

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 31/Rjt/2018
with
CO No.17/Rjt/2018
निर्धारण वर्ष/Asstt. Years: 2014-2015

D.C.I.T., Morbi Circle, Morbi.	Vs.	M/s Zealtop Granito Pvt. Ltd., Survey No.596, 8/A, National Highway, Old Ghuma Road, Morbi-2. PAN: AAACZ3126B
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Revenue by	:	Shri Shramdeep Sinha, CIT. D.R
Assessee by	:	Shri R.K. Doshi, A.R

सुनवाई की तारीख/**Date of Hearing** : **24/04/2023**
घोषणा की तारीख /**Date of Pronouncement**: **17/05/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal and CO have been filed at the instance of the Revenue and the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Rajkot, dated 16/11/2017 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 250 of the Income Tax Act 1961 (here-in-after referred to as "the Act"). The assessee has filed the Cross Objection in the Revenue's appeal bearing ITA No. 31/Rjt/2018 for the Assessment Year 2014-2015.

2. The Revenue has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the Ld.CIT(A), has erred in reducing the addition made by the AO of unaccounted cash received through angadia of*

suppressed sale from Rs.3,60,58,494/- to Rs.11,71,901/- thus allowing relief of Rs.3,48,86,593/-

2. Thus the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in utilizing the figure of 3 years average net profit of 3.25% on amount of under-invoiced sales receipt on which the assessee has already claimed all kind of direct and indirect expenditures.

3. On the facts of the case and in law , the Ld.CIT(A) ought to have upheld the assessment order of the AO.

4. Any other ground that the Revenue may raise before or during the proceedings before the Hon'ble ITAT.

5. It is, therefore, prayed that the order of the CIT(A) may be set aside and that of the A.O be restored to the above extent.

3. The only issue raised by the Revenue is that the learned CIT-A erred in restricting the addition made by the AO to Rs. 11,71,901.00 out of the total addition made by the AO of ₹ 3,60,58,494 only on account of suppressed sale.

3.1 Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of manufacturing and trading of ceramic vitrified tiles. It was alleged during the assessment proceedings that the assessee is engaged in under invoicing its sale to the customers based in different parts of the country. The difference between the actual price and the price recorded in the books of accounts for the sales was received by the assessee through the Aangadia/Shroff namely National Shroff & Co. Thus, the AO was of the view that the assessee by way of under invoicing the sales is suppressing the actual profit liable to tax. The basis of the AO for the allegation was the investigation report for search and seizure operation carried out on various Aangadia/Shroff including National Shroff & Co. The statement of Shri Keval Jayesh Sabapara, a person belonging to National Shroff & Co., was recorded under section 131 of the Act dated 14 December 2016 wherein it was admitted that National Shroff & Co has received a sum of ₹6.12 crores in cash which was deposited in different bank accounts from the different cities. Out of the total cash deposits in the bank, a sum of ₹3,60,58,494.00 was pertaining to the year under consideration. In the statement it was admitted that the cash has been deposited

by the customers of the assessee to whom the sale was made. Subsequent to the deposits of cash, the Shroff has withdrawn the same which was handed over to the person namely Shri Jadeja have mobile number 9979311803 a person attached to the assessee. On confrontation of all these facts stated above by the AO, the assessee vide letter dated 26 December 2016 has denied to have received any cash from Shri Jadeja. To this effect, the assessee has filed the affidavit of director namely Shri Jitendra Amrutlal Bavarva as well as affidavit of Shri Jadeja. As per the assessee, all the sales transactions were duly recorded in the books of accounts. Likewise, there was no variation in the gross and net profit declared by it in the year under consideration viz a viz in the earlier year which was accepted in the assessment framed under section 143(3) of the Act. There was no defect pointed out in the books of accounts which were duly admitted during the assessment proceedings. The assessee also sought the opportunity of cross examination of the statement of Shri Keval. It was also submitted by the assessee that there was no corroborative material brought on record in support of the statement alleging that the assessee has received money of unaccounted cash by way of under invoicing of sales.

3.2 However, the AO disregarded the contention of the assessee by observing that Shri Keval, a person belonging to National Shroff company, has clearly admitted the fact that they were engaged in the business of transferring money for commission on behalf of its customers. There were 49 beneficiaries and one of them was the assessee. As such, the details were furnished by the Shroff in such an exact manner which cannot be doubted. However, the AO denied to provide the opportunity of cross-examination as he has not recorded the original statement of Shri Keval. The AO also did not believe the affidavit furnished by the assessee as they were self-serving documents and created afterthought. The AO also notes that the investigation wing has established the facts after collecting the evidences during the search and seizure operation that the assessee has received unaccounted cash of ₹3.60 crores representing the under invoicing of the sales. In-fact, M/s National Shroff & Co has provided the name and addresses of the

assessee along with the mobile numbers and therefore the circumstantial evidences and the human probability suggest that the assessee was one of the beneficiary of under invoicing the suppressed sales. As per the AO, the sales on account of under invoicing represents only 2.67% of the total turnover which will not give the absurd result if the addition is made. Since, the assessee has recorded sales in the books at the lesser value by adopting the technique of under invoicing, no benefit of any direct and indirect expenses related to such suppressed sales can be given as the assessee has claimed the expenses in the regular books of accounts. Thus, the AO has made the addition for ₹3.60 crores to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT-A who partly confirmed the addition made by the AO by observing as under:

I have carefully considered the submission of the appellant and perused facts of the case in A.O's order. Ground 1, 2, 8 and 9 are general in nature. Ground 3, 4, 5 and 6 are related to the main addition of the assessment order i.e. addition on account of suppressed sales of Rs. 3,60,58,494/-. These grounds will be disposed simultaneously.

5.1 During search proceedings in respect of an Angadiya "National Shroff Group", evidences and documents showing periodic payments in cash to various concerns of Morbi and Rajkot were found. One such beneficiary identified by the search party was the appellant. A slip was found related to the appellant showing periodic payments by the Angadiya to the appellant. The content of this slip is available in page 3 of the assessment order. According to the investigation wing this paper was suggesting named party as one of the beneficiary of the Angadiya payments and that this party has received cash payments of Rs. 3,60,58,494/- for financial year 2013-14. The name of the beneficiary indicated in the seized paper was similar to the appellant. The main person of Angadiya group Shri Keval Jaish Sabapara was summoned and his statement was recorded in which, he accepted his business of an Angadiya, he stated that outstation clients of his beneficiaries deposit cash in the bank account of his partner, subsequently these respective amount were withdrawn from the said bank account and were handed over to his clients in Morbi. He further admitted that the appellant i.e. M/s Zealtop Granito Pvt. Ltd. is one of his clients and by name was noted as M/s Zealtop Vitrified in the document seized. He further name of the contact person of the appellant i.e. Jadeja Bhai along with Mobile numbers. He Informed that the appellant M/s Zealtop Granito Pvt. Ltd. has received amount of Rs. 6,29,31,123/- during the period 01.09.2013 to 30.06.2014. In brief the search operation in respect of Angadia brought out the fact of receipt of sale .proceeds of the sales made to outstation client of appellant in cash through Angadiya. During assessment proceedings the appellant negated any such transaction and filed i an affidavit of its employees and contact persons Mr. Jadeja and Mr. Jitendra A ¹ Bavasva with their statements that they had not participated in the alleged cash receipt transactions. Assessing officer had dealt with the said negation of the appellant in detail after providing copy of the said seized paper and statement recorded of the main person of the Angadiya concern. He has held that the negation by appellant as well as the affidavits filed by the

*appellant's persons are self-serving and could not be relied upon. AO observed that assesses had received Rs. 3,60,58,4947- through the Angadiya in the relevant Financial Year. Assessing officer has also rejected the appellant's alternate plea of adding only the profit element embedded in the alleged unaccounted sales proceeds instead of adding the total amount. The assessing Officer has stated that this unaccounted sale profit has been received not for sale of additional undisclosed quantity of tiles but for the under invoiced component of the items reported as sold in the appellant book. In support of this ruling the AO has given the logic that there is nothing on record suggesting removal of undisclosed quantitative manufactured goods and therefore it is logical to conclude that the items actually removed from the factory were sold at artificially low rate and the compensatory differential component of the actual sale price has been received .through Angadia in **cash** and therefore it represented the undisclosed profit of the appellant and as such there is no scope of calculating and adding only the profit element out of this proceed.*

5.2 Ld. AR has argued extensively against the AO's ruling that appellant has received suppressed sale proceeds. The main arguments are that:

- (1) The name on the seized document is not the actual name of the appellant.*
- (2) His employees including Mr. Jadeja has refused of indulging in cash receipt transaction by filing the affidavit.*
- (3) Entire addition is based only on statement of the Angadiya and such person was not allowed to be cross-examined.*
- (4) The appellant's book was audited and NP and GP continues to be similar to the earlier years NP&GP.*

5.3 These arguments of the Ld. AR in this appeal do not hold force. The papers found from the premises of the Angadiya and notings made thereon were clearly suggesting that the said Angadiya was routing "out of book" sale proceeds receivable from the butstation clients of Morbi based beneficiary appellant which is in the business of manufacturing of Ceramics Tiles. Slight difference in the name noted on the seized document does not make such documents unbelievable especially when there are no other entities with the name Zealtop. Further this difference has been explained by the Angadiya, in his statement which is also providing the name of the employees of the appellant who were involved in such cash calculations alongwith their mobile numbers. The Angadiya has clearly stated in his statement (which has been given in the condition of volition without any pressure and coercion) that it has received the sale proceeds (from outstation clients of appellant) it its bank accounts & the same afte withdrawal had been handed over to the employer of the appellant. There is no indication of any retraction of statement by this Angadiya. Copy of seized paper is displaying exact address and name of the contact persons of the appellant's as well as mobile numbers. There is no probability of this paper coming into existence without factual basis. The appellant was provided copy of this seized paper as well as copy of statement of the Angadiya and appellant did not provide any rebuttal of the facts stated by the Angadiya neither any retraction of such statement by the Angadiya can be shown by the appellant. Self-serving affidavits cannot overshadow the glaring and transparent evidences collected by the investigation wing clearly suggesting receipt of suppressed sale proceeds by the appellant through the Angadiya. The AR's argument on this count is therefore rejected.

The next issue is regarding treatment of this amount of suppressed sale proceeds of Rs. 3,60,58,494/- i.e. whether entire amount should be subjected to tax or whether only profit element out of the same should be added to the total income. There is no doubt that this amount is received from the outstation customers of the appellant and these receipts are towards suppressed sales by the appellant to such customers. AO had also not disputed this fact. The only question is to determine whether the entire sale proceeds

should be added or only the profit element out of such proceeds should be added in the hands of appellant. The Appellant had cited before the assessing officer decision of Jurisdictions I High Court of Gujarat in the case of President Industries wherein it has been clearly stated that the amount of undisclosed sales by itself cannot represent the income of the assessee unless there is a finding to the effect that undisclosed investments in production process to bring in existence the clearing goods which has been sold has also been made by the assessee and which has also not been disclosed in appellants. In simple words only the gross profit out of such undisclosed income can be taxed unless there are evidences to suggest that appellant has made undisclosed investments in acquiring (purchase) materials or in incurring related expenses which were not recorded in the appellant's book. The assessing officer has tried to distinguish this case by stating that no further cost has been incurred by the appellant in production of clearing goods as no additional quantities were manufactured by the appellant. For this proposition, AO relied on absence of any evidence suggesting clandestine removal. In other words, for giving such statement the AO has relied on absence of any information of clandestine removal of the goods. The appellant has also cited the decision of the Jurisdiction^ High Court in the case of Sameer Synthetic Mills, decision of Hon. Andhra Pradesh High court in the case of Rajnik and Co. and decision of ITAT Hyderabad in the case of Banda Mallesh to support argument of addition of only the profit element, not the entire sale proceeds.

5.5 AO's attempt to distinguish the present case from the above cited futile. AO, had tried to establish that present case is of qualitative and sale suppression and therefore amount of suppressed sale proceeds invoicing. According to AO as no additional quality of clearing goods was therefore there is no scope of allowing any debit to the corresponding purchase and other expenses. The suppressed sale proceeds are only 2.67% of the total turnover and there is no evidence of any undisclosed investments in purchase or other related expenses. Further there is no evidence for under invoicing of the sales challans. Thus AO proposition is not based on any evidences; rather it is based on absence of any .evidence of clandestine removal of goods. In such circumstances there is no escape from the ratio of decision of the Hon. Jurisdictional High Court in the case of the President Industries. I do not approve the AO's action of adding the entire sales proceeds as undisclosed income of the appellant.

5.6 The next issue is as to what should be the ratio of profit to compute the profit element in the said sale. The assessing officer had not disbelieved the book result of the appellant. The net profit form said book amounts to 3.01%. Net profit of the earlier two years i.e. FY 2012-13 and 2011-12 are 3.09%- and 3.24% respectively. Current year's net profit cannot be taken at face value as they have been tainted by the presence of incidence of out of book receipt of sales proceeds in cash. I therefore propose to take the average of 3 years net profit figure which comes to 3.25%. The figure should be utilized to work out the undisclosed profit element out of the suppressed sale receipts. Reliance Is pleaded on the decisions in the case of CIT vs. President Industries [2002] 124 Taxmann 654 (Guj.), CIT vs. Gurubachan Singh J. Juneja [2008]171 Taxmann 406 (Guj) and Dy. CIT vs. Panna Cop. (Guj.). The AO is therefore directed to restrict the additions to the amount of net profit to be computed at the rate of 3.25% of Rs. 3,60,58,494/- i.e. Rs. 11,71,901/-. Thus ground 3,4,5 and 6 are partly allowed.

5. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us and the assessee is in CO. The ground of cross objections in the CO bearing No. 17/Rjt/2018 are listed below:

1. *The learned CIT(A) has erred in confirming the addition to the extent of Rs 11,71,910/- by working out the average 3 years net profit at 3,25% of alleged suppressed sales of Rs.3,60,58,494/-*
2. *The learned CIT(A) has erred in holding that the assessee has suppressed turnover of Rs.3,60,58,494/-.*
3. *The learned CIT(A) has erred in confirming that the papers found from the premises of Angadia "out of book" sales proceeds received from the out station client of the assessee,*
4. *The learned CIT(A) has erred in confirming alleged suppressed sales of Rs. 3,60,58,494/-based on the statement of Shri Keval Sabapara recorded by the Income Tax Officer without considering that opportunity to cross examine said Shri Keval Sabapara was not granted to the assessee even though specifically requested.*
5. *The learned CIT(A) has erred in confirming alleged transaction of Rs. 3,60,58,494/- as unaccounted sales of the assessee without rebutting the affidavit of Shri Shivrajshinh Jadeja in whose name the alleged transactions were alleged by the Angadia.*
6. *The learned CIT(A) has erred in confirming the alleged unaccounted transactions of Rs. 3,60,58,494/- as unaccounted sales of the assessee without bringing on record any other evidences except the statement of Shri Keval Sabapara,*
7. *Without prejudice to the above your appellant craves leave to add, amend, alter, vary or withdraw all or any of the grounds on or before [he hearing of appeal.*

6. The learned DR before us has filed the written submission 10-4-2023, available on record and contended that the search party namely M/s National Shroff & Co has furnished the names of 49 parties including the assessee who were engaged in the activity of under invoicing the sales. The search party has maintained the data in a systematic manner containing the amount received from different companies on behalf of the parties who are involved in under invoicing the sales. The systematic recording of the transactions cannot be assumed as dumb document which is beyond the human probability. The name of the assessee was duly provided by the Anagdia/ Shroff which cannot be a mere coincidence or fake information.

7. On the other hand, the learned AR before us filed a paper book running from pages 1 to 160 and the written submissions running from pages 1 to 19. The learned AR before us contended that there cannot be any addition merely on the

basis of the statement and without bringing any corroborative material in support of such statement. There was no detail brought on record by the AO that the parties to whom the sales made was at the lesser value. The transactions of the sales and purchases made by the assessee were duly reported and accepted by the VAT and Central Excise department without any discrepancy.

7.1 The learned AR also alleged that the AO was requested to provide the opportunity of cross examination of the statement in the case of Shri Keval which was recorded on 8 April 2015 but the same was not provided. Therefore, there cannot be any addition in the hands of the assessee which is made without providing the opportunity of cross-examination.

7.2 Furthermore, Shri Jadeja who was alleged to have received unaccounted cash from the Shroff has denied to have received any cash by way of furnishing the affidavit. No infirmity was pointed out by the AO in the affidavit furnished by Shri Jadeja. He has not done cross-examination of Shri Jadeja and therefore the averments made in the affidavit of Shri Jadeja should be accepted as correct unless rebutted by the evidence. There was no significant variation between the amount of Net profit/ gross profit as well that in the year under consideration viz a viz in the earlier year and therefore the book result shown by the assessee should be accepted. Without prejudice to the above, the suppressed sale cannot be accepted as profit in to-to and agreed to calculate percentage of profit attributed to such alleged unaccounted sales.

7.3 Both the learned DR and the AR before us vehemently supported the order of the authorities below to the extent as favorable to them.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the entire foundation of making the addition by the AO on account of suppressed sale was based on the statement of Shri Keval a person belonging to National Shroff &

company which was subject to search and seizure operation. There is no dispute M/s National Shroff & Co was engaged in the activity of providing adjustment entries. The real ownership of those entries is admittedly not of National Shroff & Co. but of other parties. The question arises which are those other parties? The same can be established based on the documentary evidence. In the case on hand, there is only one statement which has been referred by the AO. Indeed, the original statement was recorded by the investigation wing of Shri Keval. Admittedly, the report received by the AO from the investigation wing is a vital piece of information but the same cannot be used against the assessee without rebutting the same. From the order of the AO, it is nowhere arising whether any opportunity of cross-examination was afforded by the investigation wing to the assessee. However, the AO has categorically denied to provide the opportunity of cross-examination on the reasoning as detailed below:

"The assessee has requested for cross-examination of the witness. The same could not be provided as the undersigned has not recorded the original statement"

8.1 Besides the above, it is also noteworthy to point out that the AO has recorded the statement of Shri Keval dated 14 December 2016 but the opportunity of the same was not provided to the assessee for the cross-examination. The relevant submission of the assessee before the AO is extracted as under:

"You have provided us the copy of the statement of Keval Sabapara, recorded by your office on 14 December 2016."

8.2 However, the AO has not provided the opportunity of cross-examination of the statement recorded by him though the statement was used against the assessee. It is the settled position of law that the statement cannot be used against the assessee until and unless it is based on corroborative material and the opportunity of cross-examination is provided to the assessee. In holding so, we draw support and guidance from the judgement of Hon'ble Madras High Court in case of R Bhopathy vs CIT reported in 103 taxmann.com 283 where it was held as under:

Merely because the Statements recorded under section 132(4) are admissible in evidence, it does not mean that the said statements or their contents can be read out of context and beyond the terms of the statements itself and without the corroborating material. There is no admission on the part of the assessee in the present case that Capitation Fee was paid by the assessee out of Undisclosed Income not so far declared. Just because the statements state that he paid Capitation Fee to the Engineering College, it does not mean that it could result in an addition ipso facto in the already declared Undisclosed Income in the hands of the assessee in his Returns filed after the search.

8.3 Likewise, it is important to note that the CBDT by way of instruction bearing number F. No. 286/98/2013-IT(Inv.III) dated 18th December 2014 has discouraged its officers to make any addition based on the statement obtained during survey/search proceedings until and unless it is corroborated by the documentary evidence. The relevant extract of the instruction of the CBDT reads as under:

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, CBDT.

8.4 In view of the above, we are of the opinion that the AO has erred in making the addition based on the statement which was not supported by the corroborative evidence as well as the assessee was not afforded the opportunity of cross-examination.

8.5 At this juncture, it is equally important to note that the AO in the assessment order has made the reference to the documents collected during the search and seizure operation from the premises of the Shroff but no detail or the whisper is there about such seized documents in the assessment order. Even at the time of hearing, the learned DR has not brought any iota of evidence suggesting that the AO has made any reference to the seized documents for making the addition in the hands of the assessee except the statement as discussed above.

8.6 We also note that the same seized document also contains the information about the alleged unaccounted sales pertaining to the F/Y 2014-15 but no addition of whatsoever was made by the Revenue. In other words, the Revenue has taken contradictory stand in different AYs which is not desirable under the provisions of law.

8.6 Before parting it is important note that Shri Keval, a person belonging to National Shroff & company in his statement has mentioned that the assessee is beneficiary of the under invoicing of the sales and the amount representing the under invoicing of sale has been collected by the company namely National Shroff and company. It is the admitted position of law that the transactions carried out by the Shroff belongs to the other parties. But such other party has to be identified based on the documentary evidence. In such facts and circumstances, it is difficult to find out any supporting evidence except the evidences gathered during the search proceedings during search as well as the statement recorded during the search proceedings which should be seen in the light of the circumstantial evidences. In the present case, the circumstantial evidences, the financial results of the assessee in the form of net profit ratio and gross profit ratio suggests no variation in the year under consideration viz a viz in the earlier years. As such the revenue, in the earlier years have accepted the net profit and gross profit declared by the assessee in the assessment framed under section 143(3) of the Act. The copies of the assessment orders are placed on record. Thus, in the

given case even the circumstantial evidences do not suggest that the assessee was engaged in the activity of under invoicing the sales.

8.7 At this juncture, it is equally important to note that the amount of sales and purchases have been duly admitted by the VAT and the Central Excise Department without pointing out any discrepancy. It means the amount of sales declared by the assessee was accepted by the other Government Departments. Thus, we are reluctant to accept action of the AO that the assessee was engaged under invoicing of the sales in the given facts and circumstances. Thus, we do not find any infirmity in the order of the learned CIT-A. Hence the ground of appeal of the revenue is hereby dismissed and the CO of the assessee is allowed.

9. At this juncture, it is also necessary to deal with the argument advanced by the learned DR vide letter dated 3-04-2023 and 13-03-2023 to refer the matter to the special bench. First, it is necessary to note that the hearing of the case was concluded dated 8-02-2023. Thereafter, the matter was fixed for clarification by the bench vide order sheet entry dated 7-3-2023 on the following points:

"As a result of search on various Angadiya and shroff it was discovered that they were collecting money on behalf of various parties against the under invoicing of sales made by such parties. It was alleged in the Assessment Order that the assessee was one of the beneficiary among other party. A clarification is sought from the assessee and the revenue about the status of the case of the other parties which were allegedly engaged in the activity of under invoicing of sales. Likewise, the assessee was also alleged in the activity of under invoicing in the subsequent year. Therefore, the clarification is also sought about the case of the assessee for the subsequent Assessment Year. Hence, the matter is to be listed for clarification dated 15.03.2023 as part heard."

10. At the time of taking the clarification from the parties, the learned DR suggested to refer the matter to the special bench. In our considered view, in the matter fixed for clarification by the bench, either of the party is precluded from making such a request to refer the matter to the special bench. As such, the learned DR at the time of hearing dated 8-02-2023 has not made any such

request to refer the matter to the special bench. Thus, we are of the view that request of the learned DR in the matter fixed for clarification cannot be entertained to refer the matter to the special bench.

11. In the result, the appeal of the Revenue is hereby dismissed and the CO of the assessee is allowed.

Order pronounced in the open Court on 17/05/2023 at Ahmedabad.

Sd/-

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad; Dated 17/05/2023

Manish

Sd/-

**(WASEEM AHMED)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि भेषित/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 प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad