



ITA.292 & 1001/Ahd/2018
M/s. B M Patel & Brothers
Assessment Years :2006-07 & 2007-08

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

**BEFORE HON'BLE SHRI MAHAVIR PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.1001/AHD/2018
(निर्धारण वर्ष / Assessment Year: 2006-07)

&

आयकरअपील सं./ I.T.A. No.292/AHD/2018
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. B M Patel & Brothers A-1, Krishnadhham Duplex Near Iskon Temple, Gotri Road Vadodara-390 021.	बनाम/ Vs.	DCIT, Circle-1(2), Baroda
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACFB-5678-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Urvashi Shodhan- Ld. AR
Revenue by	:	Shri N. K. Goel-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	03/03/2020
घोषणा की तारीख / Date of Pronouncement	:	04/03/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years [in short referred to as 'AY'] 2006-07 & 2007-08 contest separate orders of Ld. first appellate authority on certain common grounds of appeal. Since



facts are pari-materia the same, the appeals were heard together and now being disposed-off by way of this common order for the sake of convenience and brevity.

ITA No.1001/Ahd/2018, AY 2006-07

2. This appeal assails the order of Ld. Commissioner of Income-Tax (Appeals)-5, Vadodara, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)/Vadodara-5/10822/17-18 dated 26/03/2018* on following grounds:-

1. Ld. CIT(A) erred in law and on facts directing AO to assessee total income at returned income of Rs.11,35,605/- despite noting that as per the directions of Hon'ble ITAT was bound to assess income at Rs.1,87,524/- only.
2. Ld. CIT(A) ought to have directed AO to assess income of Rs.5,093/- after reducing amount of Rs.20,00,000/- as per directions given in Hon'ble ITAT order.
3. Ld. CIT(A) erred in law and on facts in directing AO to modify order giving effect to the order of Hon'ble ITAT by making addition of Rs.5,94,107/- income from other sources that was never subject matter of rectification application filed by the applicant.
4. Ld. CIT(A) further erred in law and on facts in directing AO to once again add income of Rs.5,94,107/- already reduced by AO from computation while making effect to the order of Hon'ble ITAT.
5. Ld. CIT(A) erred in law and on facts in enhancing income computed by AO while giving effect to the order of Hon'ble ITAT that is beyond scope of proceedings u/s 154 of the Act.
6. Ld. CIT(A) erred in law and on facts in directing AO to consider filing miscellaneous application before Hon'ble ITAT for correcting prima facie mistake in the order totally outside the purview of appellate jurisdiction.

3.1 To resolve the controversy, it would be vital to bring on record the sequence of events which have taken place in the case so far. The assessee being resident firm stated to be engaged as contractor filed its original return of income on 31/12/2006 at Rs.11.35 Lacs. This was after



when the assessee was subjected to survey action on 06/10/2006 wherein one of the partner Shri B.M.Patel, in recorded statement, made admission of Rs.20 Lacs. In terms of the said statement, the amount of Rs.20 Lacs was credited to the Profit & Loss Account for the year under consideration and after considering the same, the assessee reflected profit of Rs.9.34 Lacs which was offered to tax after statutory adjustments.

3.2 An assessment was framed u/s 143(3) on 26/12/2008 determining the income at Rs.15.93 Lacs. During assessment proceedings, assessee's books of accounts were rejected u/s 145(3) and profit was estimated @3% of total turnover which yielded estimated profit of Rs.5.79 Lacs which was held to be over and above declared income of Rs.20 Lacs. The same was not only confirmed by Ld. CIT(A) vide appellate order dated 21/10/2010 but Ld.CIT(A) enhanced the income by Rs.11.33 Lacs. The enhancement comprised-off of two components viz. (i) Other income of Rs.5.94 Lacs; (ii) business income of Rs.5.79 Lacs. These items, in the opinion of Ld. CIT(A), were to be added back over and above the assessed income since these remained to be added back.

3.3 We find that observation with respect to first item i.e. other income of Rs.5.94 Lacs was not added back by Ld.AO, was correct but the observation with respect to second item of Rs.5.79 Lacs was not correct since this amount was, in fact, added by Ld.AO while computing assessee's income. Another mistake noted by us is that the total of these



two items would be Rs.11.73 Lacs and not Rs.11.33 Lacs as computed by Ld. CIT(A).

3.4 Consequently, the assessee sought rectification of appellate order dated 21/10/2010 by way of rectification application u/s 154 on 17/01/2011. The attention was drawn to erroneous observation with respect to item No. (ii) for Rs.5.79 Lacs.

3.5 Meanwhile, the order giving effect was passed by Ld. AO vide order dated 20/12/2010 wherein the income was re-determined at Rs.27.27 Lacs after adding an amount of Rs.11.33 Lacs as per appellate order dated 21/10/2010.

3.6 The matter reached up-to the level of this Tribunal vide ITA Nos.91 & 92/Ahd/2011 order dated 18/09/2015 which is common order for AYs 2006-07 & 2007-08. The Tribunal, vide para-9 of the order, held that when profits were estimated, further addition of income declared during survey was not called for. In other words, it was held that when the income was estimated @3% of turnover, separate addition of Rs.20 Lacs on account of admission, was uncalled for.

3.7 In the meantime, the quantum order dated 26/12/2008 passed by Ld.AO was subjected to revisional jurisdiction u/s 263 by Ld. CIT-1, Baroda vide order dated 30/03/2011 to restrict the partners' remuneration to Rs.0.50 Lacs. The order giving effect was passed u/s 143(3) r.w.s. 263 on 15/04/2011. The order passed by Ld.AO on



20/12/2010 was modified as per the directions given u/s 263 and the income was redetermined at Rs.31.78 Lacs.

3.8 Keeping in view assessee's rectification application u/s 154 dated 17/01/2011 and another rectification application dated 4/10/2013, the order dated 15/04/2011 was rectified by Ld.AO on 15/11/2013 revising the income to Rs.25.99 Lacs. In other words, the adjustment of Rs.5.79 Lacs was deleted.

3.9 The assessee challenged exercise of revisional jurisdiction u/s 263 before this Tribunal vide ITA No.1507/Ahd/2011 order dated 28/11/2014 wherein the revisional order was canceled on the principle of merger.

3.10 Consequent to cancelling of order u/s 263 by Tribunal, the order dated 15/11/2013 was modified on 02/06/2015 re-determining the income at Rs.21.47 Lacs so as to nullify the effect of directions given u/s 263. This was the latest order quantifying assessee's income before passing of the order by Tribunal on 18/09/2015.

3.11 The order giving effect to the order dated 18/09/2015 passed by Tribunal, was passed by Ld. AO on 25/02/2016. The Ld. AO determined the income at Rs.20.05 Lacs. The perusal of order would show that Ld.AO made two mistakes in the order. Firstly, the total income has been picked as Rs.25.99 Lacs as per order dated 15/11/2013 whereas the said order was already modified on 02/06/2015 re-determining the income at Rs.21.47 Lacs. The second mistake was that Ld.AO reduced the income by Rs.5.94 Lacs for which no direction was issued by the



Tribunal. As recapitulated by us in para 3.6, the Tribunal, vide para-9 of the order, had held that when profits were estimated, further addition of income declared during survey was not called for. In other words, it was held that when the income was estimated @3% of turnover, separate addition of Rs.20 Lacs on account of admission, was uncalled for.

3.12 Aggrieved, the assessee preferred rectification u/s 154 which was rejected by Ld.AO vide order dated 18/05/2016. Upon further appeal, the Ld. CIT(A), at para 4.1 of the impugned order, agreed that the correct income as per Tribunal order should have been computed at Rs.1.87 Lacs. But he observed that the assessed income would be reduced below returned income of Rs.11.35 Lacs and therefore, he chose to assess the same at Rs.11.35 Lacs in view of the fact that the assessee furnished no objection against the same. Aggrieved, the assessee is under further appeal before us.

4. Upon careful consideration of factual matrix as enumerated hereinabove, we find that coordinate bench had already adjudicated the matter of quantum additions vide order dated 18/09/2015 and the same was to be followed in spirit. As per this order, since the income were assessed on estimated basis, separate additions of Rs.20 Lacs over and above the assessed income was uncalled for. Both the lower authorities were bound to follow the same. We find that Ld.CIT(A), at para 4.1 of the impugned order, has correctly ascertained assessee's income at Rs.1,87,524/- which was in consonance with the directions of Tribunal order dated 18/09/2015. The said computation comprised-off of



estimated income @3%, other income as per financial statements and disallowance u/s 40A(3). Against the same, deduction of interest and remuneration to partner's have been allowed. The same is in consonance with the case history. Therefore, on the facts and circumstances of the case, we direct Ld. AO to adopt the income at Rs.1,87,524/- and recompute assessee's tax liability. The appeal stands partly allowed.

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5. Facts are pari-materia the same in this year except for the fact that there was no revision u/s 263. The Tribunal order dated 18/09/2015 is common order for both the years. In this year, the assessee reflected *Nil* income after considering disclosure of Rs.25 Lacs. The Ld. AO estimated the income @8% of turnover which was considered to be over and above declared income of Rs.25 Lacs. Therefore, the income was determined u/s 143(3) on 24/12/2009 at Rs.29.06 Lacs. The Ld.CIT(A), vide appellate order dated 21/10/2010 reduced the estimation to 3% and at the same time, directed Ld. AO to add other income of Rs.8.91 Lacs to the income of the assessee. The appellate order modified the income to Rs.32,11,694/-. The same was to be modified as per decision of Tribunal dated 18/09/2015. However, Ld. AO, making similar mistake, erroneously provided relief of Rs.8.91 Lacs which was nothing but other income. The income was determined at Rs.23.19 Lacs vide order dated 25/02/2016. The rectification application filed by the assessee was rejected vide order dated 18/05/2016. The Ld.CIT(A), vide appellate order dated 28/12/2017, directed Ld.AO to provide relief of Rs.25 Lacs



as per the directions of the Tribunal. However, regarding deduction of Rs.5 Lacs representing interest on capital, it was observed that assessee did not claim any deduction and therefore, Ld. AO was directed to withdraw the same if consequential interest was not shown by the partners in their respective returns of income. Aggrieved, the assessee is under further appeal before us.

6. Upon due consideration, we find that the approach of Ld.CIT(A), in this year, was substantially correct. As per the Tribunal's order dated 18/09/2015, the income was to be reduced by Rs.25 Lacs. However, the observation that deduction of interest of Rs.5 Lacs was not claimed by the assessee is not correct since upon perusal of financial statements as placed on record, it is quite discernible that that assessee has claimed deduction of interest of Rs.5 Lacs. Therefore, there would be no occasion to issue the stated directions to Ld. AO. In nutshell, the assessee's income would be taken as Rs.7,11,694/- being differential of Rs.32,11,694/- and Rs.25,00,000/-. The appeal stands partly allowed.

Conclusion

7. Both the appeals stand partly allowed.

Order pronounced in the open court on 04/03/2020

**Sd/-
(Mahavir Prasad)
Judicial Member**

**Sd/-
(Manoj Kumar Aggarwal)
Accountant Member**



ITA.292 & 1001/Ahd/2018
M/s. B M Patel & Brothers
Assessment Years :2006-07 & 2007-08

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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आयकरअपीलीयअधिकरण, मुंबई / ITAT, Ahmedabad.



ITA.292 & 1001/Ahd/2018
M/s. B M Patel & Brothers
Assessment Years :2006-07 & 2007-08

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA. Nos: 1001 & 292/AHD/2018
(Assessment Years: 2006-07 & 2007-08)**

M/s. B M Patel & Brothers A-1, Krishnadhham Duplex Near Iskon Temple, Gotri Road, Vadodara-390021 (Appellant)	V/S	DCIT Circle-1(2), Baroda (Respondent)
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PAN: AAC FB-5678-H

CORRIGENDUM

PER MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER:-

1. This corrigendum is being issued with a view to rectify an inadvertent error which has crept in Tribunal order dated 04-03-2020.
2. It is noted that the ‘place’ on bottom of page no.8 of the order has wrongly been mentioned as “मुंबई Mumbai”. The same is incorrect. Therefore, the same may be read as “अहमदाबाद Ahmedabad”.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

अहमदाबाद Ahmedabad: Dated 05/03/2020

SS, PS



ITA.292 & 1001/Ahd/2018
M/s. B M Patel & Brothers
Assessment Years :2006-07 & 2007-08

Copy of the Order forwarded to:-

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2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
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By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad

- 1.Date of dictation 05 - 03 -2020
- 2.Date on which the typed draft is placed before Member 05-03-2020
- 3.Date on which the approved draft comes to the Sr.P.S./P.S -03-2020.
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement
- 5.Date on which the fair order comes back to the Sr.P.S./P.S
- 6.Date on which the file goes to the Bench Clerk -03 -2020.
- 7.Date on which the file goes to the Head Clerk.....
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order.....
- 9.Date of Despatch of the Order.....