

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘SMC’  
[Conducted through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 48/Ahd/2019

निर्धारण वर्ष/Assessment Year: 2015-16

Shri Hardik Mahendrabhai Patel(Prop. Of first care Corporation) A-355, Ghanshyamnagar Nr.Nobal Nagar Kubernagar Ahmedabad. PAN : AMHPP 3106 H	Vs	ITO, Ward-7(2)(2) Ahmedabad.
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Written Submissions
Revenue by :		Shri Urjit Shah, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/11/2021

घोषणा की तारीख /Date of Pronouncement : 9 /11/2021

**ORDER**

Present appeal is directed at the instance of assessee against order of Id.CIT(A), Ahmedabad-6 dated 28.11.2018 for Asstt.Year 2015-16.

2. In the appeal memo, the assessee has raised two grounds including sub-grounds, which supports the main ground. In the first ground, the grievance of the assessee is that the Id.CIT(A) has erred in sustaining addition of Rs.5,62,893/- on the ground of undisclosed contract receipts, despite alternative submission of the assessee that the Id.CIT(A) ought to have atleast restricted the addition to 8% of the

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undisclosed contracts receipts as per the provisions of section 44AD of the Income Tax Act, 1961.

3. A brief facts in this regard are that the assessee is a proprietor of "First Care Corporation" and engaged in the business of providing manpower supply services and also derives income from remuneration from Ask Me LAB Con Services P.Ltd. The assessee has e-filed his return of income on 29.10.2016 declaring total income of Rs.11,58,840/-. The case of the assessee selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. During the assessment proceedings, the Id.AO noticed difference in gross receipt of contract income as showed in the Form No.26AS and Audit report submitted by the assessee. In other words, as per Form No.26AS total receipt of contract income from various parties during the financial year 2014-15 was Rs.27,09,34,480/-; whereas as per audit report it was Rs.27,03,71,588/-; thus there was undisclosed receipt of Rs.5,62,893/- being the differential amount. The Id.AO sought explanation from the assessee in this behalf. The assessee vide reply letter dated NIL did not dispute the same and agreed to add back the differential amount to the total income of the assessee. On that basis, the Id.AO made the impugned addition. However, the impugned addition was challenged by the assessee before the first appellate authority by pleading that the Id.AO ought to have restricted the additions to the extent of profit element embedded in the undisclosed receipts, and not the entire undisclosed receipts. The Id.CIT(A) did not accept this contention of the assessee and held that since the assessee has

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conceded the factum of difference in gross receipts as reflected in the Form NO.26AS and audit report, and since being agreed to add back the same to the total income, then there was no merit in this contention of the assessee. The Id.CIT(A) accordingly confirmed order of the AO on this issue. Now, the assessee is in second appeal before the Tribunal.

4. Heard the Id.DR and gone through the material available on record. In response of notice of hearing no one has come present on behalf of us. However, Shri Ajit Sandesara has filed written submissions, which has been taken on record. According to the assessee, there was difference in the gross receipts in the audit report as well as reported in form no.26AS; when this discrepancy was brought to the notice of the assessee, the assessee has agreed for addition of the differential amount in the total income. However, before the Id.CIT(A) he disputed its inclusion on gross basis. Similarly, before the Tribunal, it has been pleaded by the assessee that only element of profit embedded in the gross receipt be considered. The assessee has also submitted details of net profit disclosed by him in the year which ranges in between 1.22% to 0.91% in the Asstt.Year 2013-14 to 2015-16. Before the Id.CIT(A), the assessee has relied upon decision of Hon'ble Gujarat High Court in the case of CIT Vs. Pesidnet Industries, 258 ITR 654 as well as other decisions of the Tribunal, to buttress his contentions that only element of profit embedded in such receipts be added to the total income. After perusal of these records, I am of the view that the assessee agreed before the AO for the addition of this amount in the total income. Before the Id.CIT(A), the assessee agitated addition of

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entire amount, but the Id.CIT(A) did not accept contentions of the assessee. The element of profit involved in unaccounted receipts is to be calculated and added in the total income in case it is ascertained that expenditure allocable to such unaccounted receipts are also unexplained, and not claimed in the regular accounts. Here is a case where the assessee has debited all the expenditure in the audited accounts, but failed to account for the correct figure of the gross amount. The assessee has placed on record profit & loss account, but nothing in this regard has been pin-pointed in the written submissions. For example, if during the course of survey a document is found, which contained details of unaccounted receipts as well as expenditure, then, only element of profit involved in those unaccounted receipts is to be added to the total income of the assessee. This is not the case before me. Here the expenditure responsible for earning this differential amount has already been claimed by the assessee in the audited accounts. Therefore, total of the differential amount is to be added as the income of the assessee. I find no merit in this ground of appeal; it is dismissed.

5. Now comes second ground i.e. addition of Rs.10,69,021/- made by the AO by invoking provisions of section 36(1)(va) of the Act and confirmed by the Id.CIT(A) in respect of payment made towards employees' provident fund contribution.

6. With the help of the Id.DR, we have gone through the record. We find that both the Revenue authorities have found that the assessee has not deposited the employees' PF contribution within the due date prescribed under section 36(1)(va) of the Act. The Id.CIT(A) by relying

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upon the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Gujarat State Road Transport Corporation, held that employees' contribution in the Employees' Provident Fund deposited beyond the due date prescribed under section 36(1)(va) of the Act, would not be eligible for deduction under section 43B of the Act, even if it is deposited before the due date of filing of the return. On this issue, the ITAT, Ahmedabad Benches are consistently following the decision of jurisdictional High Court on this issue and disallowing such claims of assessee, and that being so, we do not find any infirmity in the order of Id.CIT(A) on this issue, more so, when nothing is placed before me whether the judgment of Hon'ble Gujarat High Court cited (supra) was overruled or not. Thus this ground stands rejected.

7. In the result, appeal of the assessee is dismissed.

**Pronounced in the Open Court on 9<sup>th</sup> November, 2021.**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**