

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

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 1416/Ahd/2016
Assessment Year : 2011-12

Income-Tax Officer, Ward 3(3)(6), Ahmedabad	Vs	Shree Infrastructure, 104, Sarthak Complex, Next to Fun Republic Cinema, Satellite, Ahmedabad-380015 PAN : ABTFS 9550 P
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Revenue by :		Shri Abhimanyu Singh Yadav, Sr DR
Assessee by :		Shri P.M. Patel, CA

सुनवाई की तारीख/Date of Hearing : 06/06/2022
घोषणा की तारीख /Date of Pronouncement: 17/06/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-tax (Appeals)-3, Ahmedabad ("CIT(A)" in short) dated 16.03.2016 whereby he deleted the additions of Rs.1,58,36,330/- and Rs.60,00,000/- made by the Assessing Officer on account of disallowance of labour expenses and disallowance on account of cash payments towards land development agreement respectively.

2. The assessee, in the present case, is a partnership firm which is engaged in the business of developer and builder. The return of income for the year under consideration was filed by it on 01.10.2011 declaring a total income of Rs.3,31,570/-. The said return was selected for scrutiny under CASS and a notice under Section 143(2) of the Income-tax Act, 1961 ("the Act" in short) was issued by the Assessing Officer to the assessee on 06.08.2012. As noted by the Assessing Officer during the course of assessment proceedings, the assessee-firm had undertaken a scheme of

residential farm house at Village Chandisar, Tal: Dholka, Dist: Ahmedabad. It had entered into a development agreement in December 2010 with three landowners for development of land admeasuring 41,413 sq. mtrs. for developing a scheme of 33 bungalows. As further noted by the Assessing Officer from the Profit and Loss account filed by the assessee with its return of income, the assessee had claimed expenses on account of labour at very unusual higher ratio. He, therefore, proceeded to verify the claim of the assessee for labour expenses and on such verification he recorded his findings/observations as under:-

“.... The normal ratio of material purchase and labour is 1:1 when the construction is not pertaining to multi storied building. The assessee has constructed bungalows and hence the above ratio is applies in its case. However, as mentioned earlier the assessee has claimed material purchases V/s. labour at 1:4.41. This means the assessee has claimed labour at 4.41 time to the material purchase which is impossible. The assessee has not shown any reason as to how the labour is claimed at such higher abnormal rate.

- *During the verification of labour expenses the assessee was asked to produce Shri Babubhai Vanzara and Shri Ashok K. Thakor. However, the assessee could produce only Shri Babubhai Vanzara and that to without any books at account. It was later on found that Shri Babubhai Vanzara has issued bills of only Rs.66,54,420/-.*
- *The books of account maintained by Shri Babubhai Vanzara are audited accounts and it accounts for all the bills issued by him.*
- *The affidavit of Shri Babubhai Vanzara supplied by you shows that he has carried out and raised bills of Rs.1,74,15,920/- in F.Y.2009-10. Hence, the cognizance of affidavit cannot be taken as it is not describing the bills raise in F.Y.2010-11. Further, at Sr. No.6 of the affidavit, Shri Babubhai Vanzara has confirmed books of account of M/s. Shree Infrastructure for F.Y 2009-10 when the firm was not in existence.*
- *The affidavit of Shri Babubhai Vanzara does not speak about the nature of work for which period carried out on behalf of the assessee.*
- *The affidavit of Shri Babubhai Vanzara does not speak about the amount of work carried out on behalf of the assessee.*

- *The affidavit of Shri Babubhai Vanzara does not speak about the relevant financial year in which he has carried out work on behalf of the assessee.*
- *The expenses claimed to have paid to Shri Ashok K Thakor is also found to be not genuine. Shri Ashok K Thakor has not filed return of income. The assessee could not produce him for verification of work carried out by him.*
- *Merely, TDS is deducted only at 1% of expenses; the genuineness of expenses cannot be proved. More specifically the assessee has claimed labour at abnormal rate.*
- *The assessee could not produce any documentary evidences which show that Shri Ashok K Thakor has carried out any type of work. The assessee has not furnished copy of bills or copy of PAN Card of Shri Ashok Thakor. If at all he has rendered any services the assessee could have furnished such documentary evidences. The assessee has only supplied copy of confirmation and PAN of Shri Ashok Thakor which is also downloaded from Income Tax Web Site which is open for general public.*
- *The assessee was asked to furnish copy of account of Shri Babubhai Vanzara and Shri Ashok Thakor for A.Y.2012-13 & 2013-14 for verification of payment made to them of outstanding amount shown in the books of account. The assessee has shown outstanding labour to Shri Babubhai Vanzara at Rs.1,02,71,234/- and Shri Ashok Thakor at Rs.25,11,082/-. The assessee ha;- not supplied copy of account for this A.Ys. and hence the genuineness of expenses could not be verified.*
- *The assessee was supplied with summons on 04.03.2014 issued in the name of Shri Babubhai Vanzara. However, the assessee failed to produce him on 14.03.2014 reasonable time to produce the witness was granted.*
- *The assessee has failed to prove the labour expenses claimed by it are wholly for the purpose of business and allowable U/s. 37(1) of the Income Tax Act.*
- *Numerous payment below Rs.20,000/- made to these contractors in cash shows that the expenses are not incurred for the purpose of business."*

3. On the basis of the above findings/ observations recorded by him, the Assessing Officer rejected the book results declared by the assessee and made an addition of Rs.1,58,36,330/- to the total income of the assessee on account of disallowance of labour expenses.

4. He also verified the development agreement entered into by the assessee-firm with the concerned landowners and found that the liability

arising under the said development agreement of Rs.60,00,000/- payable to the landowners was not provided for by the assessee in the books of accounts. He accordingly made a further addition of Rs.60,00,000/- to the total income of the assessee for the following reasons given in the assessment order.

"The Liability rose on account of Land Expenses have also not been accounted for by the assessee. The assessed vide his letter dated 12.02.2014 stated that (Repeated again):

"Regarding value of sale of land of Rs. 90,67,801 and construction of Rs. 69,32,200, it is to submit that same represented actual amount of consideration received towards land and constructions respectively for units for which all significant risks and rewards were transferred unto the buyers by the assessee firm by way of registered sale deeds during the year involved."

It can be seen from the above that all the significant risk and rewards were transferred to the buyers by the assessee firm. Hence, as per mercantile system of accounting, the assessee was supposed to pass on risk and reward of land expenses which has not been done. Hence, the books of account are not showing correct result. It is also noticed that the assessee has not paid single rupee towards the land transaction. It is impossible that the person owning a land will sign transferred deed without getting consideration for the land. After signing the sale deed owner exit from all the fight prevailing over the land and hence land owner will only sign after getting consideration. The facts of the case proved that the assessee has executed sale deed for four bungalows admeasuring total land of 5508 Sq. Mt. and hence there are all reason to believe that the assessee firm has paid Rs.60,00,000/- in cash from its unaccounted income not shown in books. The assessee has put forward argument that land owner has expressed their concern for deferment of payment. This argument cannot be accepted as the assessee was required to pass the risk and reward on account of land development agreement executed with land owners."

5. The Assessing Officer accordingly made two additions of Rs.1,58,36,330/- and Rs.60,00,000/- to the total income of the assessee and determined the income of the assessee for the year under consideration at

Rs.2,21,67,900/- in the assessment completed under Section 143(3) of the Act vide an order dated 26.03.2014.

6. Against the order passed by the Assessing Officer under Section 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A) challenging both the additions made by the Assessing Officer to its total income. During the course of appellate proceedings before the learned CIT(A), various details and documents were furnished by the assessee to support and substantiate its claim on both the issues. The same were forwarded by the learned CIT(A) to the Assessing Officer for verification and comments. In the remand report submitted to the learned CIT(A) on 08.02.2016, the Assessing Officer offered his comments and when the said remand report was confronted by the learned CIT(A) to the assessee, the assessee also filed its rejoinder on 23.02.2016. After considering the submission made by the assessee and the material available on record including the remand report of the Assessing Officer and rejoinder of the assessee, the learned CIT(A) proceeded to decide the issue relating to the disallowance of Rs.1,58,36,330/- made by the Assessing Officer on account of labour charges vide paragraph Nos. 4.3 and 4.4 of his impugned order as under:-

“4.3 I have examined facts contained in Assessment Order/Remand Report and written submission submitted by the appellant. Both the grounds have common factors. AO has not rejected books of account u/s 145(3) for inconsistency or inaccuracy observed by him during assessment proceedings. As regards addition in connection with Ashokbhai Thakor of Rs.50,74,830/- it is observed that Shri Ashokbhai Thakor filed an affidavit mentioning nature of work done by him for the appellant and amount of work etc. The TDS has been deducted for the payment received by Shri Ashokbhai Thakor as per affidavit. In the Remand proceedings, the assessing Officer issued summons to him and was examined by the assessing officer on oath. The statement on oath was recorded the A.O. The AO obtained copy of his Bank Passbook and verified payments through cheque made by the appellant. The assessing officer ascertained real fact that he has done masonry work in the

group of 10 Masons and therefore as stated by him he was not filling return of income. It is understood that the addition was originally made by AO as Shri Ashokbhai Thakor could not be examined by him during assessment proceedings. Now the comprehensive inquiry has been done and in view of facts on record, so far as the labour payments made to Ashokbhai Thakor of Rs.50,74,830/- is concerned, the payment by appellant can't be said to be bogus.

As regards labour payment of Rs.1,07,61,500/-, it is now inferred that Shri Babubhai Vanzara was sub-contractor and not labour contractor. Therefore, Shri Babubhai Vanzara was not only labour contractor but also has brought in construction material alongwith him. Consequently, the appellant had filed a request for admission under Rule 46A, following documents :

- (i) Fresh affidavit executed by Shri Babubhai Vanzara dated 06.01.2016.
- (ii) Chart of work done by him
- (iii) Working of ratio material to labour
- (iv) His accounts form our books for the FY.2011-12, 2012-13 & 2013-14.
- (v) Certificate by Engineer Geometric Consultant.
- (vi) Copies of various bills issued by Babubhai Vanzara.

The assessing officer has infact verified the above documents and noticed that Shri Babubhai Vanzara has claimed in the affidavit as maintaining his books of accounts on cash basis which was contrary to the audit report which says that it was on mercantile basis. However, this cannot be conclusive prove for disallowing payments made to Shri Babubhai Vanzara. There are other sufficient evidences to indicate that actual work has been done by him which was verified by the engineer by taking measurement of work done on site visits. All bills issued by him were not only for labour but also pertaining to construction material, such as stone. This is proved as no separate expenditure on purchase of stone has been claimed by the appellant. Affidavit by Shri Babubhai Vanzara has been filed which was considered during remand proceedings and the relevant portion is reproduced under;-

".....2. That I am registered with Income Tax Department vide PAN AJVPV1776H and assessed to Income Tax Officer, Ward-1, Himatnagar and filing the return of income from time to time.

3. That I undertook various work relating construction, filling with stone and rocks of foundation of various bungalows, Roads, Boundaries Walls, compound wall etc. with material to M/s. Shree Infrastructure, a partnership firm for its site at village Chandisar, Tal. Dhokka, Dist. Ahmedabad known as "33 Oaks".

4 That works executed for M/s. Shree Infrastructure was involving materials as well as labour and I have issued various bills including materials for Rs.1,74,15,920/- for the F.Y.2010-11 (A.Y.2011-12).

5. I have executed an affidavit as on 12.02.2014 before notary Rajendrabhai T. Parekh. In the impugned affidavit an inadvertent error was made in mentioning F Y. as 2009-10 instead of 2010-11. In fact, we only commenced construction work in the F.Y.2010-11 only. We never executed any work for Shree Infrastructure in the F.Y 2009-10.

6. For the work executed for Shree Infrastructure in F.Y.2010-11, we issued bills of Rs.1,74.15,920/- and received payments of Rs.71,44,686/- by cheques and cash. For balance amount due to us I intended to purchase a house in the scheme floated by Shri Mineshbhai one of the partners of the firm at Dholka and my account was settled in F. Y.2013-14

7. I maintain my books of accounts following cash system of accounting."

Further detailed chart of work done by him with labour and material was furnished. Computation for ratio of material to labour has been furnished which is 1.04 to 1. This is at variance with that mentioned in assessment order and the reason is clear that material cost of Shri Babubhai B. Vanzara is excluded while working out the aid ratio. Date wise receipt of payments in 6 pages also filed. The appellant has submitted that because of paucity of funds, all payments including that of Shri Vanzara were not made before the year end. A copy of report by Geometrik Consultant for the work done by Babubhai B. Vanzara also filed.

4.4 The onus has been discharged by the appellant. The receiver of labour payment have been examined by the AO and their particulars are on record. The moment the two persons have confirmed of receipt of payment through affidavits the same payments cannot be held as bogus unless and until the contents of the affidavits are proved wrong by subsequent independent inquiry. Affidavits are placed on record and the contents of the said affidavits have remained uncontroverted. The same were not disproved or found to be false. If that be so Hon'ble Gujarat High Court in the case of Glass Line Equipment 253 ITR 454 has held that when affidavit was not controverted, it has to be taken as accepted.

The appellant has been able to discharge its onus [63 TT] 191 (Del.) - Instrumed (India) International Vs. ITO and successfully shifted the burden to prove on revenues as has been held in [159 ITR 78 (SC)] - Orissa Corporation. The stand of appellant has support from judgment in the case of

Bharat Bijli Ltd. reported at [71 ITD 412 (Mum.)]. I am inclined to accept the argument of appellant and rely on the ratio laid down by Hon'ble Gujarat High Court in the case of Rohini Builders reported at [256 ITR 3GO (Guj.)] which is delivered in slightly different context. However, principle laid down by different Courts for allowing any expenditure in certain circumstances dependent on evidence placed on record. Similarly, I also rely on the ratio laid down by ITAT, Ahmedabad in the case of Deputy Commissioner of Income Tax Vs. Tyco Valves & Control India (P) Ltd. [(2013) 81 DTR(Ahd) (Trib) 48] which is relevant:

Assessee having furnished the statement of commission payment giving the names of the commission agents and the services rendered by them as well as voucher numbers, dates of payments, PANs of the agents, amount of invoices, rate of commission, etc. and the AO having not found the payment of commission to be bogus payments, deduction thereof is allowable."

The appellant or the related parties in question have submitted copy of affidavits indicating quantum of work done, value of work done, details of payments and other related particulars duly supported by various evidences, In my opinion, the appellant has discharged its onus by filing all possible details including confirmations/affidavits and TDS and successfully established that the genuine expenditure has been expended for the business purposes. Further action, if any, was required by the assessing officers of Babubhai R. Vanzara and Ashokbhai K. Thakor. On the other hand, the AO could not gather the positive evidences for the department and taken decision which can be construed to have been based on presumptions and not on the facts on record.

In view of facts of the case and the ratio laid down by Hon'ble Gujarat High Court in the Supra), the addition on account of alleged bogus labour payments made by the AO of Rs.1,74,15,920/- is hereby deleted. The Ground No. 1 & 2 of appeal are accordingly allowed."

7. The learned CIT(A) thus deleted the entire addition of Rs.1,74,15,920/- made by the Assessing Officer on account of labour expenses and also deleted the addition of Rs.60,00,000/- made by the Assessing Officer on account of the cash payment allegedly made by the assessee under land development agreement for the following reasons given in paragraph No.5.3 of his impugned order:-

"5.3 I have gone through the facts mentioned in the assessment order, in the remand report and the submission filed appellant carefully. I have perused the development agreement between the land owners and the appellant. AO has pointed out correctly that no entry was passed regarding Rs. 60,00,000/- towards land charges. The partner of the firm who are mostly land owners did not want to increase the firm's liabilities which was not immediately required to be paid. The passing of entry regarding Rs.60,00,000 did not arise as no full liabilities arose in the first year. By making development agreement, the ownership of land does not necessarily gets transferred to appellant firm. It was the understanding of the both parties that land would directly transfer to the prospective buyers of the bungalows in the scheme of the appellant firm which can be derived from the clause 3.4 of the agreement which is under :

"The land owners to cover the said land in whole or in parts, in one or more lots to the Prospective Purchaser, or the society or any other body corporate that may be formed of or for the Prospective Purchaser(s) or in the favor of any other person (including itself), in such manner as may be instructed by the "Said Partnership Firm".

The appellant followed the mercantile system was required to pass entry regarding Rs. 60,00,000/- debiting to P& L account and crediting to land owners account has been pointed out by A.O. but it is not absolutely correct. In mercantile system, appellant was required to make entry regarding accrued liabilities and deemed accrued liabilities. Here, liabilities regarding land charges Rs, 60,00,000/- was not accrued and was not deemed accrued as per understanding. Hence the appellant was not required to pass entry regarding Rs.60,00,000/-. At the most appellant was required to pass entries regarding Rs.9,01,958/- towards land charges of 4 bungalows which were sold during the year. But by mutual understanding of both the parties it was agreed that said liability would be fulfilled in concluding year of scheme and hence no entry was passed for Rs.9,01,958/-. Even by not passing entry regarding Rs.9,01,9587- no loss to the revenue has occurred because by passing said entry profit would be decreased to that extent. Similar is the case with entry of Rs.60,00,000/- as that would decrease the taxable profits of appellant.

At the most it is a case of pre-ponement of tax liability and not postponement of tax liability. The department cannot sit on the armchair of the businessman especially when the decision taken is not against its interest. As revenue is not at loss, I agree with the argument of appellant and delete that addition of Rs.60,00,000/-. The ground No.4 of appeal is allowed."

8. Aggrieved by the order of the learned CIT(A), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

"1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,58,36,330/- made on account of disallowance of labour expenses.

2. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.60,00,000/- made on account of unexplained payments towards land development agreement.

3. On the facts and circumstances of the case, the Ld. Commissioner of Income-tax (A) ought to have upheld the order of the Assessing Officer."

9. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned DR has relied on the order of the Assessing Officer in support of the Revenue's case on both the issues raised in this appeal. The learned Counsel for the assessee, on the other hand, has placed strong reliance on the impugned order of the learned CIT(A) giving relief to the assessee on both the issues. He has invited our attention to the specific findings recorded by the learned CIT(A) while giving relief to the assessee on both the issues and contended that learned DR has not been able to bring anything on record to dispute the same. As pointed out by him, the relevant details and documents furnished by the assessee in support of his case on both the issues were forwarded by the learned CIT(A) to the Assessing Officer and on verification of the same, no specific adverse comments were made by the Assessing Officer in his remand report submitted to the learned CIT(A). As noted by the learned CIT(A) in his impugned order, tax at source was deducted by the assessee from the payments made to both the labour contractors namely Ashokbhai Thakor and Babubhai Vanzara. Affidavits of both the contractors were also filed by the assessee confirming the execution of work by them for the assessee as well as value thereof as claimed by the assessee. The discrepancies pointed out by the Assessing Officer while disallowing the

claim of the assessee for labour charges paid to the said two contractors were also explained and clarified by the assessee during the course of remand proceedings and the same was apparently accepted even by the learned Assessing Officer. The details of work executed by the said contractors for the assessee were also duly supported by the copies of bills and certificates issued by Engineer Geometric Consultant. Keeping in view the same, the learned CIT(A) found that the onus that lay on the assessee was satisfactorily discharged by him by filing all possible details including confirmations/affidavits and TDS; and, the business expediency as well as genuineness of the labour expenses was successfully established by the assessee. At the time of hearing before us, the learned DR has not been able to dispute this finding of fact specifically recorded by the learned CIT(A) on the basis of details and documents furnished by the assessee to give relief to the assessee by deleting the disallowance made by the Assessing Officer on account of labour expenses. We, therefore, find no justifiable reason to interfere with the impugned order of learned CIT(A) giving relief to the assessee on this issue and upholding the same, we dismiss Ground No. 1 of the Revenue's appeal.

10. As regards the other issue raised in Ground No.2 of the Revenue's appeal relating to the deletion by the learned CIT(A) of the addition of Rs.60,00,000/- made by the Assessing Officer on the ground that the said liability accrued under development agreement was not provided for by the assessee in the books of account, it is observed that the partners of the assessee-firm were mostly the landowners and the amount of Rs.60,00,000/- in question was thus payable by the assessee-firm mainly to them. As noted by the learned CIT(A) in his impugned order on the basis of the relevant clause 3.4 of the Development Agreement, there was an understanding between both the parties that the land would finally be transferred to the

prospective buyers of the bungalows in the scheme directly and because of this understanding the liability of Rs.60,00,000/- was not provided for in the books of accounts of the assessee. In any case, as rightly observed by the learned CIT(A) in his impugned order, there was no question of any loss to the Revenue by this accounting treatment given by the assessee because had the liability been provided in the books of accounts of the assessee, the profit declared by the assessee would have decreased to that extent. As rightly concluded by the learned CIT(A), it was thus not a case of any postponement of tax liability by the assessee but was a case of preponement of tax liability. Keeping in view all these facts of the case, we are of the view that the addition of Rs.60,00,000/- made by the Assessing Officer on this issue was rightly deleted by the learned CIT(A) vide his impugned order and upholding the same, we dismiss Ground No.2 of the Revenue's appeal.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 17th June, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 17/06/2022

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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)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad