

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

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No. 93/Rjt/2016**

**निर्धारणवर्ष/Assessment Year: 2011-12**

M/s. Shamji Maya & Sons, Narayan Chambers, Bank of Baroda Bldg., Station Road, Bhuj PAN : ABDFS 5703 J	Vs.	Income Tax Officer, Ward-2, Bhuj-Kutch
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Kalpesh Doshi, AR
Revenue by :	Shri B.D. Gupta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 17.11.2022

घोषणा की तारीख /Date of Pronouncement: 25.01.2023

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-3, Rajkot (hereinafter referred to as "CIT(A)") dated 19.02.2016 passed u/s 250(6) of the Income-tax Act, 1961, (hereinafter referred to as "the Act") for Assessment Year (AY) 2011-12.

2. This is a recalled matter. In the first round of litigation, the Tribunal vide order dated 30.07.2019 in ITA No.93/Rjt/2016 for the Assessment Year 2011-12, had dismissed the appeal of the assessee. However, the assessee moved a Miscellaneous Application praying recall of the order on the ground that the alternate contention raised by the assessee to tax the undisclosed contract receipts of Rs.15,41,000/- on estimated basis, in view of the decision of Hon'ble jurisdictional High Court in the case of CIT vs. President Industries, reported in (2002) 124 Taxman 654 (Guj), as relied upon by the assessee, was not considered by the Tribunal while adjudicating the case. The Tribunal, therefore, vide order dated 16.09.2022 recalled the appeal in view of the judgement of Hon'ble

jurisdictional High Court in the case of ACIT vs. Saurashtra Kutch Exchange Ltd, reported in 262 ITR 146 (Guj.) wherein it was held that non-consideration of judgement of Hon'ble jurisdictional High Court would amount to a mistake apparent from the record.

3. The solitary issue, therefore, before us is whether the addition on account of difference in contractual receipts as reflected in the TDS Certificate and as that shown in the books of accounts of the assessee is to be restricted to the profit element embedded therein. The learned Counsel for the assessee in this regard relied on various decisions including that of the Hon'ble jurisdictional High Court in the case of President Industries (supra) and the following decisions of the ITAT:-

- i. Purna Chandra Rout Vs. ITO (ITA No.1087/Del/2020 (Delhi Trib.)
- ii. Sohan Lal Aggarwal Vs. ACIT, [2021] 130 taxmann.com 380 (Delhi Trib.)
- iii. Shri Kayyum Ahamed Vs. ITO (ITA No. 2410/Del/2013) (Delhi Trib.)

He further pointed out that the net profit of the assessee for the impugned year was 1.23% while that for the immediately succeeding year i.e. AY 2012-13 was a loss of 12.98%. He requested that, considering the above facts, the addition on the difference in turnover of Rs.15,41,000/- be restricted to the profit element of 1.23%.

4. The Ld. DR, on the other hand, countered by stating that all the decisions relied upon by the learned Counsel for the assessee for the purpose of restricting the addition to the profit element embedded in the difference of contractual receipt related to trading transactions while in the present case the receipts were contractual receipts and, therefore, all the case laws were distinguishable on facts. He, therefore, vehemently argued that the entire receipt of contractual receipts, therefore, had been rightly confirmed to be added back to the income of the assessee.

5. We have heard the rival contentions. The solitary issue for adjudication before us is whether the difference in contractual receipts as reflected in the books of the assessee and as that reflected in Form No.26AS issued by its contractor M/s. Shamji Maya & Co. amounting to Rs.15,41,000/- be added completely or restricted to the extent of profit element embedded therein. The facts which are pertinent for deciding the issue are that the turnover of the assessee for the impugned year as reflected in the books of accounts was in the range of Rs.1.15 crores. The difference in contractual receipts sought to be added by the Revenue is Rs.15.41 lakhs and the same tantamounts to almost 10% of the gross contractual receipt of the assessee. The fact of the matter also is that in the impugned year the assessee has shown net profit of 1.23% while in the immediately succeeding year the assessee has returned loss of 12.98%.

6. We have also gone through the decision of the Hon'ble jurisdictional High Court in the case of President Industries (supra). On going through the same, we find that the Hon'ble High Court had held that the entire undisclosed sales can be added back only in the circumstance where the Revenue finds that the investment by way of incurring cost for the goods sold has also not been disclosed by the assessee. The Hon'ble High Court held that only in such circumstance where both the investment in cost of the goods sold and the sales thereto are not disclosed by the assessee, the entire turnover is to be added back to the income of the assessee. That otherwise it is only the profit element embedded therein which is to be added back. In the present case before us, the only case of the Revenue is that the assessee has not disclosed sales to the tune of Rs.15.41 lakhs. There is no finding by the Revenue to the effect that the cost incurred in relation to the said sales has also not been disclosed by the assessee. In view of the same, the decision rendered by the Hon'ble jurisdictional High Court squarely applies to the present case. The addition accordingly in the present case is to be restricted to the profit element embedded in the undisclosed turnover and since the facts before us reveal the profit returned by

the assessee at 1.23% in the impugned year which has been accepted by the Revenue also, we direct the profit on the undisclosed turnover to be restricted to the said extent. Even otherwise, we find that if the entire undisclosed turnover is added to the income of the assessee, the net profit would increase by 10% since, as we have noted above, the undisclosed turnover is approximately 10% of the total turnover, the net profit accordingly would come in the range of 11-12% as opposed to 1.23% returned by the assessee and accepted by the Revenue which, in our view, would be highly unjustifiable and unreasonable proposition. Considering all the facts and circumstances as above, we find merit in the claim of the assessee to restrict the addition on account of undisclosed turnover of Rs.15.41 lakhs to the extent of profit element embedded therein to be calculated by applying a profit rate of 1.23% thereto. The alternate claim of the assessee is accordingly allowed.

6. In the result, the appeal of the assessee is allowed in above terms.

**Order pronounced in the open Court on 25/01/2023 at Ahmedabad.**

Sd/-

**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 25/01/2023

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
 आयकर अपीलीय अधिकरण  
 ITAT, Rajkot