

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

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER**  
**AND**  
**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.307/Ahd/2017  
निर्धारण वर्ष/Assessment Year: 2013-14

Jatinkumar Amrutlal Shah 2, Sujay Apartments, Nr. Shalibhadra Flats, Ahmedabad-380007 PAN:AFAPS3001A	Vs	ACIT(Central Circle)-5(1) Ahmedabad
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Appellant by :	Shri M.S. Chhajed, AR
Revenue by :	Shri Vinod Tanwani, Sr. DR

सुनवाई की तारीख/Date of Hearing : 18/09/2019  
घोषणा की तारीख /Date of Pronouncement: 20/09/2019

**आदेश/ORDER**

**PER SHRI MANISH BORAD, A.M:**

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2013-14 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-5 (in short 'Ld.CIT(A)'], Ahmedabad dated 02.12.2016 which is arising out of the order u/s 143(3) of the Act, 1961 dated 28.03.2016 framed by ACIT, Ahmedabad.

2. The assessee has raised following grounds of appeal:

*“1.The order passed by the Ld CIT is without giving any opportunity to the appellant and hence same is against law, equity & justice.*

*2. The Ld. CIT(A) has erred in law and facts in upholding the order of the Ld. AO for disallowance of purchases of Rs.51,12,040/- treating it as bogus expenses.*

*3. The appellant graves leave to add, alter modify or amend any or all ground of appeal before final hearing.”*

3. Briefly stated facts as culled out from the records are that the assessee is an individual earning income from salary and capital gain. Return of income for A.Y. 2013-14 was e-filed on 30.01.2014, declaring income of Rs.21,75,220/-. Case selected for scrutiny followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. Assessing Officer during the course of assessment proceedings on observing that the assessee had shown income under the head of short term capital gain from sale of land claiming certain expenses relating to Boundary wall construction, land leveling etc. called for the details. The Land purchase account for F.Ys 2010-11, 2011-12 & 2012-13 was filed with supporting documents which included bills for purchase of cement, sand, bricks and labour charges. The Ld. AO further observed that the various bills were issued between January, 2011 to June, 2011 were settled in the month of June, 2012 which created doubts in his mind regarding genuineness of the expenses. Information was called from the Commercial Tax Department about the alleged supplier of goods. The assessee submitted before the Ld. AO that all the

bills are genuine and the parties are regular suppliers of building material. Request was also made to the Ld. AO to send the inspector to verify the claim of the assessee of having constructed Boundary wall and land leveling work. Ld. AO however, was not convinced and disallowed the claim of expenses paid to five suppliers totaling to Rs.51,12,040/- holding them to be bogus observing as follows:

*1. Generally in case of such type of work, the first stage is digging; thereafter the work of construction of wall and finally the work of plaster is being carried out. In the present case r lam assessee has first of all purchased 1020 bags of cement on 03.01.2011 and 620 bags on 04.02.2011 from M/s Mahavir Traders and 3700 Kg. TMT bar on 07.01.2011 from M/s Bhavi Trading Co. The assessee was not having any godown to store such large quantity of raw material. The purpose of such purchases is not clear as mansion work primary requires bricks, cement and Reti. The assessee has purchased bricks on 16.02.2011 for the first time and 12 trucks of Reti on 10.01.2011. In the meantime Varahi Contractor Co. has raised three bills totaling to Rs. 1,51,350/- upto 13.02.2011 for digging and construction work of 2018 Sq. feet. When the assessee was not in possession of bricks till 16.02.2011 how the work of construction was undertaken is beyond imagination. Moreover, no steel is required in construction of boundary wall.*

*2. The assessee himself has "admitted that the land was purchased by him on 07.02.2011 than in what capacity he started the work on this land prior to 14.01.2011 i.e. the date on which first bill has been raised by Varahi Contractor Co. in respect of completion of 670 Sq. feet digging and construction work. It is worthwhile to mention here that even the seller has purchased this land on 05.01.2011 i.e. after purchase of cement on 03.01.2011 by the assessee which clearly indicated that purchases are*

*bogus as they pertain to the period during which there were three owners of land.*

*3. A perusal of bills submitted by assessee in respect of labour, only one bill dated 23.05.2011 has mentioned of plaster work.*

*4. A perusal of bank account with Ahmedabad District Co-op Bank reveals that the assessee was having opening balance of Rs.4,179/- only and in the order to manage these alleged payments assessee has borrowed funds from Shri Jignesh S. Shah and instead of depositing the sale consideration in this account the assessee has opened a new bank account with State Bank of India on 21.06.2012 and too after getting Rs.10,000/- transferred from the account of Shri Jignesh S. Shah. Thereafter, Rs.3.24 crores out of sale consideration of Rs.3.46 crores has been transferred in the account of Shri Jignesh S. Shah Within the month of June 2012. This also creates a doubt about the genuineness of these expenses. The assessee had made payment after a period of almost one and half year, he should have waited for another fifteen days as he had received Rs.60 lacs out of sale consideration on 26.06.2013. There was no need to raise loan. It also give support to the conclusion that assessee had issued cheques only to reduce tax liability.*

*5. It is pertinent to note that even the entire labour payment have made after a laps of one and half year, the assessee has not paid even a single penny to any of the labour which is quite surprising. It is a well known fact that the labour class is a poor community and they are hand to mouth. Whatever they earn during a day, their family survives on that earning. They do not have past savings with them to meet out their expenses for a long period so they cannot wait for such a long period. The contention of the assessee that "the work of construction of boundary wall and land filling/leveling was assigned to Mr. Rajubhai Desai, a labour contractor with understanding to carry out all the work with requisite materials like bricks, sand, cement etc. and also labour work related with the said job, in turn he had provided all the bills of materials as well as labour with the instruction to make direct payment to the*

respective parties” also does not have any force as assessee has not placed anything on record to establish that work was carried out by middleman.

6. Even the concerns from which material has been purchase are not big dealer/wholesaler/authorized dealer of reputed companies rather they are retailers having no turnover/low turnover as informed by Commercial Tax Authorities. If they would have actually sold material to the assessee they also should not have waited so long for payment.

7. Looking to the quantity of bricks purchased, it does not seem possible that a retailer will have such huge quantity in his possession because it will require a lot of open space. If the assessee would have made purchase directly from the kiln than it will have been possible. It also created doubts above the genuineness of bills.

6. In view of above fact sand discussion, the payment as per details mentioned below alleged to be made different concerns is treated as bogus:

1. Arasuri Enterprise	Rs.4,676,625/-
2. Bhavi Trading Co.	Rs.1,50,180/-
3. Hariom Sales	Rs.20,47,500/-
4. Mahavir Traders	Rs.18,72,610/-
5. Varahi Contractor Co.	Rs.5,65,125/-
Total	Rs.51,12,040/-

Therefore, the amount of Rs.51,12,040/- is disallowed and added to the income of the assessee. The assessee has furnished inaccurate particulars of its income by claiming bogus expenses. In view of above facts, the penalty proceedings from furnishing inaccurate particulars of taxable income are being initiated u/s 271(1)(c) of the I.T. Act. 1961.

4. Accordingly, income assessed at Rs.72,87,260/- after making disallowance of bogus expenses/purchase at Rs.51,12,040/-.

5. Aggrieved assessee preferred an appeal before the Ld. CIT(A) but failed to succeed, as the view taken by the Ld. AO was confirmed by the Ld. CIT(A) observing as follows:

*“3.3. The AO has noticed that the assessee has declared income of Rs.20,07,255/- under the head short term capital gain. Further, by verification of details filed by the assessee the AO has noticed that the assessee had claimed huge expenses in the form of expenses incurred on cement purchase, sand purchase, bricks purchases and mati puran expenses. The AO has further noticed that all the bills were is used between January, 2011 to June, 2011 whereas payments to all the parties have been made in the months of June, 2012. The AO has made further inquiries to verify these expenses and letters were written to officers of commercial (trade) tax department. From the replies received in response to letter issued u/s 133(6) of the Act, The AO has observed that all the concerns from whom the assessee had obtain bills in respect of alleged purchases were engaged in the activity of issuing bogus bills and the commercial authorities after making detailed inquiries have cancelled their TIN number ab-initio. The AO has not accepted the reply of the assessee on the grounds stated in para-5 of the assessment order. The AO has disallowed an amount of Rs.51,12,0407- treating these expenses as bogus.*

*3.4. During the appellate proceedings, the appellant has contended that he has made purchases from 5 parties to do improvement on land sold. It is further contended that disallowance of land improvement expenses relying only on information collected from Commercial Tax Department and failure t& make purchases of materials in order of work required to be done ignoring explanations, facts and evidences filed during the assessment proceedings is not justified. It is further contended that the appellant has furnished required details of above suppliers including copies of invoices incorporating their VAT Registration Number and details of materials purchased from them for improvement cost claimed with reference to land sold during the year claimed as expenses while working out*

chargeable short term capital gain. The appellant has also contended that the AO has concluded that issuance of bill as colorful device for inflating expenses and further presumed that money have come back to the appellant after deducting certain amount of commission without bringing any clinching evidences on record that support said presumption on the part of the AO. It is also contended that the AO without pointing out any specific defect with reference to aforesaid evidences filed for land development expenses disallowed the expenses. It is also contended that the AO could have collected relevant details of construction directly from material suppliers and contractors for construction work done for which he has legitimate right. The has relied upon various judgments as reproduced in the preceding paras of this order.

3.5. The facts of the case and the submissions are considered. The AO has disallowed the expenses on the basis of inquiries conducted from the commercial tax (trade) officers and other circumstantial evidences as discussed in the assessment order. On the other hand the case of the appellant is that he has furnished all the relevant details and the AO has not made any independent inquiry before disallowing the said expenses. The appellant has claimed that he has incurred land development expenses in the form of cement purchases, sand purchases, bricks purchases and mati puran expenses which are genuine expenses. However from the details filed by the assessee during the course of assessment proceedings the AO has doubted genuineness of these expenses and made inquiries from the Officers of Commercial Trade Tax Department. The replies of these officers are part of the assessment order. From the replies it is clearly established that these parties from whom the assessee has shown purchases were engaged in the activity of issuing bogus bills. During the assessment proceedings, the AO has brought all these facts to the knowledge of the assessee and asked to justify these expenses. In response to that the assessee has simply stated that full details in this regard have been furnished with necessary supporting and these expenses are genuine

*one. It is important to mention here that on the basis of these details only the AO has doubted the genuineness of these expenses and made inquiries u/s. 133(6) of the Act. After getting the communication regarding the inquiries and the results thereof the assessee has not furnished anything further to prove the genuineness of these expenses. During the appellate proceedings the only contention made by the appellant is that the AO has not made any independent inquiries before disallowing the said disallowances. Once the AO has prima-facie found that certain expenses are not genuine and made further inquiries to verify the genuineness of those expenses and satisfied that these expenses are not genuine then the onus shifts to the assessee to prove the genuineness of those expenses. Here in the instant case the appellant has failed to discharge the onus. As the assessee has failed to prove the genuineness of these expenses, the disallowance made by the AO is justified and the same is confirmed.*

6. Aggrieved assessee is in appeal before the Tribunal.

7. Ld. counsel for the assessee referring to the paper book submitted that "Ld. Assessing Officer vide proceeding sheet dated 24.02.2016 asked the appellant to justify improvement cost in the light of details received from jurisdictional Commercial Tax Officer in respect of above suppliers. Appellant filed reply dated 25.02.2016, copy thereof filed with AO is attached herewith (page No.86) and stated that improvement expenses claimed are genuine expenses being statutory payments to Government, land leveling expenses and Boundary construction expenses with reference to land sold during the year. Appellant furnished documentary evidences like copies of Invoices for purchases of materials, Land Purchases Accounts

for the years 2010-11, 2011-12 and 2012-13, copies of relevant Expenses Accounts year wise, copy of Bank Statements with Ahmedabad District Co-op Bank Ltd from where appellant made payments for land improvement expenses. Copies of deed for purchases and sale of relevant land vide Annexure-VI of letter dated 26/08/2015 copy of said letter with Annexure-VI has been filed supra. AO again required appellant to establish genuineness of land improvement expenses. Appellant vide letter "dated' 21/03/2016 have furnished explanation and reiterated that Land improvement expenses are genuine incurred with reference to Capital Asset sold during the year. Copy of letter dated 21/03/2016 filed before AO is attached herewith (Page No. 87 to 88). Further, explained that land in question was 4 feet below the Road Level requiring level of 2 feet above Road as well as boundary wall to protect land from encroachment. Appellant also explained that normally type of work discussed above pertaining to land is carried out through reliable local labor contractors for proper and timely execution and avoiding loss of materials. He assigned land leveling and Boundary Work to local contractors with intension that issues of encroachment pertaining to land in question by owners of adjoining land, if any, can be set right without trouble. Hence said work was assigned to local contractor and he was shouldered responsibility of arranging materials at sight upon condition that purchases and. payment will be in the name of appellant and direct payment by appellant. Appellant stated that expenses are genuine Land Improvement expenses

requested to allow while determining chargeable STCG. AO without pointing out any defect with reference to afore said evidences filed for Land Improvement expenses, which proves that above expenses as non- genuine except presumption based on information received from jurisdictional commercial tax officer, disallowed out of land improvement expense. The disallowance out of land improvement expenses of Rs.51,12,040/- for computing chargeable STCG based merely on surmises and conjectures is not justified and deserves to be deleted.”

8. Further the Ld. counsel for the assessee took us through the ledger account for construction of material, copy of invoices, copy of purchase deed, sale deed, bank statement from where the payments were made, photographs of the work done on the alleged land in support of his contention that expense claim was genuine.

9. Ld. Departmental Representative (DR) vehemently argued supporting the finding of both the lower authorities and also submitted that burden to prove genuineness of expense was on the assessee and none of the suppliers appeared before the Ld. AO.

10. We have heard rival contentions and perused the record placed before us. The sole grievance of the assessee is against the finding of Ld. CIT(A) confirming the disallowance of purchase of Rs.51,12,040/- for treating them as bogus. We observe that the assessee has shown income under the head of

short term capital gain from sale of land. Land was purchased during the F.Y. 2010-11 and the assessee claimed various expenses for the construction of Boundary Wall, land leveling expenses, Ahmedabad Municipal Corporation (AMC) charges, registration fees and stamp duty which were incurred during three Financial Years 2010-11, 2001-13 & 2012-13. The transaction of purchase of sale of land is not in dispute. It is only the expenses on building material and labour charges paid to following five parties which are in dispute before us:

1. Arasuri Enterprise	Rs.4,676,625/-
2. Bhavi Trading Co.	Rs.1,50,180/-
3. Hariom Sales	Rs.20,47,500/-
4. Mahavir Traders	Rs.18,72,610/-
5. Varahi Contractor Co.	<u>Rs.5,65,125/-</u>
<u>Total</u>	<u>Rs.51,12,040/-</u>

11. The assessee in order to claim that all the expenses claimed and paid to the above parties are genuine has filed ledger account of construction material for all the three years, copy of invoices of all the parties, bank statement through which the payments has been made and the details about the contractor who carried out the work.

12. In respect of the parties which have shown Tax Identification No.(TIN) in their bills. Ld. AO called information from the Commercial Tax Department. As far as the identity of the alleged suppliers is concerned there was an assessee favouring report from the Commercial Tax Department but with regard to the sales turnover it was not matching with the sales shown by

these suppliers. This was the main reason which created doubts in the mind of the assessing authority. However, the assessee placed all the documentary evidences before the Ld. AO along with photographs of the land and the work carried out thereon. It was specifically requested during the assessment proceedings by the assessee to the Ld AO to depute inspector for site visit so that the issue relating to genuineness of development expenses can be resolved but the request was declined by the Ld. AO. No summons was issued to the alleged suppliers of the Ld. AO directly and only report of Commercial Tax Department was taken as the basis.

13. We further observe that Ld. AO failed to consider the fact that all the payments were made through account payee cheques. After receiving respective bills issued by the parties as well as a contractor it was incumbent on the Ld. AO to carry out the investigation by summoning the suppliers. In the body of the assessment order Ld. AO observed that the alleged suppliers are small retail suppliers hardly having the capacity to store the building materials. We find such remarks to be very general and casual with no homework.

14. As far as the claim of the assessee is concerned, apart from placing the copy of invoices, ledger account, bank statement and few photographs, the assessee could not file any confirmation from the alleged suppliers. In the sale deed also there is no mention about the Boundary Wall, land leveling work carried out which could have justify the assessee's claim.

No valuation report was filed. Payments for various expenses made after a period of 12 months also raises doubts. However, merely for the payments being late and the suppliers having retail business, and not produced before the Ld. AO cannot be a sound basis to disprove the claim of expenses made by the assessee.

15. We, therefore, in the given facts of the case, and being fair to both the parties, are of the considered view that sustaining of disallowance @ 15% of the alleged amount of Rs.51,12,040/- will meet the end of justice. We accordingly, order so and confirm the disallowance of expenses at Rs.7,66,806/- and partly allow assessee's appeal.

16. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the Court on 20 .09.2019.**

**Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER**

**Sd/-  
( MANISH BORAD)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 20 /09/2019

*Patel, P.S*

**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 CIT(A)- XV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,  
ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad