

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.217/SRT/2020

निर्धारण वर्ष/Assessment Year: (2016-17)

(Virtual Court Hearing)

The ACIT, Central Circle-2, Surat.	Vs.	M/s. Mangalmurti Developers, 17/18, Astvinayak Raw House, Near Parshuram Garden, Adajan, Surat-395001.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAVFM9510C		

Appellant by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Ashwin K. Parekh, CA
Date of Hearing	27/02/2023
Date of Pronouncement	15/05/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the Id. CIT(A)”], in ITBA No. CIT(A)-4/10531/2018-19, dated 11.03.2020, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 21.12.2018.

2. The grounds of appeal raised by the Revenue are as follows:

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.82,82,260/- on account of unexplained expenditure holding that the amount of Rs.3,54,550/- was paid to Gujarat Gas Ltd. & the remaining amount of Rs.79,27,716/- was paid to 11 persons through a/c payee cheques and TDS was deducted and deposited in the Government Account, without appreciating the facts that the assessee failed to produce any documentary evidence w.r.t. payment of Rs.3,54,550/- made to Gujarat Gas Ltd. & the bills produced by the assessee for the remaining amount of Rs.79,27,716/- do not have even contact number, bill number, TIN/ Registration number.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.1,09,86,609/- on account of unexplained sundry

creditors holding that the said payment was made to all these creditors in next F.Y. through regular banking channel without appreciating the facts that the assessee failed to even produce ledger confirmation, details of transactions and identity of these sundry creditors. Thus the assessee failed to prove the genuineness of the so called sundry creditors.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in admitting additional evidence (payment of TDS and payment to sundry creditors in subsequent year etc.) without providing an opportunity to the AO under Rule 46A of the I.T. Rule, 1962.

4. It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.

5. The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. The facts necessary for disposal of the appeal are stated in brief. The assessee before us is a Firm and filed his return of income for the year under consideration on 05.10.2016, declaring total income at Rs.6,55,000/-. The return of income was processed under section 143(1) of the I.T. Act. The case was selected under CASS under compulsory manual selection. Accordingly, notice under section 143(2) of the I.T. Act dated 08.09.2017 was issued and duly served upon the assessee.

4. Thereafter, a show cause notice was issued by assessing officer on 11/12/2018, fixing date of hearing on 14/12/2018. The contents of the show cause notice are reproduced by Assessing Officer at page nos. 2 to 4 of assessment order.

5. In response to the show cause notice, the assessee submitted its reply to the Assessing Officer, which is mentioned in paper book page no.55. Before the Assessing Officer, the assessee has submitted the following documents and evidences:

- (i) Letter towards explanation by assessee for item-wise
- (ii) Details of unsecured loans
- (iii) Creditors payment details and TDS details
- (iv) Purchase bills
- (v) Details of direct expenses with evidences
- (vi) Details of indirect expenses
- (vii) Financial expenses.
- (viii) Audit Report

6. On verification of the audit report for the year under consideration it was noted by Assessing Officer that the assessee has claimed direct expenses of Rs.82,82,260/-. The assessee was requested to furnish the supporting documents towards said expenses, therefore AO issued show cause notice dated 11/12/2018 to the assessee. The assessee in his reply has submitted the copy of the bills, the details are mentioned below:

Sl.	Bill description	Bill no	Dated	Amount
(i)	Plaster work	01	22/03/2016	8,70,500/-
(ii)	Plaster work	01	29/03/2018	8,35,200/-
(iii)	RCC Work	Nil	30/03/2016	8,60,200/-
(iv)	RCC Work	Nil	14/02/2016	8,56,800/-
(v)	Plaster work	Nil	02/03/2016	8,44,500/-
(vi)	RCC Work	Nil	05/03/2016	8,75,200/-
(vii)	Misc work	Nil	10/03/2016	8,36,806/-
(viii)	Plaster work	Nil	10/03/2016	8,80,610/-
(ix)	Electrical work	Nil	29/03/2016	5,10,600/-
(x)	Painting work	1	10/03/2016	4,56,200/-
(xi)	RCC Labour work	Nil	23/03/2016	1,01,100/-
Total				79,27,716/-

The Assessing Officer noted that the assessee has made direct expenses of Rs.82,82,260/-, however assessee had produced the bills for only Rs.79,27,716/-, as mentioned in the table above. The Assessing Officer noted that the assessee has not provided any details/supporting documents to substantiate how and when the payments towards these bills were done. The assessee has not submitted confirmation of the parties towards the payment receipt. Therefore, the bills produced by the assessee towards direct expenses of Rs.82,82,260/- was treated to be bogus. Hence, the direct expenses of Rs.82,82,260/- incurred by the assessee was added to the total income of the assessee.

7. On perusal of the audit report for the year under consideration it was noted by Assessing Officer that the assessee had shown Sundry creditors (current liabilities) of Rs.1,09,86,609/-. However no ledger confirmation, details of transaction carried out with them, date of payment made and identity proof was submitted by, the assessee. Hence the assessee was asked to show cause as to why the sundry creditors of Rs.1,09,86,609/- should not be treated as unexplained and added to his total income for the year under consideration.

8. In response to the show cause notice, the assessee had made submission on 14/12/2018 before Assessing Officer. However, the assessing officer rejected the contention of the assessee and held that genuineness of the transaction remains unverified therefore the claim of the assessee of Rs.1,09,86,609/- towards sundry creditors was disallowed by Assessing Officer.

9. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of Assessing Officer. Aggrieved, the Revenue is in appeal before us.

10. Learned Counsel for the assessee submitted that the amount of Rs.3,54,550/- was incurred for gas line expenses paid to the Gujarat Gas Company hence bills was not produced. The bills of other remaining amount of Rs.79,27,716/- were produced before the Assessing Officer, which were related to RCC work, plaster, miscellaneous work and electric work and TDS was deducted upon all these payments and TIN No. is available on TDS returns. The assessee files Online submission on dated 14.12.2018 before the Assessing Officer in which the complete address, PAN Number, bill amount, TDS amount and net amount paid to 11 persons was given and to whom the payment was made through account payee cheques. The assessee further submitted that without these expenditure, the assessee cannot carry on the construction work, thus the disallowance made by the Assessing Officer is not justified.

11. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

12. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. The necessary facts of the case have already been discussed in paragraphs above. On examination of the facts and circumstances of the case, we note that assessee submitted that amount of Rs.3,54,550/- was incurred for gas line expenses paid to the Gujarat Gas Company hence bills was not produced. The bills of other remaining amount of Rs.79,27,716/-

were produced before the Assessing Officer, which were related to RCC work, plaster, miscellaneous work and electric work TDS was deducted upon all these payments and TIN No. is available on TDS returns. The assessee filed online submission on dated 14.12.2018 before the Assessing Officer in which the complete address PAN No. bill amount TDS amount and net amount paid to 11 persons was given and to whom the payment was made through account payee cheques. The assessee further submitted that without these expenditure, the assessee cannot carry on the construction work, thus the disallowance made by the Assessing Officer is not justified. The Id CIT(A) observed that assessee filed detailed submission before the Assessing Officer on e-platform dated 14.12.2018. The amount of Rs.3,54,550/- was paid to Gujarat Gas Ltd., which is state Govt. public under taking. Remaining amount of Rs.79,27,716/- was paid to 11 persons through account payee cheques. The TDS was deducted and deposited in Govt. account and complete addresses, PAN of these persons were submitted before the Assessing Officer. The Id CIT(A) observed that during the year, the assessee has shown sale of Rs.2.21 Crore and purchase of material of Rs.64.36 lacs. Without incurring expenditure on labour work and other-items, the assessee was not able to show any sales. The expenses were incurred for the business purchases, which has not been disputed by the Assessing Officer. Keeping in view all these facts, the Id CIT(A) deleted the addition. We note that conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the ground raised by the Revenue.

13. In the result, ground No.1 raised by the Revenue is dismissed.

14. About ground No. 2 raised by the Revenue, we note that the said ground is against the addition of Rs.1,09,86,609/- made by the Assessing Officer considering the sundry creditors as bogus because these liabilities were outstanding at the year end. The Id Counsel for the assessee stated that assessee has filed the submission on 13.11.2018 & 14.12.2018 vide acknowledgement as mentioned in his submission and submitted complete details of sundry creditors before the assessing officer. The Id Counsel submitted that payment to all these creditors were made in next years by

regular banking channel. The Id Counsel further stated that no confirmation from creditors was sought by Assessing Officer and additions made u/s 41(1) of the Act is not justified. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. We have heard both the parties. During the appellate proceedings, Id CIT(A) noted that assessee submitted copy of e-filed submission dated 14.12.2018 before the Assessing Officer. It is a fact that payments have been made to all these creditors in next year, through regular banking channel. The assessee submitted complete address of these peoples in his e-submission and no independent enquiry was made by the Assessing Officer before disallowing expenditure.

16. We note that assessee, submitted PAN number, name address of creditors, confirmation of creditors, and financial of creditors, if the assessing officer has any doubt, he ought to have conducted further enquiry. Besides, the assessing officer has not discredit the documents and evidences submitted by the assessee. For that we rely on the Judgment of Hon'ble Supreme Court in case of **Sreelekha Bannerjee** (491 ITR 122), wherein it was held that “..... *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

17. Based on these facts and circumstances, we are of the view that there is no infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

18. In the result, ground No. 2 raised by the Revenue is dismissed.

19. For ground No. 3, the Id DR for the Revenue has argued that Id. CIT(A) has erred in admitting additional evidence, that is, payment of TDS and payment to sundry creditors in subsequent year etc. We note that TDS details were there before the assessing officer, hence it cannot be treated additional evidence. About

‘payment to sundry creditors in subsequent year’, we note that it was not a vital evidence before Id CIT(A) to delete the addition. The Id CIT(A) deleted the addition based on merits of the assessee’s case, since assessee, has submitted PAN number, name address of creditors, confirmation of creditors, and financial of creditors. If the assessing officer has any doubt, he ought to have conducted further enquiry. Besides, the assessing officer has not discredited the documents and evidences submitted by the assessee, as noted above. Moreover, section 41(1) of the Income-Tax Act is not a charging section. It is only a machinery section. In order to bring a case under section 41(1) of the Act, it has to be shown by the assessing officer that there has been remission or cessation of the liability, which the assessing officer has failed to do so. Therefore, we are of the view that there is no involvement of additional evidences, so far the adjudication of Id CIT(A) is concerned, hence there is no violation of Rule 46A of the Income Tax Rules. Hence, ground no. 3 raised by the Revenue is hereby rejected.

20. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 15/05/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 15/05/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat