

**THE INCOME TAX APPELLATE TRIBUNAL
SURAT "SMC" BENCH, SURAT**

Through Hybrid Mode

Before Ms. Suchitra Kamble, Judicial Member

ITA No. 539/Srt/2025 Assessment Year 2010-11

M/s. SM Construction, 101-AL Amir Appt, Ghod Dod Road Parle Point, Surat PAN: AALFS5218F (Appellant)	Vs	The Income Tax Officer, Ward-1(3)(1), Surat (Respondent)
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Assessee by: Shri Viral Marfatia, A.R.

Revenue by: Ms. Jayshree Thakur, Sr. D.R.

Date of hearing : 24-12-2025

Date of pronouncement : 29-01-2026

आदेश/ORDER

This is an appeal filed against the order dated 30-01-2024 passed by CIT(A)/Addl/JCIT(A), Kolkata for assessment year 2010-11.

2. The grounds of appeal are as under:-

"(1) That, the Assessment Order made by the Assessing officer and confirmed by the LD. ACIT/JCIT is bad in law/facts, illegal, without jurisdiction, and needs to be quashed.

(2) That the addition made by Assessing Officer and confirmed by Ld. ACIT/JCIT is outside the purview and thus it is bad in law/facts, illegal, without jurisdiction, and needs to be quashed.

(3) That, the learned Assessing Officer has erred and upheld by LD. ACIT/JCIT by making addition of Rs. 11,62,183/- as Unaccounted Income being difference in 26AS Receipt (Rs. 57,22,261/-) and Form No. 16 (Rs. 68,84,444/-). Thus, order

passed by the learned Assessing Officer u/s. 143 r.w.s 147 and upheld by LD. ACIT/JCIT is bad in law and void ab initio. Order Issued is not in accordance with the law especially since he has grossly erred in not specifying under which section addition was made.

(4) That, the Assessing officer failed to appreciate the facts of the case in the right perspective and order is issued without considering the reply of appellant, without issuing speaking order. Order issued was against the natural justice and need to be deleted.

(5) That, without prejudice to above, an addition of Rs.275,378 being 4 per cent of Rs. 68,84,444 is made while an addition of Rs. 11,62,183 is already made as above besides 12 percent of the same comes to Rs.139,620 and not Rs.275,378. Thus, assessing officer duly confirmed by LD. ACIT/JCIT grossly erred in issuing order on addition made on estimated basis.

(6) That, the LD. ACIT/JCIT grossly erred in confirming duplication of addition as stated above like the difference of Rs. 11,62,183/- you have proposed to be added as income and again resorting to Sec. 44AD you have made addition of Rs. 2,75,378/- being 4 percent of Total Receipt of Rs. 68,84,444/-.

(7) That, the Appellant reserves its right to add, alter, modify or delete any of the Grounds of Appeal hereunto taken before.”

3. The assessee filed return of income for A.Y. 2010-11 declaring total income at Rs. 2,71,376/- on 21-04-2017 in response to the notice u/s. 148 of the Act. The A.O. observed that the assessee has not filed its return of income for A.Y. 2010-11 and received contract receipt of Rs. 57,22,261/- as per 26AS report. The A.O. declared the profits and gains of business u/s. 44AD of the Income Tax Act as per serial no. 33 of the schedule BP of the Income Tax Return filed. Thus, the assessee has shown gross contract receipts by the Dawat Property Trust amounting to Rs. 57,22,261/-. The assessee has received total credit of Rs. 68,84,444/- as per bank stamen of Surat Peoples Co-

operative Bank Ltd. The A.O. issued show cause notice to the assessee and called upon the details related to the loan taken or receipt of any advances was receivables received in the A.Y. 2010-11. The A.O. also issued notice u/s. 133(6) of the Act to M/s Dawat Property Trust on 18-07-2017 requiring the assessee to submit the transactions made with the said trust. The said details are not received by the A.O. and therefore assessee was called upon to produce trustee of Dawat Property Trust to verify the business transaction between the assessee and Dawat Property trust. But the assessee failed to do so. Therefore, the A.O. made addition of Rs. 11,62,183/- on account of unaccounted income of the assessee as well as addition of Rs. 2,75,378/- on account of difference of profit as estimated at 12%.

4. Being Aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that the return of income for the A.Y. 2010-11 was kept due to mismatch in entries i.e. gross amount as well as TDS amount of 26AS and Form No. 16A. The assessee has given the details in his statement of facts before the Tribunal thereby stating that there was a wrong entry u/s. 194J of Rs. 45,000/- on 18-03-2010 and 24-03-2010. Later on this was rectified by the Deductor-contractee on regular follow up by the assessee. Despite the regular and continuous follow up with the concerned authority, no resolution or updation was done by the Deductor-contractee up to 15-10-2010 i.e. extended date of filing of income tax return u/s. 44AD for A.Y. 2010-11. On 25-

11-2010, to file the return, Form no. 26AS was obtained. The assessee to check for resolution/updation of records, but there was no correction by the Deductor-contractee. The difference of Rs. 11,62,183/- in 26AS Form No. 16 due to technical glitches and cannot form basis for addition of unaccounted income. The ld. A.R. further submitted that on account of estimated profit is again an arithmetic mistake of the A.O. and in fact the assessee is being taxed twice. The ld. A.R. further submitted that the assessee has no control over the data base of the Income Tax Department as is reflected in Form No. 26AS and at best the assessee could do it to offer bonafide explanation for these differential which the assessee did in the present case. The ld. A.R. submitted that the A.O. as well as CIT(A) has not taken cognizance of the same and also made the estimation on profit at 12% which is not correct.

6. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that there is a delay of 370 days in filing the present appeal for which the assessee has given the affidavit stating the reason that the legal consultant has not taken a prompt action for filing the present appeal. Thus, the delay was not deliberate on the part of the assessee but because of the earlier legal consultant. The reason for delay appears to be genuine, hence the delay is condoned. The assessee has given details of the technical glitches because of which the deed of Rs. 11,62,183/- has been reflected wrong amount and the

amount shown in Form 16 and amount shown in 26AS was different. This appears to be not properly verified either by the A.O. as well as by the CIT(A). The Dawar Property Trust and its contractee receipts though shown to the Assessing Officer has not been taken into account. But the fact remains that no response from the said parties received by the A.O. Therefore, it will be appropriate to remand this matter back to the file of the A.O. for proper verification of the technical glitches as mentioned by the assessee as well as the details from Dawar Property Trust. The A.O. is therefore directed to adjudicate the issue after verifying the details and the parties concerned. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29-01-2026

Sd/-
(Suchitra Kamble)
Judicial Member

a.k.

Ahmedabad : Dated 29/01/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Surat
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Surat