

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1643/Ahd/2019  
Assessment Year 2015-16**

M/s. Krishna Associates, 501, Surmount Complex, Opp. ISCON Temple, S.G. Raod, Ahmedabad-380015 PAN No:AAKFK5521G (Appellant)	Vs	The Income Tax Officer, Ward-3(2)(2), Ahmedabad (Respondent)
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**Appellant by : Shri M.J. Shah, & Shri Rushin Patel, A.R.**

**Respondent by : Shri Sudhendu Das, Sr.D.R.**

Date of hearing : 21-07-2022

Date of pronouncement : 07-10-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee against the order dated 22.08.2019 passed by the Commissioner of Income Tax (Appeals)-3, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The brief facts of the case is that the assessee is engaged in the construction business of residential and commercial units. For the Assessment Year 2015-16, the assessee filed its Return of Income declaring total income of Rs. 45,46,600/-. The case was selected for scrutiny assessment for the reasons of “Real estate business with high closing stock (Verify whether assessee has adopted percentage completion method), mismatch in amount paid to related persons u/s. 40A(2)(b) reported in Audit Report and ITR, higher turnover reported in Service Tax Return compared to ITR and assessee has deposited large amount of cash in savings bank account, large increase in Sundry Creditors and reduction in business income as compared to preceding year”.

2.1. The A.O. issued notice u/s. 143(2) calling for various expenses. On perusal of profit & loss account, the assessee claimed various expenses, to verify the genuineness of expenses, the assessee was asked to produce the ledger of all these expenses with supporting bills & vouchers. The assessee never submitted bills/vouchers during the assessment proceedings. The assessee submitted the ledger account of the expenses, wherein labour expenses to the tune of Rs. 27,12,000/- is claimed, which is after the getting of Building Usage Certificate (BU Certificate). The assessee was called upon to explain the above expenses. The assessee explained that for booking of an expense, B.U. date cannot be held as sacrosanct. As a matter of fact lot of expenses are taking place after receipt of BU Certificate. The Local Authority gives the permission of BU Certificate on the verification and completion of the project, it does

not mean that all expenses bill from the suppliers must have been received and booked in the books of account of the assessee. Most of the time laborers are providing bills after completion of work and this is routine practice. From the several bills regarding Labour Flooring, Plumbing, Electric were not finalized by the assessee and contractor. These bills were finalized after completion of work and same are accounted later. Thus the Assessing Officer contentions that no expense should be booked after the date of receipt of BU is entirely misplaced. The assessee received very few bills of Rs. 1,11,062/- after the date of receipt of BU Certificate namely 24.04.2014. Such an amount is absolutely common occurrence in the project where several crores are invested by the assessee. The above labour expenses are legitimate expenses and therefore the same should not be added on the basis of BU Certificate cut off date.

2.2. The Assessing Officer considering the above reply, held that the claim of annual maintenance contract expenses of Rs. 50,000/- can be accepted as genuine expense and the rest of the amount of Rs. 26,62,000/- towards plumbing and electrification work would be generally incur before the completion of the project, because the assessee already completed its project on 20.12.2013 and claiming the above expenses from 01.04.2014 to 08.01.2015 which is a huge gap of time after completion of the project. Therefore the above expenses are not allowed and added as the income of the assessee and determined the total income as Rs. 72,08,600/- and demanded tax thereon.

3. Aggrieved against the same, the assessee is in appeal before the Ld. CIT(A). During the appellate proceedings, the assessee submitted ledger account and copy of bills for labour expenses and claimed as additional evidences under Rule 46A of the Act which have been admitted and forwarded to the Assessing Officer calling for his Remand Report. On verification of the bills and ledger account, the A.O. issued noticed u/s. 133(6) of the Act asking for confirmation of expenses from the following persons:

- (i) Shri Shailesh bhai Himmatbhai Makwana*
- (ii) Shri Suresh Yadav*
- (iii) Shri Laljibhai P Chauhan*
- (iv) M/s. Aai Shree Khodal Plumbing Working*
- (v) Shailesh Devanshibhai Patel*

3.1. In response to the notices, all the five parties submitted the ledger account alongwith confirmation, copies of bills. However the Assessing Officer held that the core question that remains unanswered as to why such labour expenses claimed to have been incurred even after BU permission, which is beyond the general practice in the construction trade. Therefore the claim of expenses of Rs. 26,62,000/- is unjustifiable. Since the project was completed on 20.12.2013 and the claim of expenses from 01.04.2014 to 08.01.2015 after a huge gap of time is not allowable. The assessee in its rejoinder submitted the ledger of labour expenses of Rs. 26,01,138/- have incurred till the date of BU Certificate namely 24.04.2014. Labour, Flooring, Plumbing, Electricity Work which is normal course in case of construction activity continues to happen besides the Application for the BU Certificate. The assessee has received few bills after issuance of

certificate on 24.04.2014. Thereafter the assessee has incurred expenses of Rs. 1,11,062/- towards Labour Flooring, Plumbing, Electricity Work. Such an amount is an absolutely common occurrence in the construction project of receiving the bills after some period of completion of work. Thus the assessee had proved the expenditure incurred by it as genuine, there is no reason to disallow the same by the Assessing Officer on the ground that the expenses incurred after obtaining BU permission and therefore requested to allow the genuine expenses.

3.2. The Id. CIT(A) considered the above explanation and held that the assessee has incurred such expenses only to suppress the income to the tune of Rs. 26,62,000/-. Since the assessee already completed his project on 20.12.2013 and claiming such expenses from 01.04.2014 to 08.01.2015 after a huge gap of time. The bills cannot be pending for such a long period. Further as a matter of fact that such expenses are taking place after receipt of BU permission which is peculiar. Therefore the Labour Expenses claimed of Rs. 26,62,000/- were not attributable to project under consideration but may be related to some other project. In view of this addition made by the A.O. was upheld and the appeal filed by the Assessee was dismissed.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1 The CIT(A) erred in law and on facts in confirming addition of Rs.26,62,000/- being alleged unjustified labour expenses without appreciating the facts and law of the case properly.*

*2. The CIT(A) erred in law and on facts in holding that labour expense of Rs.26,62,000/- were not attributable to project and may be related to some other project without appreciating the fact that the Appellant has not developed any other project in the year under consideration.*

*3 The addition of Rs.26,62,000/-being alleged unjustifiable labour expenses is bad in law as it was outside the purview of limited scrutiny.*

4.1. Reiterated the Grounds of Appeal, the Id. Counsel for the assessee submitted that the Id. CIT(A) erred in holding that the labour expenses of Rs. 26,62,000/- were not attributable to project and may be related to some other project without appreciating the fact that the appellant has not developed any other project in the year under consideration. Further during the assessment proceedings, the A.O. has not verified these aspect. Therefore it is pleaded to allow the genuine expenses by set aside the matter back to the Assessing Officer for proper verification.

5. Per contra the Ld. Sr. D.R. appearing for the Revenue supported the order of the Lower Authorities and requested to uphold the addition.

6. We have given our thoughtful consideration and perused the materials available on record. From the Remand Report given by the Assessing Officer, the suppliers have given the confirmation and ledger account to the Assessing Officer in the remand proceedings, however the Remand Report is silent about the nature of expenses relating to this project or not.

6.1. In the above circumstances, we deem it fit that it is a fit case to be remand it back to the Assessing Officer to verify whether any other project done by the assessee during the assessment year and verify the expenses claimed by the above five parties. Needless to say, the assessee should cooperate with the Assessing Officer in the set aside proceedings to pass appropriate assessment order. For this limited purpose, the Grounds of Appeal raised by the assessee are allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07-10-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 07/10/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद