

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.100/SRT/2020 (AY 2014-15)

(Hearing in Physical Court)

Income Tax Officer Ward-3(3)(3), Room No. 420, 4 th Floor, Aaykar Bhavan, Majura Gate, Surat	Vs	M/s M.D. House Build, 10, Shardha Row House, Varachha Road, Surat- 395006 PAN No. AAWFM 4520 F
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Akshay Modi, C.A.
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	07.12.2022
उद्घोषणा की तारीख/Date of pronouncement	26.12.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income-tax (Appeals)-3 Surat [for short to as “Ld. CIT(A)”] dated 28.01.2020 for the assessment year 2014-15, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 19.12.2016. The Revenue has raised the following grounds of appeal:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not upholding the addition made by the AO of Rs.2,74,57,986/- on account of creditors, in spite of

the fact that the assessee had failed to establish the genuineness of the creditors?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not upholding the disallowance made by the AO of Rs.16,27,148/- on account of Loan Processing Charges without appreciating the fact that the assessee had failed to establish the genuineness of such expenses?

3. On the facts and circumstances of the case and Law, the Ld. CIT(A) ought to have upheld the order of the A.O. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the A.O may be restored.”

2. Brief facts of the case are that assessee is a partnership firm engaged in the business of construction of residential units / flats under the project name “Om Regency”. For the assessment year 2014-15, the assessee filed its return of income declaring “Nil” income. The case was selected for limited scrutiny. During the assessment, Assessing Officer noted that assessee has shown credit against the thirty different persons on account of purchase of materials or labourers etc. The Assessing Officer also noted that assessee has not paid any amount during the relevant financial year. The assessee was asked to furnish the name of the persons, PAN and details thereof. The Assessing Officer recorded that assessee has not provided addresses of

the creditors in the list, so Assessing Officer sent notice under section 133(6) as per the given addresses on the respective PAN. The Assessing Officer recorded that only five creditors submitted their confirmations. It is further noted by Assessing Officer that partner of assessee was asked to submit the addresses of their creditors. The partner of assessee furnished addresses of such creditors. Thereafter the Assessing Officer again issued notices under section 133(6) of the Act which were returned back with the remarks of Postal Authority “no such person / incomplete address / not known” and in some cases no responses were made. On the basis of such report in response to notice under section 133(6) of the Act, the Assessing Officer issued detailed show cause notice. The Assessing Officer recorded that no reply was furnished by assessee till the finalization of assessment order. The Assessing Officer completed the assessment on the basis of materials available on record. On the basis of ledger, the Assessing Officer made the addition of Rs.2.74 crores in respect of following persons:

<i>Sr.No</i>	<i>Particulars</i>	<i>Total purchase (Rs)</i>	<i>Outstanding (Rs)</i>	<i>Nature of creditors (as per ledger)</i>
1	<i>Ashokkumar Sanghani F</i>	<i>30,85,236</i>	<i>30,85,236</i>	<i>Material with labour</i>
2	<i>Ghanshyam M</i>	<i>1,74,510</i>	<i>1,74,510</i>	<i>White reti</i>

	<i>Kotadiya</i>			
3	<i>Laljibhai Kotadiya</i>	4,35,886	4,35,886	<i>Carting</i>
4	<i>Madhubhai K Vaghasiya</i>	32,64,724	32,64,724	<i>Material with labour</i>
5	<i>Nilesh R Dobariya</i>	26,37,360	26,37,360	<i>Material with labour</i>
6	<i>Pravinkumar M Korat</i>	31,52,101	31,52,002	<i>Material with labour</i>
7	<i>Ukeshbhai D Korat</i>	31,52,002	31,52,002	<i>Material with labour</i>
8	<i>Vijaykumar Vekariya</i>	34,14,669	34,14,669	<i>Material with labour</i>
9	<i>Timbadiya Ashish Vallabhabhai</i>	29,71,679	29,71,679	<i>Material with labour</i>
10	<i>Shreeji Carting</i>	4,54,198	4,54,198	<i>Carting/material purchase</i>
11	<i>K & D Carting</i>	3,18,377/-	3,18,377	<i>Carting/material purchase</i>
12	<i>Jignesh K Korat</i>	36,11,543	36,11,543	<i>Material with labour</i>
13	<i>Jai Shihori Krupa Carting</i>	7,85,701	7,85,701	<i>Carting/material purchase</i>
	<i>Total</i>	2,74,57,986	2,74,57,986	

3. The Assessing Officer further recorded that assessee has debited expenses of Rs.16,27,148/- on account of loan processing charges. On perusal of details in return of income, the Assessing Officer noted that there is no secured loan reflected therein. The assessee was asked to explain the fact. The Assessing Officer noted that assessee has not provided any details of such loan processing charges. Accordingly, entire expenses / loan processing charges of Rs.16,27,148/- was disallowed and added to the income of assessee.

4. Aggrieved by the addition in the assessment order, the assessee filed an appeal before the Ld. CIT(A). Before Ld. CIT(A), the assessee filed detailed written submission. The

submission of assessee is recorded in **para-4** of the order of Ld. CIT(A). The assessee in its submission stated that assessee is a partnership firm engaged in the business of construction of residential units / flats, which was started from 20.12.2013. The assessee is developing project “Om Regency” by executing a partnership deed dated 01.03.2013. This was the first of its business activities. The assessee has incurred direct expenditure to complete the construction work of residential unit / flats. The assessee-firm has developed aforesaid residential flats but there was no sale of said residential flats in the year under consideration and advanced money against the bookings were received from the prospective buyers. The assessee is following project completion method and furnished its audit report in Form 3CB & 3CD. On the issue challenged in the appeal, the assessee stated that during the assessment they have complied the direction of assessing officer and furnished details on all the issues. The Assessing Officer despite furnishing detailed explanation particularly in respect of sundry creditors for the goods and expenses as appearing in the audited balance-sheet, the Assessing

Officer arbitrarily made addition of creditors as unexplained cash credits under section 68 of the Act and made addition of Rs.2.74 crores under section 68 r.w.s. 115BBE of the Act. The Assessing Officer also made disallowance of genuine business expenses of loan processing charges.

5. On the addition of Rs.2.74 crores, the assessee submitted that assessee-firm has incurred expenses for purchase of goods and materials and labour charges to various labour contractors, which are duly recorded in the books of account. The Assessing Officer himself accepted that liabilities outstanding shown in the audited balance-sheet and liabilities against the building materials purchased could not explain and labour charges which are exclusively meant for construction business activities. The Assessing Officer doubted the trading liability in case of thirteen creditors on suspecting that no payments were made to them till the end of relevant year and is bogus trading liability and not genuine. Such addition is based on mere suspicion and doubt, without appreciating the fact that creditors also having other source of income or materials, contract income from other labour contractor with other

parties. Simply because the assessee has not made payment to the creditors and showed them outstanding as they started transaction with the assessee-firm could not automatically be presumed as bogus / in-genuine and no tangible evidence was available with the Assessing Officer against the real and factual trading liabilities of assessee-firm. The assessee further stated that till 31.03.2014, the assessee incurred of Rs.9,31,63,790/- for construction of residential units / flats which shown as work-in-progress in the audited balance-sheet. The construction cost till the end of relevant year was for the purchased of land and its development expenses, labour charges, cutting expenses, material purchase expenses, labour with material expenses and other indirect expenses shown in the audited balance-sheet. All the details were provided to Assessing Officer and Assessing Officer made addition under section 68 and not under section 69C of the Act thereby found genuine real and direct expenses though the books of assessee were not rejected. The Assessing Officer accepted the liability as a trading result because some of the parties have not responded to the notice under section 133(6) of the Act. The

Assessing Officer presumed that the trading liability as in-genuine cash credit. The assessee submitted that they have furnished complete names, addresses, PAN, opening balance, total purchases/ contractual, total payments and outstanding as on 31.03.2014. Thus, it was not a case of non-furnishing details of information of sundry creditors out of total sundry creditors of Rs.3.80 crores the Assessing Officer drawn inference of bogus / in-genuine cash credit for thirteen creditors only. The assessee further submitted that assessee made payment against such creditors in subsequent financial year, substantially through account payee cheque, which has been rightfully accepted and assessed in the subsequent years i.e. in financial years 2014-15 to 2016-17 while passing assessment order under section 143(3) of the Act. The assessee deducted tax at sources (TDS) wherever applicable, particularly on payment of labour charges. The assessee also relied on certain case law.

6. On the disallowance of loan processing charges, the assessee stated that Assessing Officer made disallowance only on presumption and allegation that there is no secured

loan reflected in the books of account. As a matter of fact, the loan processing charges were incurred for loan processing charges for the housing loan obtained for the buyers of the flats. The Assessing Officer himself appreciated the fact and presumed that said expenses were incurred for loan transaction outside the books of account. The expenses were, in fact, wholly and exclusively for the purpose of business and fully liable under section 37(1) of the Act.

7. The Ld. CIT(A) after considering the submission of assessee and the contents of the assessment order noted that Assessing Officer made addition of sundry creditors by taking view that no payments were made during the financial year, therefore expenditure was not genuine. Further, the PAN of Shri Jignesh Kannubhai Korat, one of the creditors found to be incorrect from ITD data. On the contrary, the assessee stated that they started construction from 20.12.2013 and no sales of flats were made and advance was received against the booking of flats, the assessee has shown its work-in-progress of Rs.9.71 crores at the year end and that all details were provided to the

Assessing Officer. The Ld. CIT(A) further recorded that assessee claim that all these creditors, the substantial amount was paid through account payee cheque in next financial year i.e. 2014-15, 2015-16 and 2016/17 respectively, which is accepted by Assessing Officer in assessment proceedings under section 143(3) of the Act. The assessee also made TDS on payments wherever applicable. The assessee provided correct PAN of Shri Jignesh Kannubhai Korat. The Ld. CIT(A) on his observation held that Assessing Officer made addition merely on the basis of fact that no payment has been made to the creditors during the year but he should keep in mind that project was started from 20.12.2013 and project was made in the last quarter of financial year similarly services of labour contractors were taken in the last quarter of financial year payments. All these contractors were made through account payee cheque. The Assessing Officer passed the assessment order under section 143(3) and accepted these payments as genuine though book result of assessee was not disturbed by disturbing work-in-progress. The TDS made on the payment made to labour contractors is deposited in the

Govt. account in due time. The Assessing Officer has not made any inquiry from the creditors despite having complete addresses and PAN. On the basis such findings of Assessing Officer, Ld. CIT(A) deleted the entire addition of Rs.2.74 crores.

8. On the addition of Rs.16,27,148/- made on account of disallowance of loan processing charges, the Ld. CIT(A) noted that Assessing Officer noted this expenditure is not genuine. The assessee claimed that loan processing charges were borne by assessee on behalf of customers who booked their flats in assessee's project. For obtaining bank loan facilitated all those people (buyers) and to attract buyers has assessee borne this expense. Therefore, it is a revenue expenditure and allowable under section 37(1) of the Act. The expense was paid through account payee cheque for the purpose of assessee's business. On the basis of such finding, the Ld. CIT(A) deleted the disallowance of loan processing charges. Aggrieved by the order of Ld. CIT(A) the Revenue has filed present appeal before the Tribunal.
9. We have heard the submissions of learned Senior Departmental representative (Ld. Sr-DR) for the Revenue

and the Ld. Authorized Representative (Ld.AR) for the assessee and have gone through the orders of lower authorities carefully. The ground No.1 relates to deleting the sundry creditors addition. The Ld. Sr. DR for the Revenue submits that Ld. CIT(A) deleted the addition on his observation that project of assessee was started in last quarter and substantial amount was paid to the creditors through cheque in next financial year and the assessee deducted tax wherever required. The observation of Ld. CIT(A) is not acceptable for the reason that during assessment, the Assessing Officer made complete inquiry by issuing notice under section 133(6) of the Act to the creditors and notices were returned back by the Postal Authorities with the remarks “no such person/incomplete address/not known” even complete name and addresses were furnished. The PAN of the one creditors was wrong. The Assessing Officer established that creditors were not genuine and assessee has not paid even single penny to the creditors and payment of labour contractor cannot be withheld for long period as labourers with the construction are daily labourers who need payment on daily basis.

10. On the other hand, Ld. AR for the assessee supported the order of Ld. CIT(A). The ld. AR for the assessee submits that during the assessment, the assessee furnished complete details including names, addresses and PAN of the creditors. The assessee properly explained the facts that project of assessee was started in the last quarter of financial year 2015-16 and the payments were made in the next financial year. It is not the case of Assessing Officer that assessee has not incurred any expenditure or no payments against the purchase of constructional materials were made. The assessee has shown sundry creditors of Rs.3.80 crores and only the Assessing Officer disallowed Rs.2.74 crores. The Assessing Officer in the scrutiny assessment in next assessment years accepted the payments against same sundry creditors as genuine. Once the payment is accepted in subsequent year, the same cannot be doubted in the year under consideration. The Ld. AR of the assessee fully supported the order of Ld. CIT(A).

11. We have heard the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that Assessing Officer during the assessment

proceedings, noticed that assessee has shown 21 creditors though the Assessing Officer made the addition against 13 creditors only by taking view that either they have no response or the notices under section 133(6) were not complied. We find that the Assessing Officer has not segregated the parties who have not complied with or the notice of which parties were returned back with the remarks of Postal Authorities “incomplete addresses, or not found”. The Assessing Officer made addition by taking view that assessee has not furnished complete details. We find that the Assessing Officer added the addition of sundry creditors under section 68 instead of section 69C of the Act. As noted above, before the Ld. CIT(A) assessee filed detailed written submission. The submission of assessee also consider by Ld. CIT(A) that assessee have shown WIP of Rs. 9.31 Crore. The ld CIT(A) further noted that the assessee claimed that all the details of creditors were furnished before assessing officer and that in subsequent year all most of the payments were made, which is not doubted by the assessing officer. We find that once the payment in subsequent assessment year has been accepted in the scrutiny assessment as

genuine, the same cannot be left as treated in-genuine. Moreover, the assessee has made TDS against such payment of labour contractors wherever applicable. In view of the aforesaid discussion, we do not find any reason to deviate the findings of Ld. CIT(A). This ground of Revenue's appeal is dismissed.

12. Ground No.2 relates to disallowing the loan processing charges. The Ld. Sr-DR for the Revenue supported the order of Assessing Officer. Ld. Sr-DR for the revenue submits that Ld. CIT(A) deleted the disallowance of loan processing charges by taking view that it was a revenue expenditure incurred wholly and exclusively for the purpose of assessee's business. The Ld. Sr-DR for the Revenue submits that assessee failed to establish genuineness of the expenditure incurred under the head "loan processing charges" with supporting evidence. The Ld. CIT(A) accepted the contention of assessee that loan processing charges of flat booking buyers were borne by the assessee for the purpose of assessee's business. The Ld. CIT(A) was not correct in allowing the expenditure on third-party at the hand of assessee.

13. On the other hand, Ld. AR for the assessee supported the order of Ld. CIT(A). Ld. AR for the assessee submits that loan processing charges were borne by assessee as market strategy as assessee persuaded all the flat booking buyers to obtain loan from one bank or financial institutions to avoid the multiplicity of non-incumbency certificate and for smooth sanctioning of such loans and such expenses were certainly incurred wholly and exclusively for the purposes of assessee's business.
14. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We find that Assessing Officer disallowed the loan processing charges by taking view that no details for evidence to substantiate such loan processing charges were provided by assessee during assessment proceedings. We find that before Ld. CIT(A) the assessee filed detailed written submission, which we have recorded in earlier paragraphs of this order. The Ld. CIT(A) considering the fact as noted that Assessing Officer on perusal of balance-sheet of assessee found that there is no loan from bank to the assessee and disallowed such loan processing charges but

before Ld. CIT(A) the assessee claimed that assessee facilitated all these people to attract buyers and borne the expenditure of loan processing charges. The Ld. CIT(A) accepted the contention that such expenses were revenue in nature and allowable under section 37(1) of the Act. Such expenditure was paid through account payee cheque and expenditure were incurred for the purpose of assessee's good business. We find that the contention of assessee throughout the proceedings that loan processing charges were borne by assessee to attract the buyers book flats and Assessing Officer has not investigated the fact either bank or financial institutions or from the buyers whether the loan processing charges borne by assessee. The details fact alleged buyers and bank may have been available with the Assessing Officer. No investigation is made either from the buyer or from other bank or financial institute by assessing officer. The Assessing Officer made addition / disallowance without making thorough investigation of fact and disbelieve the contention of assessee. In our view, the Ld. CIT(A) granted relief on appreciation of fact that loan processing charges were born by assessee-firm to attract the buyers for

booking flats of assessee as in the nature of revenue expenditure allowable under section 37(1) of the Act. Such view of Ld. CIT(A) does not warrant any inference, which we affirm as no contrary law or fact is brought to our notice to take contrary view. This ground of Revenue's appeal is dismissed.

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

Order pronounced in the open court on 26/12/2022.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 26/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

By order

// True Copy //

Sr.P.S./Assistant Registrar, ITAT, Surat