Nana Varachha Road, Surat <b>[PAN: AEPPV01031G]</b>	V	Dy. Commissioner of Income Tax, Central Circle-3, Surat
7 to 12 & 13	IT(SS)A 11/SRT/2019 12/SRT/2019 13/SRT/2019 14/SRT/2019 15/SRT/2019 16/SRT/2019 & ITA 167/SRT/2019	2009-10 2010-11 2011-12 2012-13 2013-14 2014-15 & 2015-16	Suryakant Sakariya, 236, Shyamdham Sankul-1, Punagam Taluka, Choryasi, Surat <b>[PAN: BNSPS4806E]</b>	V	Dy. Commissioner of Income Tax, Central Circle-3, Surat
14 to 15 & 16	IT(SS)A.No.17/SRT/ 2019 18/SRT/2019 & ITA.No.155/SRT/20 19	2010-11 2011-12 & 2015-16	Alpeshbhai Govindbhai Sakariya, 53, Gokuldharm Society, Chharprabhatha Road, Amroli, Surat-395006 <b>[PAN: BOBPS1490E]</b>	V	Dy. Commissioner of Income Tax, Central Circle-3, Surat
17 to 21	IT(SS)A.No.19/SRT/ 2019 IT(SS)A.No.20/SRT/ 2019 IT(SS)A.No.21/SRT/ 2019 IT(SS)A.No.22/SRT/ 2019 IT(SS)A.No.23/SRT/ 2019	2009-10 2010-11 2011-12 2013-14 & 2014-15	Hiteshbhai K. Bhikadiya, 305, Dharmanandan Society, Yogi Chowk, Puna Simda Road, Surat <b>[PAN: AMIPH9192L]</b>	V	Dy. Commissioner of Income Tax, Central Circle-3, Surat
22 to 27 & 28	IT(SS)A.No.24/SRT/ 2019 IT(SS)A.No.25/SRT/ 2019 IT(SS)A.No.26/SRT/ 2019 IT(SS)A.No.27/SRT/ 2019 IT(SS)A.No.28/SRT/ 2019	2009-10 2010-11 2011-12 2012-13 2013-14 2014-15 & 2015-16	Bharatbhai Mohanbhai Savani, 201, 2 <sup>nd</sup> Floor, Swapan Milan Apartment, Nilambaug Society, Hira Baug, Varachha Road, Surat-395006 <b>[PAN: BCZPS4936D]</b>	V	Dy. Commissioner of Income Tax, Central Circle-3, Surat

	IT(SS)A.No.29/SRT/2019 & ITA.No.154/SRT/2019				
29 to 35 & 36	IT(SS)A.No.30/SRT/2019 IT(SS)A.No.31/SRT/2019 IT(SS)A.No.32/SRT/2019 IT(SS)A.No.33/SRT/2019 IT(SS)A.No.34/SRT/2019 IT(SS)A.No.35/SRT/2019 IT(SS)A.No.36/SRT/2019 & ITA 161/SRT/2019	2008-09 2009-10 2010-11 2011-12 2012-13 2013-14 2014-15 & 2015-16	Nirmalbhai B. Dhanani, 158, Gopinath Society-2, B/h. Narayan Nagar, Siganpor Road, Katargam, Surat-395004 <b>[PAN: ADJPD2415N]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
37 to 40	IT(SS)A 37/SRT/2019 38/SRT/2019 39/SRT/2019 40/SRT/2019	2010-11 2011-12 2013-14 & 2014-15	Rajeshbhai N Kalathiya, 303, 3 <sup>rd</sup> Floor, Swapna Milan Apt., Nilambuag Society, Varachha Road, Surat <b>[PAN: ATTPK4354M]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
41 & 42	IT(SS)A.No.41/SRT/2019 and ITA.No.158/SRT/2019	2014-15 & 2015-16	Bipinbhai N. Sakariya, A/101, Madhav Park, Singanpur Char Rasta, Ved Road, Surat <b>[PAN: BTTPS1483E]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
43 & 44	IT(SS)A 42/SRT/2019 & 43/SRT/2019	2010-11 & 2011-12	Vipul V Vaghasiya, B/10, Matruchya Row House, Nana Varachha, Surat-395006 <b>[PAN: AEPPV01031G]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
45 to 46 & 47	IT(SS)A.No.44/SRT/2019 IT(SS)A.No.45/SRT/2019 & ITA 159/SRT/2019	2013-14 2014-15 & 2015-16	Jatin K Mehta, 701, Parshwa Darshan Appartment, Opp. Navyug College, Rander Road, Surat-395009 <b>[PAN: AICPM8048G]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
48 to 52 & 53	IT(SS)A.No.46/SRT/2019 IT(SS)A.No.47/SRT/2019 IT(SS)A.No.48/SRT/2019 IT(SS)A.No.49/SRT/2019 IT(SS)A.No.50/SRT/2019 & ITA.No.156/SRT/20	2010-11 2011-12 2012-13 2013-14 2014-15 & 2015-16	Bhavesh D Hapani, 203/A, Rajmandir Apt.-2, Puna Vedchha, Tal-Choriyarsi, Surat <b>[PAN: ADCPH0153L]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat

	19				
54 to 57 & 58	IT(SS)A.No.51/SRT/ 2019 IT(SS)A.No.52/SRT/ 2019 IT(SS)A.No.53/SRT/ 2019 IT(SS)A.No.54/SRT/ 2019 & ITA.No.160/SRT/20 19	2010-11 2011-12 2013-14 2014-15 & 2015-16	Dilipbhai B. Goyani, 42/3, 4 <sup>th</sup> floor, Sunrise Diamond, Gajjar Compound, Kapodra, Varachha Road, Surat <b>[PAN: AKJPG3023E]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
59 to 64 & 65	IT(SS)A.No.55/SRT/ 2019 IT(SS)A.No.56/SRT/ 2019 IT(SS)A.No.57/SRT/ 2019 IT(SS)A.No.58/SRT/ 2019 IT(SS)A.No.59/SRT/ 2019 IT(SS)A.No.60/SRT/ 2019 & ITA 164/SRT/2019	2008-09 2009-10 2010-11 2011-12 2013-14 2014-15 & 2015-16	Pravinbhai L. Kalathiya, 2/A, Ganesh Row House, Nr. Shyamdharm Society, Puna Simda Gam, Surat <b>[PAN: AUUPK9451D]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
66 to 70 & 71	IT(SS)A.No.61/SRT/ 2019 IT(SS)A.No.62/SRT/ 2019 IT(SS)A.No.63/SRT/ 2019 IT(SS)A.No.64/SRT/ 2019 IT(SS)A.No.65/SRT/ 2019 & ITA 157/SRT/2019	2008-09 2009-10 2010-11 2011-12 2014-15 & 2015-16	Navjibhai Chhaganbhai Gorasiya, Plot No.122, Gr. Floor, Vithalnagar Co.op Housing Society, Nr. Hirabaug, Varachha Road, surat-395006 <b>[PAN: ALTPG2336B]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
72 to 75 & 76	IT(SS)A.No.66/SRT/ 2019 IT(SS)A.No.67/SRT/ 2019 IT(SS)A.No.68/SRT/ 2019 IT(SS)A.No.69/SRT/ 2019 & IT(SS)A.No.162/SRT /2019	2010-11 2011-12 2013-14 2014-15 & 2015-16	Kantibhai N. Nakarani, D/2, Pramukhchhaya Society, Puna Simada Road, Yogichowk, Varachha, Surat- 395006 <b>[PAN: ACEPN2026R]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
77 to 80 & 81	IT(SS)A 70/SRT/2019 71/SRT/2019 72/SRT/2019 73/SRT/2019 & ITA 163/SRT/2019	2010-11 2011-12 2013-14 2014-15 & 2015-16	Raghavbhai K Bhingradiya, B/10, Matruchaya Row House, Nana Varachha Road, Surat <b>[PAN: ALTPB8844R]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat
82	IT(SS)A	2010-11	Shantibhai G. Kakadiya,	V	Dy.

to 85	74/SRT/2019 75/SRT/2019 76/SRT/2019 & 77/SRT/2019	2011-12 2013-14 & 2014-15	Plot no.54, Gr. Floor, Bhagu Nagar, Co.op Housing Society, singanpor Road, Surat <b>[PAN: ASUPK9649R]</b>	.	Commissioner of Income Tax, Central Circle-3, Surat
86	ITA.No.165/SRT/20 19	2015-16	Pragnesh A. Sakariya, 109, Vrundavan Society, Chhaprabhatha Road, Amroli, Surat <b>[PAN: BWRPS9124F]</b>	V .	Dy. Commissioner of Income Tax, Central Circle-3, Surat

निर्धारितीकीओरसे <b>Assessee by:</b>	Shri Nitin Gheewala – CA
राजस्वकीओरसे <b>Revenue by:</b>	Shri O.P.Vaishnav – CIT-DR
सुनवाईकीतारीख <b>Date of hearing:</b>	06-02-2020
उद्घोषणाकीतारीख <b>Date of pronouncement:</b>	06-02-2020

आदेश /ORDER

**PER BENCH :**

1. The above 86 appeal(s) filed by the 18 Assessee's are directed against the separate order(s) of learned Commissioner of Income tax (Appeals)-, Surat dated for A.Y.
2. Since, the issue involved in these appeals are inter-connected, hence same were heard together and being disposed of by this common order. We are taking the case of Shri Bharatbhai Mohanbhai Savani as lead case in IT(SS)A No.24/SRT/2019 for A.Y. 2009-10, the findings of which would apply *mutatis-mutandis* to other cases also.
3. Grounds raised by the assessee in IT(SS)A No.24/SRT/2019 read as under:

*“1. On the facts and circumstances of the case and in law the Learned CIT (A) has erred in not adjudicating the legal grounds [Ground No 1 to 4] as raised by the appellant during the course of appellate proceedings stating the same to be academic in nature. He ought to have appreciated the same being against the principles of natural justice and should have passed the speaking order dealing with the legal grounds as raised by the appellant since the question relating to*

*jurisdiction assumed u/s 153C rws 143(3) of the Act goes to the very root of the matter and the same required adjudication on the part of appellate authority.*

*2. On the facts and circumstances of the case and in law the Ld. Commissioner (Appeals) erred in passing an order under sec. 251 thereby enhancing the assessment without giving any proper opportunity of hearing to the assessee, therefore the impugned order passed is bad in law.*

*3. On the facts and circumstances of the case and in law the Ld. Commissioner (Appeals) had erred in carrying the enhanced addition of Rs 9,873/- on account of estimation of N.P @6% by merely relying upon the CBDT instruction no 02/2008 dated 22.02.08, although the said circular was only applicable for the assessments made during the AY 2008-09 and not in the year under appeal and without bringing any cogent and credible material that is having nexus with the adverse conclusion so arrived.*

*4. In law, on the facts and circumstances of the case, the learned CIT (A) has grossly erred in confirming the action of A.O in levying interest u/s.234A, 234B, 243C and when no such interest is chargeable. It may be deleted.*

*5. In law, on the facts and circumstances of the case, the learned CIT(A) has grossly erred in confirming the action of A.O for initiating the penalty proceedings u/s.271(1)(c) of the act when no such penalty is leviable. Since the proceedings are wrongly initiated. He may be directed to withdraw such proceedings.”*

**4.** Ground No.1 is against the non-adjudicating the legal grounds as raised by the appellant during the course of appellate proceedings, stating the same to be academic in nature which is against the principle of natural justice and ought to have been passed speaking order dealing with legal ground raised relating to jurisdiction assumed under section 153C read with section 143(3) of the Act goes to very root of the matter and same required adjudication on the part of the Appellate Authority.

**5.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee derives income from cutting and polishing of diamonds. The search under section 132 of the Act was carried out in the case of HVK International, Group on 09.10.2014. It was observed

that the group is engaged in the business of Diamond manufacturing and is one of the site holder companies who was suppressing profit by way of debiting bogus labour charges in the name of certain persons being labour contractors from whom HVK International Group has got the job of Diamond polishing being done in the period of last 6 and half years, which also included the name of the assessee also. During the course of search proceedings, there back up of the computers and server installed at the main factory premises of HVK International Pvt. Ltd. was taken in the hard disks and were seized as per annexure A-50 to A-53. From the back of the PC of Shri Dharmesh R Lad, accountant of the HVK International Pvt. Ltd., a list of labour contractor in excel sheet form have been found along with the amount of work done in the period of last several years. The pre-decided limit of the expenses to be booked in the account of each labour contractors in last several years was not found in these excel sheets. In this case, pre-decided limit of expenses appears at Rs.27,49,722 /- wherein the details of limit fixed against the name of each impugned labour contractor and actual amount debited from the books of HVK International Pvt. Ltd. was given. Most of the people interrogated during post search enquiry, stated in the statement under section 131 of the Act before the DDIT(Inv.), that they have not received salary from HVK International Group but received job work charges for work done as labour contractor. In view of these facts, notice under

section 153C of the Act was issued on 28. 12. 2015 and duly served upon the assessee. in response to which the assessee has filed return of income under section 153C on 30.01.2016 and also vide letter dated 10.04.2016 requested to provide reasons for re-opening of the same. The assessment was made by observing that the assessee was merely in name lender for the labour expenses claimed by HVK International Pvt. Ltd. at Rs.27,49,722/-, which are bogus, hence, same were added to the return of income of the assessee on protective basis. The AO further made an addition of Rs.2,70,000/- on presumptive basis as giving that the assessee would certainly be getting some benefit being in name lender as labour contractor to HVK International Pvt. Ltd.

**6.** Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). Wherein the assessee has stated legal ground number 1 to 4 by stating that the assessment made under section 153C of the Act is bad in law and liable to be quashed. As the AO has failed to record satisfaction that any seized documents or material belong for the appellant and were incriminating in nature and prima-facie represented undisclosed income. However, the CIT (A) has allowed relief in respect of addition of Rs.27, 49, 722. Being brought the addition being accommodation of bogus labour expenses to HVK International Pvt. Ltd. and deletion of salary receipt of Rs.2,70,000/-. However, the CIT (A) has estimated net profit @6% by applying CBDT Instruction No. 2/2008 dated 22.02.2008 on that gross

receipts of Rs.27,49,722/- shown by the assessee and made addition accordingly, which amounted to enhancement of income by that amount. Therefore, Ld. CIT (A) observed that since the Appellant has been provided relief on the merit on the additions made, the legal grounds becomes only academic in nature. Hence, same is not being adjudicated.

**7.** Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Counsel for the assessee submitted that the learned Ld. CIT(A) has erred in not adjudicating the legal grounds as raised by the appellant during the course of appellate proceedings. The learned Ld. CIT(A) failed to adjudicate the legal grounds pertaining to the jurisdiction assumed under section 153C read with section 143 (3) of the Act which goes to the very root of the matter. The learned Ld. CIT(A) has treated the legal grounds to be academic in nature. Since he had provided relief on the merits of the case. However, the learned Ld. CIT(A) had carried enhancement of addition by estimating 6% NP., Without giving any enhancement notice in this regard. The proceeding under section 153C can be initiated if any valuable assets /documents found and seized are belonged to person other than searched person. However, in the case of no such assets or document were found and seized which belonged or pertained to the assessee. Hence, initiation of proceedings under section 153C are illegal. In support of this contention, the learned counsel relied in the case of DCIT-CC-7 v. Notional Standard India Ltd. [2017] 85

taxmann.com 87 (Mum-Trib). Further, Learned Counsel submitted that no satisfaction note was provided to the assessee, thus, being against the principle of natural justice and thus, proceedings initiated itself is void and bad-in-law. In support of this contentions, the learned counsel for the assessee has placed reliance in the case of ITO- New Delhi v. Canyon Financial Services Ltd. [2018] 90 taxmann.com 169 (SC) , DCIT CC- 21 New Delhi v. Satkar Roadlines (P) Ltd. [2015] 62 taxmann.com 327 (Delhi-Trib) , Super Malls (P) Ltd. v. DCIT [2017] 88 taxmann.com 373 (Delhi-Trib), Satkar Fincap Ltd. v. ACIT CC-21, New Delhi [2016] 66 taxmann.com 107 (Delhi-Trib), Pepsi Foods (P) Ltd. v. ACIT [2014] 52 taxmann.com 220 (Delhi) , DCIT v. Aakash Arogya Mindir (P) Ltd. [2015] 58 taxmann.com 293 (Delhi-Trib) , Pr.CIT v. Index Securities (P) Ltd. [2017] 86 taxmann.com 84 (Delhi) . It was found that that the assessee has filed detailed submissions before CIT (A) but the same has not been considered. Further no incriminating material was discovered during the course of survey proceedings which pertained to the assessee and at the same time had no bearing on the total income of the assessee therefore, proceedings initiated under section 153C is void and bad-in-law. Further, no books of accounts or documents or material has been alleged by the AO that they pertain to the appellant were never provided to the assessee during the course of assessment proceedings , hence, fort the assessment framed itself in bad-in-law and against the principle of

natural justice. The ld. CIT (A) ought have adjudicated the legal ground of appeal thereby passing speaking order. Therefore, the assessment needs to be remitted to Ld. CIT (A) for passing speaking order by adjudicating legal grounds of appeal. In this regard the learned counsel for the assessee relied in the case of SSBJ v. ITO- Delhi [2015] (10) TMI 1596, DCIT v. Fractal Analytics Limited 2017 (8) TMI 1305 ITAT-Mumbai. Further, the ld. CIT (A) has enhanced the income by applying 6% net profit rate. Without providing reasonable opportunity of being heard and issuing show-cause notice for enhancement of such income. In this regard the learned counsel for the assessee supported his view by placing reliance in the case of Roshan Motors v. ITO [2015] 64 taxmann.com 381 (Delhi-Trib) , Naresh Sunderlal Chug v. ITO [2018] 93 taxmann.com 485 (Pune-Trib) and C.Anitha v. CIT [2017] 88 taxmann.com 53 (Mad).

**8.** *Per contra*, learned CIT(D.R.) supported the order of Ld. CIT (A).

**9.** We have heard the rival submissions and perused the relevant material on record. We find that the ld.CIT (A) has not adjudicated the legal grounds of appeal raised by the assessee which goes to the root of matter. Further, the ld. CIT (A) has made enhancement of income without allowing opportunity of being heard and issue of show-cause notice for doing so. Hence, the CIT (A) has not allowed proper

opportunity of being heard. The principle of *audi alteram partem* is the basic concept of natural justice. The expression "*audi alteram partem*" implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross examination, right to legal representation, disclosure of evidence to party, report of enquiry to be shown to the other party and reasoned decisions or speaking orders. We find that the guidance for right of hearing, as is laid down by the Hon'ble Supreme Court in the case of Maneka Gandhi v. Union of India, wherein Hon'ble Supreme Court has held that rule of fair hearing is necessary before passing any order. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We find that in this instant case, the assessee was not given proper hearing. Therefore, we are of the view that the assessee must be given one more opportunity of hearing and to represent his case. Therefore, in exercise of power conferred under Rule 28 of Tribunal Rules, we restore this appeal to the file of Ld.CIT(A) for adjudicating the legal grounds of appeal as raised in respect of initiation of proceedings under section 153C of the Act after allowing proper opportunity of being heard in accordance with law and considering the ratio of case laws as relied by the assessee as mentioned and to be brought to his notice during the course of appellate proceedings. The

ld.CIT(A) has failed to provide an opportunity of being heard to the assessee for making enhancement of income by applying 6% net profit rate and would issue proper show-cause notice if he want to apply the rate of net profit rate, which is prima-facie not applicable for the year under considerations. Nevertheless, to mention that the assessee will cooperate in the appeal proceedings and file necessary evidences on which he wants to rely upon.

**10.** In the result, appeal of the assessee is allowed for statistical purposes.

**11.** To sum up, all (86) appeals filed by the 18 assessee's are allowed for statistical purpose.

**12.** The order pronounced in the open court on 06.02.2020

**Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

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

Surat: Dated: 6<sup>th</sup> February, 2020/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**

