

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

### CORRIGENDUM

The assessee, Shri Mehulkumar Somabhai Mevada and Shri Smit Dineshchandra Joshi, through two separate corrigendum applications both dated 24/07/2023, brought to our notice the following typographical mistakes in the order passed by the Tribunal in ITA Nos.826 to 830/Mum/2023 & ITAs No.749 to 753/Mum/2023 dated 27/06/2023:

Page No.	Typing error in the order	To be corrected as
1 to 19	Name of the appellant - Shri Mehulkumar Sombhai Mevada	To be changed as Shri Mehulkumar Somabhai Mevada
6	d he (second para last line)	Instead of "d", "and" has to be added.
8	<sup>A</sup> pittpetefit (second para second line)	This word has to be deleted removed
11	"11.11" (second para)	It should be "11. 13" as per Assessment Order. The Q and Ans from Q 1 8 to Q28 are reproduced in Assessment Order of Shri Smit Dineshchandra Joshi. It should be Assessment order of Shri Mehul Somabhai Mevada

12	Q.24 first line "ttieAcouTSE"	To be changed as "the course"
12	Q.26 (First Line) Ans. Shri Hitesh Pate!	To be changed as "Patel"
13	Q.27 5% of wmm JAsion (Q.27 last line)	To be Changed as "5% commission"
15	VISIT NOTE (second Line) PF Code No. SRVAPC049495000	To be Changed as "SRVAPC049494000"
15	VISIT NOTE (second Line) Name of Estt M/s. Maruti Associates	To be Changed as " M/s. Siddhi Vinayak Enterprises"
15	Account No.502000004685 179 (last line)	To be Changed as "502000004685141"
17	Samabhai (Second para second line)	To be Changed as "Somabhai"
17	Samabhai (Point No. 21 second line)	To be Changed as "Somabhai"
18	Mr. Mehulkumar Mevada (first para third line)	To be Changed as "Mr. Hitesh Patel"
18	Shri. Mehulkumar Samabhai Mevada (first para fifth line)	To be Changed as "Shri Mehulkumar Somabhai Mevada"

2. We have perused the order of the Tribunal and found the contentions of the assessee to be correct and accordingly, we rectify the order of the Tribunal as under:-

3. The name of the assessee appearing in pages 1 to 19 as ***Shri Mehulkumar Sombhai Mevada*** may be read as ***Shri Mehulkumar Somabhai Mevada***.

4. In page 6 the second paragraph shall be substituted with the following –

*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 CMCPPL 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.*

5. In page 8 second paragraph shall be substituted with the following –

*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 competent 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 CMCPPL amounting to Rs. 4,90,60,2357- is derived only from the books of account of the assessee*

6. In page 11 paragraph 8 in the order shall be replaced with the following –

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:-*

*“11.13 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.19 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.20 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.21 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.22 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.23 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.24 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.25 During the course of survey action dated 14.02.2019 at your premise at B-131, Raghuvеer 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. Siddhi Vinayak Enterprises 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.26 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. Siddhi Vinayak Enterprises 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.27 Mr. Hitesh Patel, in statement to Q.No.23, 24 & 25 stated that business activity of M/s. Siddhi Vinayak Enterprises 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.28 Mr. Hitesh Patel was having the Power of Attorney of M/s. Siddhi Vinayak Enterprises (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 commission. 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.29 During the course of survey at the office premise of M/S CLASSIC MARBLE CO. PVT LTD , Naroli, blank letter head of M/s. Siddhi Vinayak Enterprises were found and accountant of M/S CLASSIC MARBLE CO. PVT LTD in his statement admitted that rubber stamp of M/s. Siddhi Vinayak Enterprises found from his cabin. What you want to say . about this?*

*Ans. The letter head of M/s. Siddhi Vinayak Enterprises 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.*

7. In para 10 in page 15 after the wording "The copy of the **visit note** is given below" the following shall be substituted –



Shri Mehulkumar Sombhai Mevada &  
Shri Smit Dineshchandra Joshi

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

For Siddhi Vinayak Enterprises  
Sd/-  
Proprietor / Authorised Person

8. In pages 17 and 18 paragraph 20 and 21 shall be replaced with –

*20. The facts are identical in these appeals and the assessee was carrying on the business of supply of labour contracts to CMCPPL 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 ld AR submitted that the assessee had submitted the same set of details as has been done in the case of Shri Mehulkumar Somabhai 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 Somabhai 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. Hitesh Patel without recording any contrary finding with regard to the details furnished. Accordingly in view of our decision in the case of Shri Mehulkumar Somabhai 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.*

9. The rest of the contents of order dated 27/06/2023 will remain unchanged.

Sd/-

sd/-

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

Mumbai, Dt : 04<sup>th</sup> August, 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**