

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

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

1. आयकर अपील सं./ITA No.1012/Ahd/2015
 2. आयकर अपील सं./ITA No. 298/Ahd/2019
- (निर्धारण वर्ष/Assessment Year : 2011-12)

Ashirwad Developers Dev Residency Opp. Nirman House New S.G. Road, Gota Ahmedabad – 382 481`	बनाम/ Vs.	The DCIT Circle-9 Ahmedabad- 380 015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQFA 3704 M		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Manish J. Shah, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri Vedanshu Tripathi, Sr.DR

सुनवाई की तारीख/ Date of Hearing	03/12/2020
घोषणा की तारीख/Date of Pronouncement	04/01/2021

आदेश / O R D E R

PER PRADIP KUMAR KEDIA, AM:

The captioned appeals filed at the instance of the assessee are against the separate orders of the Commissioner of Income Tax(Appeals)-4, [CIT(A) in short] dated 03/03/2015 & 19/12/2018 in the matter of assessment order under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 11/03/2014 in quantum appeal and penalty order under s.271(1)(c) of the Act dated 27/02/2017 relevant to Assessment Year (AY) 2011-12.

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2. At the time of hearing, it was informed to the Bench that the appeal of the assessee in ITA No.1012/Ahd/2015 for AY 2011-12 concerns additions/disallowances in quantum proceedings, whereas the other appeal of the assessee in ITA No.298/Ahd/2019 for AY 2011-12 concerns imposition of penalty under s.271(1)(c) of the Act on the additions/disallowances made in the quantum proceedings. It was thus informed that both the appeals being inter-connected and integral to each other on facts, it will be expedient to hear both the appeals together for their simultaneous disposals. Consequently, both the appeals were heard together and are being disposed of by this common order.

ITA No.1012/Ahd/2015 – AY 2011-12 (quantum appeal):

3. As per the grounds of appeal, the assessee has challenged the action of the CIT(A) in sustaining the disallowances of Rs.46,44,514/- incurred towards job-work/labour work expenses.

4. Briefly stated, the assessee is a Builder and Real Estate Developers. The assessee filed return of income declaring total income of Rs.1,12,04,240/- for the AY 2011-12 which was subjected to scrutiny assessment. In the course of the assessment proceedings, it was noticed by the Assessing Officer that assessee has *inter alia* claimed expenses of Rs.46,44,518/- on account of job-work/labour work paid to one Shri Kailash Sukhlal Mandal. To verify the genuineness of the aforesaid expenses, notice under s.133(6) of the Act was issued to be aforesaid party seeking details in relation to the aforesaid work and payments

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received by him. Notice under s.133(6) of the Act was returned unserved and incomplete reply was filed thereafter. To support the expenses claimed, the assessee, on its part, filed a copy of ledger account of contractor Shri Kailash Sukhlal Mandal. Certain reply of the contractor was also stated to have been received by the Assessing Officer in the course of proceedings. The Assessing Officer observed that the contractor (Shri Kailash Sukhlal Mandal) has committed default and not filed return of income for AY 2011-12. The return for AY 2012-13 was also filed by the contractor after the issuance of notice to the contractor. The Assessing Officer observed that while the assessee has submitted copy of bills, copy of ledger account of the contractor, it has failed to prove the genuineness of the expenses and thus failed to substantiate the claim made.

5. The Assessing Officer thus rejected the claim of the job-work expenses primarily on the ground that complete reply was not filed by the contractor and the assessee could not produce the party for verification for genuineness of expenses. The bills produced were found to be dated for the last day of the year. Adverse inference was also drawn on the premise that the contractor was not a tax assessee. The Assessing Officer was consequently of the view that onus cast upon the assessee to establish and substantiate the claim has not been discharged. As a result, a sum of Rs.46,44,518/- incurred for job-work/labour work was *inter alia* disallowed and added to the total income. The Assessing Officer also imposed penalty on the aforesaid additions in terms of s.271(1)(c)

of the Act which is also subject matter of appeal in ITA No.298/Ahd/2019 for AY 2011-12 (supra).

6. Aggrieved, the assessee preferred appeal before the CIT(A) for reversal of the action of the Assessing Officer. The CIT(A), however, found little merit in the plea of the assessee for nullifying the additions. The CIT(A) thus sustained the additions so made by the Assessing Officer on following terms:

“3.3 I have carefully considered the submissions made by the appellant and the assessment order passed by the Assessing Officer.

3.3.1. Appellant has claimed payment of Rs.46,44,518/- to Shri Kailash Sukhlal Mandal for labour work in its project. In support of its claim, copies of bills raised by Kailash Sukhlal Mandal have been submitted along with his bank account statement. It is seen that there are many cash withdrawals from this account. I have also examined the copies of bills / RA bills given by this party. On most of the bills/ RA bills there is no date. The bill has been raised on the last day of the financial year on 31/03/2012. Many of the bills are unsigned. Normally RA bills are given on monthly basis. In case of appellant there are total 14 RA bills raised during the year. Appellant has shown payment to this party in two years and in both the years the amounts have been credited on the last day of the financial year. Even on Form 16A submitted by the appellant, address of Shri Kailash Sukhlal Mandal is not mentioned. As stated in the assessment order, the notices issued to this party were returned unserved and appellant could not produce the party before the AO for verification. Importantly, the party has not filed return of income and only after receipt of notice from the AO return of income was filed. Appellant has submitted copy of Ledger account of the party in its books. As per Ledger account, the payments were made under different heads like wood, security, electrical. Names of many persons are appearing and cumulative payments have been claimed to be made to Shri Kailash Sukhlal Mandal. Interestingly, no such details are available on the bills raised by this party. It is not clear when these details are not available on the bills of the party, how appellant has

given such details in the Ledger account of this party in its accounts. In view of all the above reasons, it is held that appellant could not prove that Shri Kailash Sukhlal Mandal has done labour work on the sites constructed by the appellant. Genuineness of payment of Rs.46,44,518/- to Shri Kailash Sukhlal Mandal could not be proved with corroborative evidences. Deduction of only those expenses is allowable against business income which can be proved to have been incurred for the purpose of business. Therefore, it is held that AO was justified in disallowing Rs. 46,44,518/-."

7. Further, aggrieved the assessee preferred appeal before the Tribunal.

8. We have carefully considered the respective submissions made on behalf of the assessee as well as defense propagated on behalf of the Revenue.

9. The solitary controversy in hand is legitimacy of disallowance of expenses claimed Rs.46,44,518/- for job-work/labour work utilized for Real Estate business. As pointed out on behalf of the assessee, we notice that assessee has provided (i) copy of invoices raised by the contractor for impugned job-work (ii) evidences towards deduction of tax at source on payments/credits (iii) payment made through banking channel in consonance with the provisions of section 40A(3) of the Act (vi) name and address of the contractor provided. Along with the aforesaid evidences, the ledger account of the contractor in the books of the assessee as well as bank statement showing payment made to the contractor was also placed. It is contended that the accounts of the assessee has been duly audited without any adverse comments. In the

course of hearing before the Tribunal, a reference was made to the ledger account which depicts adhoc payments made to various parties including Shri Kailash Sukhlal Mandal and TDS was also duly deducted thereupon as mandated in law. With reference to details of job-work/labour charges performed by various parties as appearing at page Nos.186 and 187 of the paper-book, it was asserted that Shri Kailash Sukhlal Mandal was responsible for RCC work for block Nos. A, B, C, D & E of the construction work. It is contended that job-work charges were paid to the contractor for RCC work of these blocks for which expenses have not been incurred and paid to any other party. In this background, it is the contention of the assessee that notwithstanding the non-appearance of the party before the Assessing Officer, the fact remains intact that the construction cannot be completed without the RCC work being carried out by someone. It was further supported that cash withdrawn by the contractor is only natural to meet the day-to-day basis and other expenses by him. The running bills drawn by the contractor on the last day of the year was justified on the ground that these contractors are not professionally equipped and do not adhere to the best accounting practices as expected. It is also contended that where the contractor has not filed the return of income at all, his non-attendance before the Assessing Officer is quite plausible and adverse inference cannot be drawn against the assessee for such non-appearance for the supplier/contractor.

10. We find considerable merits in the case of the assessee in the light of tell-tale evidences. The assessee has filed the relevant documentary

evidences to support its claim. The plea of the assessee that without the RCC work for block numbers A to E of the project, the building construction work cannot be completed and building cannot be sold, appears to be quite compelling to support the factum of rendering of job-work/labour work.

11. Noticeably, it is not the case of altogether non-compliance of the notice under s.133(6) of the Act. The Assessing Officer himself has made an averment to the effect that partial/incomplete reply was received from the contractor. However, it is not known as to on what aspects, reply was not adequately received. Thus, in totality of the circumstances, the assessee, in our view, has proved overall bonafides of the expenses actually incurred in relation to construction of project. Given the evidences placed, the Assessing Officer could not have drawn an inference against the assessee in wholesale. The action of the Revenue Authorities is accordingly set aside and the additions made in question is directed to be deleted.

12. In the result, appeal of the assessee in ITA No.1012/Ahd/2015 for AY 2011-12 is allowed.

ITA No.298/Ahd/2019 for AY 2011-12 (penalty appeal):

13. The subject matter of this appeal concerns imposition of penalty on the additions made in quantum proceedings.

14. In view of the reversal of the additions/disallowances made in the quantum appeal in ITA No.1012/Ahd/2015 (supra), the consequential penalty under s.271(1)(c) of the Act automatically gets obliterated. The penalty imposed under s.271(1)(c) of the Act thus stands deleted.

15. In the result, appeal of the assessee in ITA No.298/Ahd/2019 for AY 2011-12 is allowed.

16. In the combined result, both the captioned appeals of the assessee are allowed.

This Order pronounced in Open Court on 04/01/2021

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad; Dated 04/01/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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)-4, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER.

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad