

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1686/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2014-2015

Sunil Dhirubhai Patel, Plot No.16, Vikram Park, Nr. Bajrangdas Ashram, NH No.8, Thakkarbapa, Ahmedabad-382350.  <b>PAN: AHXPP1195M</b>	Vs.	Income Tax Officer, Ward-7(2)(3), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Parin Shah, AR
Revenue by :	Shri Ashok Kumar Suthar, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **25/01/2024**

घोषणा की तारीख /**Date of Pronouncement**: **02/02/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-7, Ahmedabad, arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The only effective issue raised by the assessee is that the Ld. CIT(A) erred in confirming the addition made by the AO for Rs. 1,74,00,000/- on account of bogus expenses.

3. The facts in brief are that the assessee in the present case is an individual and deriving his income from the business of construction and development of land. The AO in the instant case initiated the proceedings u/s 147 of the Act based on the report received from the Principal DIT(Investigation). As per the report there were certain parties engaged in providing bogus labour bills. The assessee has taken labour expense bills from these parties detailed as under:

<i>S.No.</i>	<i>Name</i>	<i>Amount</i>
1.	<i>Task Management Company</i>	<i>36,00,000/-</i>
2.	<i>Umiya Contractor Company</i>	<i>36,00,000/-</i>
3.	<i>Labh Construction Company</i>	<i>36,00,000/-</i>
4.	<i>Patel Arvindbhai Babaldas</i>	<i>30,00,000/-</i>
5.	<i>Infowork Solutions</i>	<i>36,00,000/-</i>

3.1 Thus, the AO treated the same as bogus expenses and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who also confirmed the order of the AO. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 71 to 202 and contended that the expenses in dispute were incurred in the earlier year but the payment to that effect was made in the year under consideration. The Ld. AR in support of his contention drew our attention on pages 55 to 59 of the paper book where the ledger copies of the parties were placed and the bank statement demonstrating payment to such parties which is place on pages 60 to 64. As per the Ld. AR, since the expenses were incurred in the earlier year and capitalized in

the value of the land and no deduction of whatsoever was claimed in the P & L account, the question of making the disallowance does not arise. As per the Ld. AR, the value of the land was still shown in the books of accounts even as on date. Thus, the Ld. AR submitted that since no deduction has been claimed for the impugned expenses, the question of making disallowance does not arise. Accordingly, the Ld. AR prayed to delete the addition made by him.

6. On the contrary, the Ld. DR submitted that the expenses incurred by the assessee were bogus in nature. As per the Ld. DR, the labour contractor will not wait for the payment till the year under consideration. It was also pointed out by the Ld. DR that surprisingly; the labour expenses were incurred by the assessee in the name of 5 parties and the payment to all of them were made in the year under consideration which is highly improbable. Accordingly, the Ld. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the impugned expenses incurred by the assessee were not claimed as deduction in the profit and loss account in the year in dispute. As such the expenses incurred in the earlier year were capitalized by adding in the value of the land. This, undisputed fact can be verified from the findings of Ld. CIT(A), which is extracted below.

*It is observed that appellant has obtained the bogus bills from above referred parties and expenditure is capitalized under the relevant land account which is forming part of investment in balance sheet. This aspect is further explained from one of the bills taken by Appellant from Task management services for Rs.6,28,866 and same is capitalised as part of land Pethapur 56B which is apparent from grouping of land account reproduced herein above. This fact clearly proves that Appellant has not claimed any expenditure in earlier years but same is capitalised as part of land cost.*

7.1 Firstly, on perusal of the copies of the ledger, we note that none of the labour expenses was incurred by the assessee in the year under consideration which can be verified from the copies of the ledger of the contractor, placed on

pages 55 to 59 of the paper book. Secondly, all these expenses were capitalized in the value of land, meaning thereby, no deduction was claimed by the assessee qua to the impugned expenditure. Thirdly, there is no allegation of the revenue suggesting that the expenses were incurred by the assessee out of the books of accounts meaning thereby, the expenses were incurred by the assessee out of disclosed cash available with him.

7.2 Regarding the fact that the expenditure was incurred by the assessee in the earlier year, we note that the AO in his order has also observed as under:

*Therefore, income chargeable to tax has found escaped assessment for A.Y 2011-12 within the meaning of provisions of section 148 of the Income Tax Act, 1981.*

7.3 From the above findings of the AO, there remains no ambiguity to the fact that the impugned expenses were incurred in the earlier year and therefore no addition of whatsoever can be made in the year in dispute despite without going into the issue whether such expenditure were bogus in nature or not. Regarding the issue that the expenses were capitalized in the value of land, we note that the question of making disallowance arises when the assessee claimed the deduction. In the present case, undeniably the assessee has not claimed any deduction in the year in dispute and therefore on this count as well as such expenses cannot be disallowed in the year under consideration.

7.4 Moving further, there is also no dispute to the fact that the expenses were incurred out of disclosed cash available with the assessee and therefore no deeming provision provided u/s 69/69A of the Act can be attracted. In view of the above, after considering the fact in totality, we are of the view that no addition is warranted on account of impugned bogus expense. Accordingly, we set-aside the finding of Ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal filed by the assessee is hereby allowed.

**Order pronounced in the Court on 02/02/2024 at Ahmedabad.**

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

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
02/02/2024