

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 228/Ahd/2024
(Assessment Year: 2016-17)

M/s. The Emerald Infra, 6-A, Janakpuri Society, Nr. Dawat Hotel, Manjalpur, Vadodara-390011	Vs.	The Deputy Commissioner of Income Tax, Central Circle-2, Vadodara
[PAN No. AAIFT7454M]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Urvashi Sodhan, A.R.
Respondent by :	Shri Purshottam Kumar, Sr. D.R.
Date of Hearing	13.06.2024
Date of Pronouncement	10.07.2024

ORDER

The appeal filed by the assessee is against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), Ahmedabad on 20.12.2023 for A.Y. 2016-17.

2. The grounds of appeal raised by the assessee are as under:

“1. The Learned CIT(A) has erred in law and on facts of the appellant’s case in passing an order U/s 250 of the Act confirming the order of the Ld. AO of making an addition of Rs. 16,43,316/- on erroneous plea it is a bogus expenses.

2. Both the lower authorities have erred in law and on facts of the appellant’s case in holding that purchases made by the appellant is bogus.

3. The initiation of penalty proceedings U/s. 271(1)(c) of the Act is not justified.

4. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before hearing of the appeal.”

3. The assessee firm filed its return of income on 27.06.2017 declaring total income of Rs. 25,74,640/-. The assessee firm is engaged in the business

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of construction and development and housing projects. Consequent to search under Section 132 of the Act in the case of Akshar Group of cases on 22.09.2015 a search was initiated / conducted in the case of Shri Mehul G. Patel from where the assessee's books of account / documents were found. Accordingly, the case was selected for scrutiny and as per provisions of Section 153B(2) of the Act notice under Section 143(2) was issued on 07.07.2017 which was duly served upon the assessee. Notice under Section 142(1) along with detailed questionnaire was issued on 13.06.2017 which was duly served upon the assessee. The Assessing Officer observed that during the period of search assessment years under consideration that is A.Ys. 2014-15 to 2016-17, the assessee has undertaken housing project viz. The Emerald. Certain details containing a delivery challans as well as bills from M/s. Subh Trading Co. Ltd. for delivery of cement for the site The Mark of Shree Ganesh Developers was found during the search at the residential premises of Shri Mehul G. Patel. The said bill pertains to the month of March 2015. Therefore, the assessee's issues summons to M/s. Shubh Trading Co. and the same return was served. After taking the cognizance of the assessee's reply and submissions the Assessing Officer held that the transaction was not proved genuineness by the assessee and therefore, the onus was not discharged in respect of trading with M/s. Subh Trading Co. and therefore, the expenses shown by the assessee amounting to Rs. 16,43,316/- in A.Y. 2016-17 are clearly bogus expenses bills and hence added the same.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. A.R. submitted that the Assessing Officer despite giving proper explanation and the identity of the parties has treated the same bogus expenses

and added the same. The Ld. A.R. submitted that the identity was true and the bank accounts statement was also not taken into account by the Assessing Officer. In fact, in the search assessee's name was not found and the books were also not rejected at any point of time. At the time of hearing the assessee submitted certain bills related to Subh Trading Co. for the period 06.04.2015 to 13.11.2015 related to projects of cement. These invoices were not before any of the authorities but filed by the assessee as additional evidences before the Tribunal thereby requesting that the same may be admitted and on the said basis the addition be deleted.

6. The Ld. D.R. submitted that the entity Subh Trading Co. despite giving summons has not given any confirmation related to cement trading or has not found on the address given by the assessee. The Ld. D.R. further submitted that the assessee's books of account was found during the search and therefore, there was sufficient material to establish that there was no business activity carried out by the assessee. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. In respect of the additional evidences filed by the assessee it appears that the assessee has submitted the dealing in the cement with Subh Trading Co. and the invoices are for the period 06.04.2015 till 13.11.2015 but on Page 12 of the Assessment Order the ledger account of Subh Trading Co. in assessee's books describe the opportunities are still. It appears that these evidences and the observations made by the Assessing Officer needs to be verified and therefore, we are admitting these evidences with the condition that the Assessing Officer will verify the same in consonance of the search material found as well as the assessee will submit the confirmations of the party

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including the correct address of the party Subh Trading Co. and the Assessing Officer will verify the identity of the said party and after establishing the transaction by the assessee will take the cognizance as per the income tax statute. Thus, the matter is remanded back to the file of the Assessing Officer for proper adjudication of the issues in consonance with the observations made hereinabove thereby directing the Assessing Officer to take cognizance of the additional evidence. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on	10/07/2024
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 10/07/2024
TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad