

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

*(Convened through Virtual Court)*

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 802/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

<b>Ashokkumar Parshotamdas Solanki</b> Prop. of Shiv Shakti Construction Vankar Vas, At Manud, Post Manud, Manud, Patan, Gujarat 384265	<b>बनाम/ Vs.</b>	<b>ITO</b> Ward -1, Patan
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BCLPS4828L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Kalpesh Doshi, A.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri L. P. Jain, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	13/05/2021
घोषणा की तारीख /Date of Pronouncement	01/06/2021

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), Gandhinagar ('CIT(A)' in short), dated 06.11.2017 arising in the assessment order dated 28.12.2016 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. When the matter was called for hearing, the learned counsel for the assessee, at the outset, submitted that although several grounds have been raised, the solitary grievance is addition of Rs.77,00,063/- towards undisclosed sales on the basis of comparison made by the AO in relation to turnover declared by the assessee *vis-à-vis* turnover statedly reported in the prescribed form to the Service Tax Department.

3. As pointed out, the assessee is an individual and engaged in supply of labour for construction and allied activities in the name of proprietary concern M/s. Shiv Shakti Construction. The return of income for AY 2014-15 under consideration was filed declaring a turnover of Rs.58,67,316/- and a total income of Rs.4,87,000/-. It was submitted that the assessee is engaged in the business of supply of labour contract work and is duly registered with service tax department. It was contended that the assessee has rendered services within India only and earned income from supply of labour amounting to Rs.58,67,316/- only. However, the AO has recorded a finding that as per AIR information by Service Tax Department, the turnover is declared at Rs.1,35,67,379/-. The AO has thus alleged an amount of Rs.77,00,063/- as undisclosed income towards understatement of turnover to the Income Tax Department.

4. The learned counsel in this regard submitted that the wrong data in service tax return could be possibly due to clerical error by the Consultant while filing the service tax return as the online system of filing service tax return was introduced about that time. It was pointed out that the figure of export/exempt service is

wrongly mentioned by the Consultant due to uploading or typographical error as the assessee has provided only domestic taxable services within India and paid due taxes on the same. The learned counsel for the assessee referred to several documents, such as, balance sheet, P&L account, service tax return, bank statement etc. to support the bonafides of the error committed while filing the service tax return. It was finally submitted that the assessee cannot be taxed for the hypothetical income which was neither earned nor received on the solitary basis of an incorrect service tax return. Under the circumstances, it was urged that the matter be set aside to the file of the AO for suitable verification of the facts with the Service Tax Department to arrive at a benign view in the matter.

4. The learned DR for the Revenue relied upon the order of the AO but however expressed no objection to the proposal for fresh verification of facts before the AO.

5. On the basis of facts narrated above, we find adequate force in the plea of the assessee for setting aside the assessment order and remanding the matter back to the file of the AO for a fresh verification and consequently framing fresh assessment order after suitable verification of facts. The AO in our view should exercise his statutory powers and obtain information from the Service Tax Department towards turnover as well as the service tax recovery of alleged inflated turnover. It shall be open to the assessee to place all such evidences and materials before the AO to explain the alleged variance in the turnover in the *de novo* proceedings. The AO shall make such enquiry as may be considered expedient to examine the bonafides of the stand of assessee. The additions made are thus set aside and the AO is directed to determine the issue afresh in accordance with law after giving reasonable opportunity to

the assessee in this regard and after making such clarifications and examinations as may be considered expedient.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on 01/06/2021**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

Ahmedabad: Dated 01/06/2021

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

*S. K. SINHA*

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।