

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.132/Ahd/2022  
निर्धारण वर्ष /Assessment Year : 2017-18

Aadhya Infrastructure C/202, Manorath Complex Nr.Jalaram Nagar B/h. Mothers School Gotri Road Vadodara - 390 021 (Gujarat) PAN: AAYFA 4505 C	<u>बनाम/</u> <u>v/s.</u>	The Pr.CIT Vadodara -1
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AND

आयकर अपील सं/ITA No.133/Ahd/2022  
निर्धारण वर्ष /Assessment Year : 2017-18

Aadhya Reality 10, Gopal Nagar Gotri Vasna Road Vasna Vadodara - 390 007 (Gujarat) PAN: AAZFA 3693 G	<u>बनाम/</u> <u>v/s.</u>	The Pr.CIT Vadodara-1
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<b>पीलार्थी/ (Appellants)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee(s) by :	Ms. Urvashi Sodhan, AR
Revenue by :	Shri Prithviraj Meena, CIT-DR

सुनवाई की तारीख/Date of Hearing : 09/10/2024  
घोषणा की तारीख /Date of Pronouncement: 17/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These two appeals, filed by Aadhya Infrastructure and Aadhya Reality (hereinafter referred to as "the assessee-firms"), are directed against the

revision orders dated 21/03/2022 & 26/12/2022 respectively passed by the Principal Commissioner of Income Tax (hereinafter referred to as "PCIT"), Vadodara-1, under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Since the facts and issues involved in both the appeals are identical, they are being disposed of by this consolidated order for the sake of convenience. Both the appeals challenge the revisionary jurisdiction exercised by the Ld.PCIT, contending that the scrutiny assessment orders passed by the Assessing Officer (hereinafter referred to as "AO") under Section 143(3) for the Assessment Year (AY) 2017-18 were neither erroneous nor prejudicial to the interests of the Revenue.

**Facts of the Case:**

2. The assessee-firms, both engaged in the business of real estate development, filed their returns of income for AY 2017-18. A survey action under Section 133A of the Act was conducted on 30.08.2016 at the business premises of both assessee-firms. During the survey, the respective partners of the firms admitted undisclosed income arising from unrecorded receipts. These amounts were included in their respective returns of income. The case of both the assessee-firms was selected for scrutiny assessment, and the AO passed orders accepting the returned income of the assessees without any modification. Following are the tabulated details of the assessment:-

<b>Particulars</b>	<b>AADHYA REALITY</b>	<b>AADHYA INFRASTRUCTURE</b>
<b>Assessment Year (AY)</b>	2017-18	2017-18
<b>Status</b>	Firm	Firm
<b>Date of Return Filing</b>	27/10/2017	23/09/2017

<b>Income Declared in Return</b>	Rs.3,20,77,040/-	Rs.1,02,52,730/-
<b>Income Assessed</b>	Rs.3,20,77,040/-	Rs.1,02,52,730/-
<b>Survey Action u/s 133A</b>	Conducted on 30/08/2016	Conducted on 30/08/2016
<b>Undisclosed Income Admitted by Partner</b>	Rs.3,00,14,000/- (Partner: Shri Ashwin Naranbhai Patel)	Rs.1,00,20,000/- (Partner: Shri Hitesh C. Patel)
<b>Undisclosed Income Offered in return of income</b>	Rs.3,00,14,000/-	Rs.1,00,20,000/-
<b>Order Passed u/s</b>	143(3)	143(3)
<b>Date of Assessment Order</b>	26/12/2019	26/12/2019
<b>Penalty Proceedings Initiated</b>	u/s 270A for underreporting of income	u/s 270A for underreporting of income

2.1. Later on, the PCIT, in both cases of Aadhya Reality and Aadhya Infrastructure, determined that the AO failed to conduct proper verification regarding the nature and source of the undisclosed income admitted during the survey under Section 133A of the Act. Specifically, the PCIT, observed that the AO accepted the undisclosed income as part of regular business receipts without investigating whether it was unexplained cash receipts under Section 69A of the Act. The PCIT also observed that the undisclosed income was taxed at the normal rate of 30%, instead of the higher rate of 60% under Section 115BBE of the Act, which applies to income covered under Sections 68 to 69D of the Act. By failing to tax the undisclosed income under Section 69A and at the higher rate prescribed by Section 115BBE of the Act, the AO's omission led to a potential revenue loss, which renders the assessment order prejudicial to the interests of the Revenue. This is the

primary basis for the PCIT invoking revisionary jurisdiction under Section 263 of the Act. The PCIT pointed out that the AO did not conduct a sufficient inquiry into the cash receipts that were declared as undisclosed income during the survey. The PCIT also pointed out that the AO did not verify the source of the cash receipts, call for details or confirmations from persons from whom the cash was allegedly received and examine whether these cash receipts were business receipts or unexplained money, which would determine the appropriate tax treatment under Section 69A of the Act. The PCIT noted that the AO did not examine the possible violations of Section 269ST of the Act and whether penalties under Section 271DA of the Act should be levied for the same violation. The PCIT further noted that since the assessee had received substantial amounts in cash, it was incumbent upon the AO to inquire whether these transactions violated the newly inserted provisions. The PCIT set aside the assessment orders and directed the AO to conduct fresh assessments after making the necessary inquiries and verifications. The AO was also instructed to consider the provisions of Sections 69A, 115BBE, 269ST, and 271DA of the Act, while passing the revised orders.

3. Aggrieved by the order(s) of the PCIT, both the assesseees are in appeal(s) before us with following common grounds of appeal:

1. *Ld. PCIT Vadodara-1 erred in law and on facts revising a scrutiny assessment order which is neither erroneous nor prejudicial to the interest of revenue.*
2. *The action of Ld. PCIT revising an order passed after extensive verification of the details on record is without any justification to invoke revisional jurisdiction.*
3. *Ld. PCIT erred in law and on facts holding order erroneous that was framed without any inquiry or verification to examine whether the cash receipts as noted in the impounded documents and admitted during survey proceedings were in*

*the nature of business receipts by calling for the details of identity, confirmation of the persons from whom cash has been received.*

4. *Ld. PCIT erred in law and on facts in passing impugned order on the alleged ground of possible violation of Sec. 269ST and 274DA inserted w.e.f. 01.04.2017.*
5. *Ld. PCIT erred in law and on facts revising scrutiny assessment order relying on Hon'ble Delhi high court judgments on completely different set of facts.*

*Your appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal before the appeal is heard and decided.*

4. During the course of the hearing before us, the Authorised Representative (AR) of the assessee submitted that neither of the assessee-firms were engaged in any other business from which the undisclosed income could have been generated. The AR emphasized that the partners of both firms, in their recorded statements, unequivocally admitted that the undisclosed receipts were solely related to the respective business activities. Furthermore, the AR highlighted that the source of these unaccounted receipts was fully explained during the statements recorded in the survey, confirming that the amounts were received from members involved in the project, the list of which was provided to the AO along with the financial statements. The AR also asserted that the assessee firms had duly incorporated the income disclosed during the survey into their respective profit and loss accounts, and that their books of accounts had been audited in accordance with the provisions of the Act.

4.1. The AR argued that after going through the details AO has taken a plausible view and has passed the order by treating income disclosed during survey as business income, therefore his order is not erroneous. The AR placed reliance on the judgement of **Hon'ble Jurisdictional High Court in PCIT Vs. Dharti Estate [2024] 163 taxmann.com 179 (Gujarat).**

5. The Departmental Representative (DR), on the other hand, stated that the AO has not made any inquiry into the receipts of cash and whether such receipts are in violation of provisions of 269ST of the Act. The DR also stated that the details were available with the AO and still he failed to enquire into the source of cash receipts. The DR relied on the order of the PCIT.

7. We have heard the contentions put forth by the learned AR for the assessee-firms, as well as the arguments advanced by the learned DR on behalf of the Revenue. We have also carefully perused the assessment orders, the impugned revisionary orders passed by the PCIT under Section 263 of the Act, the grounds of appeal, and all other material available on record. Upon careful consideration of the facts and submissions, it is evident that the core issue for adjudication revolves around the validity of the revisionary jurisdiction exercised by the PCIT in revising the assessment orders passed under Section 143(3) for Assessment Year (AY) 2017-18. The central question is whether the AO erred in treating the undisclosed income admitted during the survey under Section 133A of the Act as business income, without conducting further inquiries into the source of the receipts or considering the provisions of Sections 69A, 115BBE, and 269ST of the Act.

7.1. After considering the facts of the case and the arguments presented by both parties, we find that the AO made sufficient inquiries during the original assessment proceedings. The undisclosed income admitted during the survey was included in the profit and loss accounts of the assessee firms, and the submission before PCIT clearly indicated that the receipts related to business activities (i.e., extra work, development charges, and maintenance charges). Furthermore, the cash receipts were in multiple transactions, each of which

did not exceed Rs.2 lakh per transaction, as required by Section 269ST of the Act. The assessee had already provided this information to the PCIT during the revisionary proceedings, confirming that the receipts did not violate Section 269ST of the Act. The PCIT did not present any evidence to contradict the assessee's explanation, and therefore, the invocation of Section 263 on the ground of potential Section 269ST of the Act violations was based on conjecture rather than facts.

7.2. Moreover, the reliance placed by the AR on the **Hon'ble Gujarat High Court's judgement in the case of Dharti Estate** is valid. In that case, the court held that if the AO has made adequate inquiries and treated the undisclosed income as business income, the revisionary powers under Section 263 of the Act cannot be invoked simply because the PCIT holds a different view. This legal principle applies here, where the AO took a plausible view after considering the evidence and treating the undisclosed income as business income.

7.3. Regarding the application of Section 115BBE of the Act, the AO correctly assessed the undisclosed income at the normal rate since it was explained and connected to business receipts. There was no basis for taxing the income at the higher rate of 60% under Section 115BBE of the Act, as the income was neither unexplained under Section 69A nor considered unexplained investments.

7.4. Therefore, in light of the Dharti Estate judgment and the facts of the present case, we find that the PCIT erred in invoking Section 263 of the Act. The AO made adequate inquiries during the assessment proceedings and

correctly treated the undisclosed income as business receipts. The accounts were audited under the Act, and there were no adverse comments from the auditor regarding the financial statements. The undisclosed income was duly incorporated into the profit and loss accounts, and the explanation provided by the assessee firms regarding the cash receipts was valid. The cash transactions did not exceed Rs.2 lakh per transaction, in compliance with Section 269ST of the Act, and no evidence of any violation was presented.

7.5. The AO exercised a plausible and legally valid view in treating the undisclosed income as business income and taxing it at the normal rate. The revisionary jurisdiction under Section 263 of the Act cannot be invoked merely because the PCIT holds a different view.

7.6. Accordingly, the assessment orders passed by the AO were neither erroneous nor prejudicial to the interests of the Revenue. The appeals filed by the assesseees are allowed, and the revision orders under Section 263 of the Act are quashed.

8. In the combined result, the appeal(s) of the assessee(s) in ITA No.132/Ahd/2022 for AY 2017-18 & ITA No.133/Ahd/2022 for AY 2017-18 both are allowed.

**Order pronounced in the Open Court on 17<sup>th</sup> October, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 17/10/2024

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

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 Pr.CIT, Vadodara-1
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad