

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “J”, MUMBAI**

**BEFORE PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**AND**

**MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

<b>I.T.A. No.826/Mum/2023</b>	-	<b>AY 2014-15</b>
<b>I.T.A. No.827/Mum/2023</b>	-	<b>AY 2015-16</b>
<b>I.T.A. No.828/Mum/2023</b>	-	<b>AY 2016-17</b>
<b>I.T.A. No.829/Mum/2023</b>	-	<b>AY 2017-18</b>
<b>I.T.A. No.830/Mum/2023</b>	-	<b>AY 2018-19</b>

Shri Mehulkumar Sombhai Mevada Ranpur Ugamana Vas Ta – Deesa, Dist – Banaskantha Gujarat- 385 535 <b>PAN AKWPM6480C</b>	vs	Dy.Commissioner of Income-tax, Central Circle-2(3), Mumbai Room No.803, 8 <sup>th</sup> Floor, Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>I.T.A. No.749/Mum/2023</b>	-	<b>AY 2014-15</b>
<b>I.T.A. No.750/Mum/2023</b>	-	<b>AY 2015-16</b>
<b>I.T.A. No.751/Mum/2023</b>	-	<b>AY 2016-17</b>
<b>I.T.A. No.752/Mum/2023</b>	-	<b>AY 2017-18</b>
<b>I.T.A. No.753/Mum/2023</b>	-	<b>AY 2018-19</b>

Shri Smit Dineshchandra Joshi 26, Revenue Society, Patthar Talavadi Godhra, Panchmahal Gujarat-389 001 <b>PAN AMZPJ8992M</b>	vs	Dy.Commissioner of Income-tax, Central Circle-2(3), Mumbai Room No.803, 8 <sup>th</sup> Floor, Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri B.V. Jhaveri
Department represented by	Shri Anil Gupta, Sr.AR
Date of hearing	20-06-2023
Date of pronouncement	27-06-2023

## O R D E R

### PER BENCH

This bunch of 10 appeals pertaining to two different assesseees are directed against the order of the Commissioner of Income-tax (Appeals)-48, Mumbai dated 03/02/2023 in the case of Shri Mehulkumar Sombhai Mevada and dated 18/01/2023 in the case of Shri Smit Dineshchandra Joshi for Assessment Years 2014-15 to 2018-2019. The issues are common for all the appeals and therefore these appeals were heard together and disposed off through this common order.

### **I.T.A. No.826 to 830/Mum/2023 - Shri Mehulkumar Sombhai Mevada**

3. We will first consider ITA 826/Mum/2023 for A.Y. 2014-15. The assessee filed a return of income for A.Y. 2014-15 on 25/11/2014 declaring an income of Rs.2,161,020/-. The assessee is the proprietor of M/s Siddhi Vinayak Enterprises and is engaged in the business of supply of labour contractors and the assessee has rented the place of business from one M/s Varun Enterprises for which Shri Hitesh Patel as karta of Hitesh V Patel, HUF is the proprietor. A search and seizure action under section 132 of the Income-tax Act, 1961 (in short, 'the Act') was carried out on 14/02/2019 in the

case of Classic Marble Pvt Ltd. (CMCPL), with whom the assessee is having the contract for supply of labour and there was a survey under section 133A on the premises of M/s Varun Enterprises on the same day. During the course of survey, a statement from one Mrs Juhi Patel (employee of M/s Varun Enterprises) and Shri Hitesh Patel was recorded. In the said statements Shri Hitesh V Patel had stated that only paper work relating to labour contracting was being carried out in the premises and no actual work was done. He further admitted that he has never seen the labour parties, who were working for CMCPL and he holds the 'Power of Attorney' to take care of EPF compliance, opening he bank accounts and making payments to the labourers. Based on these statements recorded, the Assessing Officer was of the view that the payments made by CMCPL towards labour charges to the assessee are not genuine in the absence of any corroborative evidence. For this reason, the Assessing Officer reopened he assessment of the assessee and issued a notice under section 148. In response to the said notice, the assessee filed the return of income on 29/01/2021 declaring total income at Rs.2,61,020/-. During the course of hearing, the Assessing Officer confronted the assessee on 08.02.2021 with regard to the various statements made by Shri Hitesh Patel and the denied all the statements made by Shri Hitesh Patel. The Assessing Officer was of the view that the assessee has simply denied the facts mentioned in the statement made by Shri Hitesh Patel that he has not submitted any corroborative evidence to justify that he has supplied manpower to CMCPL. Further the Assessing Officer and the assessee cross examined Shri Hitesh Patel in which Shri Hitesh Patel refuted his previous statements due to which the Assessing Officer was of the view that the statements of Shri Hitesh Patel denying his previous statements was not reliable and does not have any merits. The Assessing Officer also noticed that the

assessee has discontinued the business of supply of manpower from June, 2017 but as per his bank statements, there are many credit entries from various parties. The assessee, when asked to explain the nature of credit entries, submitted that the amounts pertain to repayment of loans advanced in earlier years. The assessee also submitted that there was a visit by the Enforcement Officer, Regional Office, Vapi which would substantiate that the assessee was carrying on the business of supply of manpower. The assessee evidenced the visit through a visit note dated 01/02/2021. The assessee also submitted affidavits from 172 labourers to support the claim that he has supplied labourers to CMCPL. The Assessing Officer noticed that out of the 172 labourers, 115 labourers are common for both the assesses and M/s Varun Enterprises and also did not accept the genuineness of the affidavits for the reason that the assessee could not contacted all the labourers after 4 years to get the affidavits signed. Based on these findings, the Assessing Officer made the addition @ 5% of the gross receipts as pe the details given below:-

A.Y.	Total receipts	5% of total receipts	Already shown in ROI	Final addition
2014-15	83,39,492	4,16,974	2,61,020	1,55,954
2015-16	3,93,84,294	19,69,214	10,05,330	9,63,884
2016-17	4,90,60,235	24,53,011	11,70,940	12,82,071
2017-18	5,23,87,813	26,19,390	10,91,410	15,27,980
2018-19	1,29,98,471	6,49,923	1,88,350	4,61,573

4. Aggrieved, the assessee filed appeal before the CIT(A). The Ld.CIT(A) dismissed the appeals. The assessee is in appeals before the Tribunal against the order of the Ld.CIT(A).

5. The Ld.AR submitted a detailed written submissions and the relevant portion of the same is extracted below—

*In view of the answers given by Mr Hitesh Patel and Mr Mehul Mevada in their respective statements recorded by the AO on 8<sup>th</sup> February 2021 and also the statements made by Mr Hitesh Patel in his cross examination conducted by the advocate for CMCP. the conclusion drawn by the AO that M/s. Siddhivinayak Enterprises did not provide any manpower to CMCP and all the data regarding labour supply were maintained and updated by CMCP itself is contrary to the facts brought on record by Mr Hitesh Patel and by Mr Mehul Mevada in their respective statements recorded by the AO on 8<sup>th</sup> February 2021. It is submitted that the AO has not brought on record any other evidence other than the statement of Mr. Hitesh Patel recorded on 14<sup>th</sup> February 2019 which he has fully explained in his examination conducted by the Assessing on 8<sup>th</sup> February 2021 and thereafter in his cross examination conducted on the same day. In fact, the evidence adduced of filing 561 affidavits of the workers doing work for CMCP during February, 2021 (page 186 to 190B) who are on the pay roll of Varun Enterprises and other contractors, prove that the contractors did supply manpower to CMCP and those workers made it possible for CMCP to achieve the sales turnover of about Rs.400 crores every year. It was also explained that the processing of natural marble blocks and manufacturing marble slabs and tiles require manpower to carry out each of the processes through which the marble block passes through before marble slabs or marble tiles are manufactured and therefore, CMCP could not carry on its business without there being workers working in three shifts all seven days in a week. Similarly. CMCP was manufacturing artificial marble blocks and manufacturing artificial marble slabs and tiles for which CMCP had employed hundreds of workers in these units. The assessee also gave financial data of CMCP for A.Ys. 2015-16 to 2017-18 to explain that CMCP could achieve the turnover of about Rs.400 crores every year only because it had employed sufficient manpower to do the work at each stage of the processes. Not only that, the total labour charges paid by CMCP to its sales turnover is ranging between 3.56% and 4.19% which is most reasonable and comparable with other concerns carrying on the similar business of the same size. At this juncture it is also required to be noted that CMCP had incurred various expenses for these workers like*

*providing them quarters, electricity and water charges, canteen expenses, uniform expenses, medical expenses, premium paid for Workmen's Policy and employer's contribution of Provident fund in their respective accounts. These expenses are not found to be non-genuine by the AO as the AO had collected all the details in respect of these expenses from CMCPL in the course of its assessment for all the years.*

*It is, therefore, submitted that the reliance placed by the AO on the statement of Mr Hitesh Patel recorded on 14<sup>th</sup> February 2019 is not only incorrect but it is contrary to the facts on record after the said statement has been fully explained by Mr Hitesh Patel in his examination conducted by the AO on 8<sup>th</sup> February 2021 and thereafter the cross examination of Mr Hitesh Patel conducted by the advocate for CMCPL wherein he has categorically stated that many of the answers recorded in his statement on 14<sup>th</sup> February 2019 are not his answers and he had never given the said answers.*

*Apart from the above, the assessee had made elaborate submission and provided various documentary evidence to prove the genuineness of the transactions with CMCPL. The assessee is in the business of supplying manpower which is the nature of service and therefore, it can be established and proved by documentary evidence only. The assessee has provided maximum possible circumstantial evidence as per details given below in the course of assessment proceedings before the AO.*

- 1. PAN Card of Mr. Mehul Mevada*
- 2. Form C - Certificate of Shop & Establishment Act (dt. 03.03.2014).*
- 3. Certificate in Form VI being the Labour License issued in January 2015.*
- 4. PF coverage confirmation dtd. 18/06/2014 by the PF Commissioner.*
- 5. Note on the business activities i.e. supply of Manpower - carried out by the Assessee (Siddhi Vinayak Enterprise).*
- 6. Invoices Issued by SVE to CMCPL for the A.Y 2016-17.*
- 7. Bank Statements of SVE from 01.04.2013 to 31.03.2016.*
- 8. Confirmation from Workers who were employed by SVE and working at the Factory of CMCPE*
- 9. Salary Registers*
- 10. Attendance Registers*
- 11. PF Challans*

12. Visit report of the Enforcement officer of the PF Department dtd. 27.01.2021  
 13. Details of the wages paid to employees for A.Y. 2016-17  
 14. Affidavits of 172 labourers working in the factory of CMCPE at the relevant time.  
 15. Combined PF challan for the month of May 2017  
 16. Summary of the Bank Statements for the period 1/07/17 to 31.03.2018  
 17. Copy of financial statement along with Tax Audit Report of the assessee for all five years. 18. Agreement entered into between Siddhivinayak Enterprises and CMCPL dated 1<sup>st</sup> April, 2015. (Pages 102A-102E).

The Ld.AR further submitted that the A.O. while passing the Assessment order for the A.Y. 2016-17. brushed aside all the aforesaid numerous documentary evidence and on conjecture sand surmises rejected the books of account of the assessee (without finding any defect or discrepancy in the books and records submitted) and estimated the income at Rs. 24,53,0107- i.e.. 5% of the total receipts, from CMCPE.

The AO failed to appreciate that the income of the assessee in respect of its transactions with different units of the CMCPL viz, Unit I @ 5% of the gross receipt and 3.75% in respect of its transactions with Unit III & IV is already offered by the assessee in its returns of income which is credited to the Profit & Loss Account of the year under consideration and therefore, the AO has added the amount which is already offered by the assessee in its return of income. Thus one and the same income is added twice by the AO while completing the assessment which is the duplicate addition of the income offered by the assessee

The A.O. computed the addition as shown in table below:

<i>Particulars</i>	<i>Labour Charges</i>	<i>Service Charge offered as Income</i>	<i>PF</i>	<i>Total Receipts</i>
<i>CMCPE - UNIT I</i>	2,59,32,966	12,96,647	6,68,264	2,78,97,877
<i>CMCPE UNITS III &amp; IV</i>	1,96,57,364	7,37,149	7,67,845	2,11,62,358
<i>Total</i>	4,55,90,330	20,33,796	14,36,109	4,90,60,235

*The AO has estimated 5% on total receipts i.e., Rs. 4,90,60,2357- which includes service charges of the assessee of Rs. 20,33,7967- and the reimbursement of provident fund contribution of Rs. 14,36,1097- from CMCPE. Thus, the A.O. has wrongly computed addition made by him being 5% of Rs.4,90,60,2357- because 5% of service charges and PF contribution cannot be added as the income of the assessee.*

*It is pertinent to mention that the assessee's books of accounts are subject to Tax Audit under section 44AB of the Act by a ^pittpetefit Chartered Accountant which are filed with the assessing officer. The assessee has filed his service tax returns based on these books of account only which were duly accepted by the Service Tax department. The provident fund authorities also have checked and verified the books of account and the relevant records of the assessee and have found them in order. Therefore, the conclusion of the AO, that he is not satisfied about the correctness and completeness of books of account is completely baseless as the AO has not been able to point out any defect or discrepancy in the said books of the assessee. In this respect the assessee relies on the decision of the Bombay High Court in the case of PCIT v. Swananda Properties Pvt. Ltd. (267 Taxman 429). It is further submitted that the amount of gross receipts from CMCP amounting to Rs. 4,90,60,2357- is derived only from the books of account of the assessee.*

*The statement of Shri. Hitesh Patel recorded in the course of the survey has no evidentiary value more so when the same was explained in examination in chief conducted by A.O. and in cross examination on 8<sup>TM</sup> February, 2021.*

6. The Ld.DR, on the other hand, relied on the order of the CIT(A).

7. We heard the parties and perused the materials on record. The assessee is a proprietor of M/s. Siddhi Vinayaka Enterprises and is engaged in the business of supply of labourers to CMCP. The said business was carried out of the business premises rented from Shri Hitesh Patel, who was also supplying labourers to Classic CMCP and

was also handling EPF related matters and payments of labour charges on behalf of the assessee through a 'Power of Attorney'. The Assessing Officer, based on the statements recorded from Shri Hitesh Patel and Mrs. Juhi Patel had treated the payments received by the assessee from CMCPL as non-genuine and accordingly added 5% of gross receipts to the total income of the assessee. The statements relied on by the Assessing Officer as extracted from the order of assessment is given below:-

*"11.3 During the course of survey action, the statements of Mrs. Juhi Bhairav Patel, who was employed by M/s. Varun Enterprises were recorded, the relevant portion of which is as under :*

*"Q.10 Have you ever seen the labours coming to this office?*

*Ans: No Sir, I have not seen any labour coming to this office.*

*Q. 11 Have you ever noticed Sh. Hitesh Patel having conversation on phone regarding arrangement for labours for site projects?*

*Ans: No, sir I have not heard any such kind of telephonic conversation.*

*Q.15. Please confirm whether the business activity of Marutl Associates and Siddhi Vinayak Enterprise was conducted from this premise i.e. B-131, Raghuvir Complex,.*

*Ans; Sir, I had never heard the name of said two firms before, Sir, / only know that M/s. Varun Enterprise is being operated from this address.*

*Q.16 Have you ever seen Dinesh Chandra Joshi and Shri Mehul Mevada who are the partners in Maruti Associates and Siddhi Vinayak Enterprise visiting this office i.e. B-131, Raghuvir Complex, Opp.VIA Cricket Ground, GIDC, Vapi-396195?*

*Ans: No, Sir I have neither heard the said names nor seen such persons in this office.*

*11.4 Statement of Mr. Hitesh Patel (Karta of Hitesh V. Patel (HUF) Prop. M/s. Varun Enterprises, who exercises the Power of Attorney of the assessee and also*

*running the proprietary concern of the assessee from the same premise) was also recorded, the relevant portion of which is as under :*

*Q9 Please explain in detail, the labour contracting work done by M/s Varun Enterprise*

*Ans. Sir, only paper work related to labour contracting is done at M/s Varun Enterprise.*

*Q.10 Please confirm if you know the labour parties for which you have taken the labour contracts from the M/s. Classic Marble Company Pvt. Ltd.*

*Ans. Sir, I have not seen the labour parties which work for the M/s. Classic Marble Company Pvt. Ltd.*

*Q.11 Please confirm if you are arranging any labour for the M/s. Classic Marble Company Pvt. Ltd?*

*Ans. Sir, I am not arranging any labour for M/s, Classic Marble Company Pvt. Ltd.*

*Q.12 Please confirm if any labour which is supposed to be supplied by you to M/s Classic Marble Company Pvt Ltd lhas ever visited this office i.e B -131, Raghuvir Complex, Vapi.*

*Ans. Sir, none of the laborers which are supposed to be supplied by me has ever visited this office i.e. B-131, Raghuvir Complex.Vapi.*

*Q.13 In reply to above question you have mentioned that you have neither arranged labour parties for M/s. Classic Marble Company Pvt. Ltd nor seen the labour parties which have been supplied to M/s. Classic Marble Company Pvt. Ltd. Then please confirm what is your role in supplying labour to M/s. Classic Marble Company Pvt. Ltd.*

*Ans. Sir, my role is to just to sign the cheques and keep the documents as provided by M/s Classic Marble Company Pvt Ltd at this office. My role is also to take care of EPF compliance, opening the bank accounts and making payments to the laborers (the list of labourers to whom payment is to be made is provided by M/s Classic Marble Company Pvt Ltd).”*

8. We notice that the Assessing Officer has also recorded a statement from the assessee on 08/02/2021 where the Assessing Officer raised various queries to the assessee with regard to the statements made by Shri Hitesh Patel. The relevant extract of the assessment order with queries raised and the reply by the assessee is extracted below:-

*“11.11 During the course of recording statement on 08.02.2021 of Shri Mehul Mevada, various queries have been raised to the assessee with regard to various statements made by Shri Hitesh Patel (who exercises the Power of Attorney of the assessee and also running the proprietary concern of the assessee from the same premise), the relevant portion of which is as under:’*

*Q.18 I am showing you the statement of Shri Hitesh Patel recorded on 14.02.2019, wherein he has admitted that he is not arranging any labour for M/S CLASSIC MARBLE CO. PVT LTD . Further, he has admitted that he has not supplied any labour and only done paper work. Please offer your comments ?*

*Ans. Sir, I have supplied manpower to M/S CLASSIC MARBLE CO, PVT LTD*

*Q.19 In reply to Q.no.24 to statement recorded on 14.02.2019, Shri Hitesh Patel admitted that he have Power of Attorney to sign the documents pertaining to M/s. Siddhi Vinayak Enterprises. Please explain ?*

*Ans. Sir, I have given Power of Attorney to Shri Hitesh Patel to carry out work relating to Service Tax, PF, Shop and Establishment, Labour License etc.*

*Q.20 In reply to Q.no.25 to statement recorded on 14.02.2019, Shri Hitesh Patel admitted that he received email from Rajeev Mevada regarding payment which was supposed to be made to labourers. I just used to sign the documents and send it back to M/S CLASSIC MARBLE CO. PVT LTD . Please explain ?*

*Ans. The mail pertains to PF payment only*

*Q.21 Please furnish the documents to substantiate the PF deduction and your contribution towards Provident Fund*

*Ans. At present, I am not having details and the same will be submitted by tomorrow.*

*Q.22 Please produce all the day-to-day attendance register, muster role, labour payment slip for all labour payment ?*

*Ans. I am producing the attendance register and muster role register. I am submitting sample copies for record.*

*Q.23 Please provide the Labour Register and Names of labour for whom you had deducted PF and match both of the above ?*

*Ans. I will provide statement of the employees whose PF is deducted and their names appearing in attendance and muster roll.*

*Q.24 During the course of survey action dated 14.02.2019 at your premise at B-131, Raghuvver Complex, Vapi, the survey team had found that no business activity was carried out from the place. Mrs. Juhi Patel in her statement has stated that no labour coming to this office and she had never heard the name of M/s. Maruti Associates operating from that premise. What you want to say about this ?*

*Ans. The office was taken on rent from Hitesh V Patel. However, the activities of the labour supply etc was carried on at the factory premises of M/S CLASSIC MARBLE CO. PVT LTD and the workers were not required to come to the office. Moreover, at the time of survey, I had stopped the activity. All the PF compliances related to my firm were carried out by Shri Hitesh Patel from this office only.*

*Q.25 Further, the proprietor of M/s. Varun Enterprises, Mr. Hitesh Patel during the course of survey action at your business premise also gave his statement that no business activities of M/s. Maruti Associates is carried out from your office premises. What you want to say about this ?*

*Ans. I do not agree with his statement as it was not confronted to me. All the compliances were carried out from the office only and labour work was carried out from factory premises of M/S CLASSIC MARBLE CO.PVT LTD.*

*Q.26 Mr. Hitesh Patel, in statement to Q.No.23, 24 & 25 stated that business activity of M/s. Maruti Associates is conducted from factory premise of M/s. M/S CLASSIC MARBLE CO. PVT LTD and they just used to sign the document and send it back to M/S CLASSIC MARBLE CO. PVT LTD . Please explain?*

*Ans. I don't agree with the statement of Shri Hitesh Patel and I don't know why he has made such statement.*

*Q.27 Mr. Hitesh Patel was having the Power of Attorney of M/s. Maruti Associates (i.e. your prop, concern). He clearly stated that you have never visited the premise and Hitesh Patel just signed the documents and cheques provided by M/s. M/S CLASSIC MARBLE CO. PVT LTD . Further, he also stated that he gets cheque from M/S CLASSIC MARBLE CO. PVT LTD , deposit in bank account and withdraw cash and return to the Accountant of M/S CLASSIC MARBLE CO. PVT LTD and get 5% of wmmJ^sion. What you want to say about this ?*

*Ans. I don't agree with the statement of Shri Hitesh Patel and I don't know why he has made such statement. I have visited the office and met Shri Hitesh Patel also.*

*Q.28 During the course of survey at the office premise of M/S CLASSIC MARBLE CO. PVT LTD , Naroli, blank letter head of M/s. Maruti Associates were found and accountant of M/S CLASSIC MARBLE CO. PVT LTD in his statement admitted that rubber stamp of M/s. Maruti Associates found from his cabin. What you want to say . about this?*

*Ans. The letter head of M/s. Maruti Associates was given to the accountant of M/S CLASSIC MARBLE CO. PVT LTD for closing of bank account etc, as I had stopped my business activity.*

9. From the perusal of the records we notice that the core basis on which the Assessing Officer has made the addition are—

- Statements recorded from Shri Hitesh Patel and Mrs. Juhi Patel
- The business of supply of labourers is carried out of the same premises by the assessee as well as Mr. Hitesh Patel
- The assessee has simply submitted that he didn't agree with any of the statements made by Shri Hitesh Patel but did not submit any corroboratory evidence to justify that he has supplied man power to CMCPL.
- the assessee has not supplied any manpower to any entity other than CMCPL
- The assessee's statement that he didn't agree with the comments of Shri Hitesh Patel has no merits, as Shri Hitesh Patel exercises the Power of Attorney of the assessee
- The affidavits of labourers submitted are not genuine for the reason that assessee could not have obtained these affidavits after a period of 4 years;

- Shri Hitesh Patel's statements made denying the statements made in earlier occasion are not reliable.

10. We notice that the assessee during the course of assessment had submitted a several documentary evidences before the Assessing Officer (list extracted in the earlier part of this order) which have not been perused by the Assessing Officer and has not recorded any contrary finding out these documentary evidences. We further notice that Shri Hitesh Patel had retracted his statements made on 08/02/2021 and in the cross examination conducted on 14/02/2021 had categorically stated that he did not denied the statements made on 08/02/2021. During the course of hearing, the Bench asked the Ld.AR to submit the audited financial statements of the assessee pertaining to the relevant assessment years. On perusal of the said statements we notice that the assessee's accounts are subject to tax audit under section 44AB of the Act and on further perusal of Form 3CD, we notice that the assessee is deducting provident fund from the labour charges paid and the same is duly remitted to the Provident Fund Account. It is also noticed that the labour charges and the Provident Fund contributions are fully reimbursed by CMCPL and hence, the only income arising to the assessee is from service charges at 5%. In this regard it is relevant to note that the Assessing Officer while making addition by applying 5% has considered the gross labour charges including the service charges which have already been offered to tax by the assessee and accordingly, we find merit in the submission of the Ld.AR that there is a double charge towards service charges to this extent. Further we notice that there has been visit by Enforcement Officer on 27/01/2021 at the premises of the assessee where

various documents pertaining to the records of the employees maintained by the assessee have been verified. The copy of the **visit note** is given below:-

EMPLOYEES PROVIDENT FUND ORGANISATION (Ministry of Labour, Government of India) REGIONAL OFFICE CM/8/5 Snehdeep Commercial Complex, Gunjan, Vapi- 396 195 (Gujarat) Telephone Number☎0260) 2435123,2427976 Email:
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### VISIT NOTE

Date of visit:27-01-2021

Date of document Preseat 01-02-2021

PF Code No. SRVAPC049495000

Name of Estt. M/s. Maruti Associates

Name of E.O. – Samir Kumar

Name of Proprietor / Authorised Signatory: Shri Hitesh Patel

As per inspection assigned to the undersigned through Shram Suvidha Portal, I visited the establishment Siddhi Vinayak Enterprises situated at B-131, Raghvir Complex Opp V IA Cricket Counsel Valsad Gujarat for verification of compliance. The undersigned served a spot memo for requisiting of relevant records for EPF inspection purpose viz. Attendance register, wage register, copy of balance sheet, copy of digital signature, Form 5A and copy of cancelled cheque.

The observation made on the records prescribed by the employer is as under:-

- Inspection was assigned on the basis of default in payment and found under category A/B in the default list.
- The establishment is labour supplier to principal employer M/s Classic Marble Company Pvt Ltd and after completion of work order, contract had terminated with effect from 31/03/2020.
- Establishment has submitted a letter regarding closure of PF Code for closure from 01/04/2020 and copies of surrender of labour license and completion of contract labour enclosed as proof of closure.
- PF challan summary submitted from May 2014 to Nov-2020, Copy of form 5A, and Cancelled Cheque enclosed. Thereafter, establishment has remitted min challan as applicable.
- Relevant records like attendance and wages register seen up to March 2020 and wages ledger in books of account seen.
- Based on the available records and facts available as well as on the basis of establishment's request, it is hereby recommended to mark the establishment as closed in system.
- Establishment is directed to ensure that PF accumulations of members are transferred / withdrawn and est to duly help the members in same.
- The undersigned is a PF authority reserve the right for re-inspection / enquiry in case of any complaint an documentary evidence is brought to the office regarding any compliance / non compliance in future or the past.
- Bank details HDC Bank, Silvassa, Account No.502000004685179.

- Recommended for levy of damages and interest under section 14B and 7Q for belated compliance.

Sd/-  
1/2/2021  
(Samir Kumar)  
Enforcement Officer  
Regional Office, Vapi

For Siddhi Vinayak Enterprises  
Sd/-  
Proprietor / Authorised Person

18. The above note evidences the fact that the assessee has been maintaining various records with regard to the labour supply and the same is being verified by the Enforcement Officer. Considering these facts and the circumstances of the case, we are of the view that the assessing officer is not correct in holding the assessee is not engaged in the business of supply of labour contracts to CMCPPL without bringing any contrary findings on record. The only basis for the Assessing Officer to make the addition is the statements recorded from Mr. Hitesh Patel and the Assessing Officer had not carried out any independent verification of the various documents submitted by the assessee. In view of these discussions and after perusing the evidences on record we hold that the action of the Assessing Officer in making addition applying 5% of the gross receipts is not tenable. We accordingly delete the addition made by the Assessing Officer.

19. In the result appeals I.T.A. No.826 to 830/Mum/2023 are allowed.

**I.T.A. No.749 to 753/Mum/2023 - Smit Dineshchandra Joshi**

20. The facts are identical in these appeals and the assessee was carrying on the business of supply of labour contracts to CMCPL as proprietor in the name of M/s Maruti Associates. The assessee in the given case also was carrying on the said business from the premises of M/s. Varun Enterprises owned by Shri Hitesh Patel and was included in the survey proceedings. The Assessing Officer made the addition as per the details given below based on the same statements recorded from Shri Hitesh Patel.

A.Y.	Total receipts	5% of total receipts	Already shown in ROI	Final addition
2014-15	81,71,703	4,08,585	2,83,350	1,25,235
2015-16	3,73,97,994	18,69,899	9,99,610	8,70,289
2016-17	4,40,19,670	22,00,983	11,18,420	10,82,563
2017-18	4,99,94,424	24,99,721	13,40,440	11,59,281
2018-19	1,26,34,147	6,31,707	1,69,800	4,61,907

The Id AR submitted that the assessee had submitted the same set of details as has been done in the case of Shri Mehulkumar Samabhai Mevada evidencing the supply of labourers to M/s Classic Marble Co.Pvt Ltd which have not been verified by the Assessing Officer. Further it was submitted that the Enforcement Officer has verified the labour related documents of M/s.Maruti Associates also which is substantiated by the visit note.

21. We heard the parties and perused the material on record. We notice that the facts in present assessee's case are identical to the case of Shri Mehulkumar Samabhai Mevada. On perusal of records, we further notice that the assessee has made similar set

of documents before the Assessing Officer including the "visit note" of the Enforcement Officer. It is also noticed that the Assessing Officer has completed the assessment basis of statements recorded from Mrs. Juhi Patel and Mr.Mehulkumar Mevada without recording any contrary finding with regard to the details furnished. Accordingly in view of our decision in the case of Shri Mehulkumar Samabhai Mevada under similar facts and circumstances, we hold that in assessee's case also, the Assessing Officer is not correct in making the addition without recording any independent adverse finding. Accordingly, we delete the addition made by the Assessing Officer.

22. In the Result, the appeals I.T.A. No.749 to 753/Mum/2023 are allowed.

23. As a result, all the appeals filed by both the assesseees are allowed.

**Order pronounced in the open court on 27/06/2023.**

Sd/-

sd/-

<b>(PAVAN KUMAR GADALE)</b>	<b>(PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 27<sup>th</sup> June, 2023

Pavanan

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

**BY ORDER,**

//True Copy//

**Asstt. Registrar / Senior Private Secretary  
ITAT, Mumbai**