

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA No. 160/Jodh/2020
(ASSESSMENT YEAR- 2016- 2017)

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| Smt. Chanchal Jain 14B, Kalkaji Goraji, New Sadri Colony, Udaipur (Raj) | Vs | ITO Ward-1(2) Udaipur (Raj) |
| (Appellant) | | (Respondent) |
| PAN NO. AIBPJ 9957 A | | |

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| Assessee By | Shri Rajendra Jain, Adv. |
| Revenue By | Shri Sanjeev Kumar Dev, CIT-DR |
| Date of hearing | 16/01/2023 |
| Date of Pronouncement | 16 /01/2023 |

ORDER

PER: B. R. BASKARAN, AM

The assessee has filed this appeal challenging the order dated 11-09-2020 passed by Ld CIT(A)-1, Udaipur and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in partially confirming the addition to the extent of Rs.7.00 lakhs, out of the total expenditure of Rs.56.41 lakhs disallowed by the AO.

2. The facts relating to the case are discussed in brief. The assessee is engaged in the business of development of real estate properties. During the year under consideration, the assessee had taken loan of Rs.63,29,564/- from one Smt Chaya Jain. The AO assessed the same u/s 68 of the Act. Further, the AO noticed that the assessee has incurred a sum of Rs.57,61,675/- for development of certain property held as stock in trade. The above said expenses consisted of salary of Rs.1.20 lakhs paid to manager and labour expenses of Rs.56.41 lakhs. In support of the above said expenses, the assessee furnished details of labour payments showing date, name, amount and voucher numbers and the work for which wages was paid. However, the assessee did not furnish relevant supporting vouchers. Hence, the AO disallowed the above said amount of Rs.57,61,675/- as unexplained cash credit u/s 68 of the Act.

3. In the appellate proceedings, the assessee submitted relevant details and evidences in support of loan of Rs.63,29,564/- taken from Smt Chaya Jain. After remanding the same to the AO and getting remand report, the Id CIT(A) deleted the addition of Rs.63,29,564/- made u/s 68 of the Act.

4. With regard to the addition of Rs.57,61,675/-, the assessee contended that this is an item of expenditure incurred for development of property and the said expenditure has been incurred out of the above said loan of Rs.63,29,564/-. Accordingly, it was contended that the AO has made double disallowance. It was further submitted that the expenditure incurred by the assessee cannot be

considered as “Cash credit”, liable for disallowance u/s 68 of the Act, as expenditure cannot fall under the category of “liability”. It was also submitted that the entire amount of Rs.57.61 lakhs has been shown as stock in trade in the assets side of the Balance Sheet. In view of the above said contentions, the Ld CIT(A) asked for comments of the AO on the above said contentions. The AO, however, stick to his view that the expenses incurred by the assessee would fall under the category of “cash credit”. However, the Ld CIT(A) agreed with the said contentions of the assessee and held that the provisions of sec.68 is attracted only if any amount is credited into the books of accounts. In the instant case, it is expenditure incurred by the assessee, which is shown as stock-in-trade in the assets side of Balance Sheet. Accordingly, the Ld CIT(A) dismissed the view expressed by the AO holding that the AO has wrongly invoked the provisions of sec. 68 of the Act.

5. After holding so, the Ld CIT(A), however, proceed to make partial disallowance. The Ld CIT(A) observed that the assessee has produced only few bills and vouchers in support of the expenses and they are also self made vouchers. Accordingly, the Ld CIT(A) took the view that the assessee has not fully discharged the onus placed upon him to prove the expenses. Accordingly, the Ld CIT(A) took the view that a portion of expenses is required to be disallowed to cover up all possible leakages. Accordingly, the Ld CIT(A)

partially sustained a sum of Rs.7.00 lakhs out of total disallowance of Rs.57.61 lakhs.

6. The assessee is aggrieved with the order of Ld CIT(A) in partially sustaining disallowance to the extent of Rs.7.00 lakhs.

7. We heard the parties and perused the record. The question of invoking provisions of sec.68 of the Act shall apply only if any amount is found credited to the books of accounts of the assessee and the assessee does not prove the same to the satisfaction of the AO. Hence, the Ld CIT(A) was justified in holding that the provisions of sec.68 will not be attracted to the case of “expenditure” incurred by the assessee. However, the Ld CIT(A) has proceeded to partially sustain the addition to the extent of Rs.7.00 lakhs on the reasoning that the assessee did not substantiate the labour expenses of Rs.56 lakhs with proper vouchers.

8. We noticed that the impugned expenses have been incurred on development of land and the entire expenses have been shown as stock in trade. When entire expenses have been included in Stock in trade, the same was not claimed as expenditure against computing total income of the year under consideration. Hence the question of making any addition of the above said amount of Rs.7.00 lakhs to the total income computed for the year under consideration will not arise, i.e., the disallowance made by the Ld CIT(A) will not have any influence on the total income of the year under consideration.

9. Further, it is not the case of the tax authorities that the assessee did not maintain vouchers at all in support of labour expenses incurred by him. The case of the Ld CIT(A) is that the said expenses are supported by self made vouchers. In case of labour payments, the prevailing trade practice is to disburse the payment by getting signature on the papers or vouchers of the assessee, which are always self made. If there is signature of the assessee acknowledging the receipt of payments and if it is for putting up labour, then the same should not be normally interfered with, i.e., the AO should bring any other material on record to disprove the said payments. The Ld CIT(A) has not given a finding that the signature of labourers was not available or it was shown that the impugned payments are bogus in nature. Hence, on merits also, we are of the view that the impugned disallowance of Rs.7.00 lakhs made by the Ld CIT(A) could not be sustained.

10. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was not justified in partially sustaining addition to the extent of Rs.7.00 lakhs. Accordingly, we modify the order passed by Ld CIT(A) on this issue and direct the AO to delete the entire disallowance of Rs.56.41 lakhs relating labour payments.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 16/01/2023

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Dated : 16 /01/2023

**Mishra*

Copy to:

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

Asstt. Registrar

Jodhpur Bench