

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1060/Ahd/2023  
(Assessment Year: 2015-16)

Unique Enterprise, 13, Abhar Society, Nizampura, Baroda, Gujarat-390002	Vs.	Income Tax Officer, Ward-1(3)(3), Vadodara
[PAN No.AADFU6854H]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Ms. Foram Doshi, C.A.
<b>Respondent by:</b>	Shri Yogesh Mishra, Sr. DR

<b>Date of Hearing</b>	02.05.2024
<b>Date of Pronouncement</b>	20.05.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short öLd. CIT(A)ö), National Faceless Appeal Centre (in short öNFACö), Delhi vide order dated 19.10.2023 passed for Assessment Year 2015-16.

2. The Assessee has taken the following grounds of appeal:-

- “1. The order passed by the Ld, CIT(A) is illegal and bad in law. The Ld. CIT(A) has erred both on facts and Saw. It is submitted that it may be held so now
2. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in adding unexplained receipt of Rs.6,64,029/-. Under the facts and circumstances of the case, loss being genuine, ought to have been allowed.
3. Both the lower authorities have erred in law and on facts of the case in confirming the addition without appreciating facts of the case.
4. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been

*considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

5. *The Ld. CIT(A) has erred in [law and on facts of the case in confirming action of the Ld. AO in levying interest under Section. 234A/B/C of the Act.*

6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty proceedings under Section. 274 r.w.s. 271(1)(c) of the Act.*

7. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. The brief fact of the case are that the assessee, Unique Enterprises, filed its return of income for A.Y. 2015-16 on 27.09.2015, declaring total income of Rs.3,35,830/- on turnover of Rs. 1,31,99,689/-. While passing the order under Section 143(3) of the Act 1961 on 04.09.2017, the Ld. Assessing Officer made addition of Rs.35,73,304/- to the income returned by the assessee and computed income from Business & Profession at Rs.39,09,130/- as against total income of Rs.3,35,830/- returned by the assessee. The addition was because there was difference in receipt as per profit and loss account and as per 26AS as on date of passing the order.

4. In appeal, an amount of Rs.29,09,275/- was deleted by Ld. CIT(Appeals). The assessee is in appeal before the ITAT for the balance amount of Rs.6,64,029/- sustained by Ld. CIT(Appeals). Ld. CIT(Appeals) made the following observations while passing the order:

*“6.4 During the appellate proceedings, the appellant has challenged the findings of the AO and has submitted reply along with documentary evidence in support of its contention with regard to turnover mismatch. The appellant has furnished the copy of revised 26AS of M/s Pareshwaer Infra wherein the mistake of the alleged turnover has been rectified. The AO in his remand report has examined the correctness of additional evidence and TDS reconciliation as submitted by the appellant. The AO has reported that as per latest TDS Conciliation (after due rectification has been done in 26AS in the case of M/s Pareshwaer Infra) still there is difference of Turnover amounting to Rs. 664209/-. The AO has commented that the appellant's claim to the extent of wrong reporting of M/s Pareshwaer Infra can only be entertained. Further it is also seen that appellant has not been able to substantiate its claim with respect to two other entities namely Balram Developers and Tejaswi Construction with respect to wrong reporting of sales turn over. Considering the factual explanation and*

*totality of the case, the sales turnover as evidenced from the revised 26AS with respect to M/s Pareshwaer Infra is accepted. Therefore AO is directed to give relief to the appellant to the extent of Rs. 2909275/- and the balance of Rs. 664029/- is confirmed. Therefore **this ground of appeal is partly allowed.***

7.0 *In the result, the appeal is **partly allowed.***”

5. Before us, the Counsel for the assessee submitted that the Ld. Assessing officer had made addition as the difference between turnover as per 26AS and as per turnover stated in Profit & Loss account could not be explained by assessee before the Ld. A.O. The Ld. Counsel for the assessee submitted that in the remand report of Ld. A.O. before Ld. CIT(Appeals), the AO wrongly stated that so far as the assessee's claim with respect to two other entities/persons viz. Balaram Developers and Gaurang Yogeshbhai Shah, Proprietor of Tejsvi construction is concerned, no documentary evidences have been furnished by the assessee and no corrections are noticed in the Form 26AS. The Counsel for the assessee submitted that the assessee had sold goods worth Rs.5,08,400/- to Balaram Developers in the assessment year 2015- 16. There was a dispute regarding quantum of the bill. The purchaser Balaram Developer had made provision for the bill of Rs. 5,08,400/- in A.Y. 2015-16 while the assessee had accounted for the said amount in A.Y. 2016-17, after the bill was finalized. To substantiate the accounting of the bill in next assessment year i.e. A.Y. 2016-17, the assessee submitted before us profit and loss account, ledger account of the construction income and computation of total income. (Annexure 3 to 6 of the paper book). The Counsel for the assessee submitted before us that if this amount of Rs.5,08,400/- is excluded, there is difference of only Rs. 39,020/- which is credited by Balaram Developers to the account of assessee. The Assessee is not aware of the excess amount so credited by

Balaram Developers. (Ledger copy of A.Y. 2015-16 & 2016-17 was produced before us for our records at Annexure 7 of the paper book). The Counsel for the assessee submitted that the next difference is of Rs. 2,48,924/- being excess credit amount returned by Tejsvi Construction (Proprietor Gaurang Yogeshbhai Shah). The assessee is neither aware of excess amount returned by Tejsvi Construction nor has this sum been received by the assessee. It was submitted that the assessee does not have control over the Tejsvi Construction, so he is not responsible for the incorrect entries made by Tejsvi Construction in its books of accounts, though the assessee has not received this amount at all (the Counsel for the assessee submitted Ledger copy of A.Y. 2014-15 & 2015-16 at Annexure 7 & 8 of Paper-Book). Accordingly, the Counsel for is submitted before us that the assessee has been able to provide complete difference of the alleged mismatch in the income in the books of accounts and as per the return filed by assessee.

6. In response, DR placed reliance on the observation made by the Ld. CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the Remand Report of the assessing officer submitted before Ld. CIT(Appeals), wherein the Assessing Officer has stated that additions with respect to the aforementioned parties may be confirmed in the hands of the assessee, only on the ground that no documentary evidence have been furnished by the assessee and no corrections are noted in form 26AS:

- 5-

*“As regards the assessee’s claim that two other entities/person viz. Balaram Developers and by Gaurang Yogeshbhai Shah, Prop of Tejsvi Construction, also had wrongly reported the amounts received by the assessee, no documentary evidences have been furnished by the assessee and no corrections are noticed in the Form 26AS. Hence, the assessee’s claim to the extent of the wrong reporting by Pareshwar Infra can only be entertained.”*

8. However, looking into the instant facts, the documentary evidence placed on record before us, we are of the considered view that the assessee has been able to explain the alleged mismatch and the additions in our considered view, are not sustainable in the hands of the assessee/appellant. Accordingly, the appeal of the assessee/appellant succeeds.

9. In the result, the appeal of the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>20/05/2024</b>
---	-------------------

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 20/05/2024

TANMAY, Sr. PS

**TRUE COPY**

**आदेश क तलम अत/Copy of the Order forwarded to :**

1. अपीलाथ / The Appellant
2. तयथ / The Respondent.
3. संबंघत आयकर आयुत / Concerned CIT
4. आयकर आयुत(अपील) / The CIT(A)-
5. त्रभागीय तलम, आयकर अपील त्र अधकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गाडफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपील त्र अधकरण, अहमदाबाद / ITAT, Ahmedabad