

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B',(VC) JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 655/JP/2018  
निर्धारण वर्ष /Assessment Year : 2013-14.

Shri Ganga Ram Choudhary, Tadawala Bhawan, Village - Saipura, Sanganer, Jaipur.	बनाम Vs.	The Dy. Commissioner of Income Tax, Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAQPC 5542 B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya, (ITP)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27.01.2021.  
घोषणा की तारीख / Date of Pronouncement : 09/02/2021.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 28.02.2018 of  
ld. CIT (A)-3, Jaipur for the assessment year 2013-14. The assessee has raised the  
following grounds of appeal :-

1. The impugned addition and disallowances made in the order u/s 143(3) of the Act dated 21.03.2016 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be deleted.

2. Rs. 5,00,000/-: The Id. CIT (A) erred in law as well as on the facts of the case in partly confirming the disallowance of Rs. 5,00,000/- made by the AO on account of the development expenses out of total development expenses of Rs. 45,92,528/-. The disallowance so made & partly confirmed by the Id. CIT (A), is contrary to the provisions of law and facts hence, kindly be deleted in full.
3. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234 of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.
4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of appeal on or before the date of hearing."

2. The brief facts of the case are that the assessee is an Individual and engaged in the business of Builder and Property Developer. The assessee filed his return of income for the Assessment Year 2013-14 on 13.09.2013 declaring total income of Rs. 33,13,290/-. The case of the assessee was selected for scrutiny assessment. While passing the assessment order under section 143(3), the A.O. made the addition of Rs. 9,00,000/- out of expenses claimed of Rs. 45,92,528/- to cover up the possible leakage. On appeal filed before the Id. CIT (A), the Id. CIT (A) sustained the addition of Rs. 5,00,000/- considering that the appellant failed to file any explanation or evidences which prove that development expenses are fully vouched or verifiable. The net profit rate is also decreased from 10.35% to 10.11% and the development expenses are not fully vouched. The Id. CIT (A) considering the nature of business and expenses, restricted the addition to Rs. 5,00,000/-.

3. Aggrieved by the order of the Id. CIT (A), the assessee has preferred this appeal before us. The Id. Counsel for the assessee submitted that the

addition/disallowance made by the AO under section 143(3) is bad in law and the Id. CIT (A) has committed an error in partly confirming the disallowance of Rs. 5,00,000/- made by the AO on account of development expenses out of total development expenses of Rs. 45,92,528/-. The Id. A/R also reiterated the same arguments as made by him before the Id. CIT (A) which are contained in para 4.2 of the CIT(A)'s order as under :-

*" 4.2. (1) Development expenses Rs. 1162583/- incurred in cash: Out of Rs. 45,92,528/- development expenses Rs. 1162583/- paid to JDA for internal development charges, site plan charges, land cost under bsup, urban assessment and other charges levied by JDA. All these expenses supported by challan. Copy of these challan produced before L.A.O. in assessment proceeding by wide letter dated 05.11.2015. These was no leakage of revenue. Expenses are properly supported by challan.*

*(2) Development expenses for Rs. 3429945/- related to three parties (i) Kudaliya Construction (ii) Nand Lal Thakedar (iii) Jagdish Narayan Meena. These all expenses supported by invoices. Copy of such invoice produced before L.A.O. for verification. In invoices nature of expenses also mentioned. All bill were Pakka Bill and Tds deducted on all these expenses which was admitted by L.A.O. in assessment order "However the payment made to 3 contractor is subject to TDS and assessee has properly complied in this regard" so L.A.O make addition on the ground that some kacchi slips where name and complete address of payee is not mention was unjustified as L.A.O goodself admitted that T.D.S was deducted on bills by assessee. Secondly assessee produced confirmation of accounts of all three parties. There is no leakage of revenue on this account. All expenditure duly supported and non of expenditure incurred by assessee which was supported by kachhi-slip etc.*

*(3) That during the year payment was made to Kudaliya Construction by cheque and no payment made in cash during the year. Thus it is clear that assessee did not made any payment in cash to three parties during the year and also no payment made by kachhi slip also there was no defect in vouchers. Addition made by L.A.O. on the above ground is not justified. There for addition of Rs. 900000/- need to deleted.*

*(4) We are enclosing here with power of attorney in original."*

4. On the other hand, the Id. D/R has relied upon the order of the Id. CIT (Appeals).

5. We have heard both the parties. After having gone through the present case as well as the documents placed on record by the parties and orders passed by the revenue authorities, we find that during the year under consideration the assessee had incurred an amount of Rs. 45,92,528/- on account of development expenses in addition to purchases of Rs. 5,39,451/-. During the course of assessment proceedings, the assessee was asked to furnish the details of the development expenses and to produce the relevant supporting vouchers in this regard. The AO, on scrutiny of these expenses noticed that out of total expenses claimed at Rs. 45,92,528/-, the assessee had made payment of Rs. 34,29,945/- to three parties, namely, M/s. Kudaliya Construction Co., Shri Nand Lal Thekedar and Shri Jagdish Narain Meena. The balance expenditure amounting to Rs. 11,62,583/- was incurred in cash. During the assessment proceedings, the assessee had stated that these expenses have been incurred in respect of leveling of land, sand filling, construction of pillars of demarcation, laying of grit roads, tractor charges, water tanker charges etc. The revenue has taken the specific stand that the assessee has not submitted complete details of work done and there is a single bill for work completed in a month or more period, for which date-wise details of job done and plot-wise area, where the job done was not mentioned. It was further submitted by the revenue that the expenditure claimed are not subject to verification whereas the assessee has taken the stand that the amount of Rs. 11,62,583/- was incurred on account of internal development expenses which were paid to JDA on account of site plan

charges, land cost under bsup, urban assessment and other charges levied by JDA and all these expenses were supported by challans. The copies of the challans have already been placed on record by the assessee. As per the assessee there was no revenue leakage and all the expenses were supported by documentary evidence. After having gone through the facts of the present case and the documents placed on record, we are of the view that the development expenses of Rs. 34,29,945/- were paid to three parties, namely, M/s. Kudaliya Construction Co., Shri Nand Lal Thekedar and Shri Jagdish Narain Meena and are supported by invoices, copies of the same have already been placed on record in the paper book filed by the assessee. In the invoices nature of expenses have also been mentioned and all the bills are pacca bills and the TDS deducted on all these payments was admitted by the AO in the assessment order. Apart from this, the assessee has also produced confirmation of accounts of all three parties and the amount of Rs. 11,62,583/- was paid by the assessee to JDA. Copies of ledger account of development expenses along with supporting vouchers have been placed on record by the assessee in the Paper Book at pages 9 to 14, copy of relevant annexures of Audit Report along with Balance Sheet & Profit & Loss account are at pages 3 to 8 of the paper book, copies of Ledger Accounts of three parties, namely, M/s. Kudaliya Construction Co., Shri Nand Lal Thekedar and Shri Jagdish Narain Meena have been placed on record at paper book pages 18 to 20 along with confirmation of accounts of these parties at pages 21 to 23, bill of development expenses related to three parties are placed at paper book pages 24 to 34, copy of Form 27A of Four quarters of FY 2012-13 showing tax deducted at source of above mentioned three parties is placed at paper book pages 35 to 38 and copy of Form 26Q of Four quarters of FY 2012-13 is placed

at paper book pages 39 to 42. From all these documents we find that the revenue has failed to pin-point specifically regarding the missing bills with regard to development expenses. In the absence of specific details or objections, no disallowance can be made out of the expenditures incurred by the assessee. The revenue has simply mentioned that some kachhi slips were maintained where name and complete address of payee is not mentioned has been placed on record. But at the same time, the AO and Id. CIT (A) has failed to point out as to which documents do not contain complete address of the payee. The AO has not issued any summon to the respective parties to whom the documents belonged. Even the AO has not recorded the statements of the persons who have issued the bills. In the absence of contrary details filed by the revenue, the adhoc disallowance of expenses is not justified. Therefore, we delete the addition.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09/02/2021.

Sd/-

(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-

( संदीप गोसाई )  
( SANDEEP GOSAIN )  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:-09/ 02/02/2021.

das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Shri Ganga Ram Choudhary, Jaipur.

2. प्रत्यर्थी / The Respondent-The DCIT, Circle-7, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 655/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar