

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. Nos.604&605/Kol/2024**  
**Assessment Years: 2016-17 & 2017-18**

**M/s Utkal Builders Ltd.....Appellant**  
**Plot No.777, Virayatan**  
**Saheed Nagar,**  
**Bhubaneshwar, Khorda,**  
**Orissa – 751007.**  
**[PAN: AAACU5502C]**

**vs.**

**DCIT, Circle-1(1), Kolkata..... Respondent**

**Appearances by:**

Shri S. M. Surana, AR and Sunil Surana, AR, appeared on behalf of the appellant.  
Shri Abhijit Kundu, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 18, 2024

Date of pronouncing the order : September 12, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The captioned appeals have been preferred by the assessee for different assessment years against the separate orders dated 15.02.2024 & 14.02.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since common issues are involved in both the appeals, therefore, both the appeals have been heard together and are being disposed of by this common order. ITA No.604/Kol/2024 is taken as lead case for narration of facts.

2. **ITA No.604/Kol/2024** - The assessee in this appeal has taken the following grounds of appeal:

“1. For that on the facts and in the circumstances of the case Ld. CIT(A) was not justified in confirming the addition of Rs.5,56,62,541/- u/s 68 without at all considering the submission of the assessee with regard to non-grant of opportunity, that all the details with PAN were on record, the AO did not proceed to issue any summon u/s 131/133(6) and further loans were in fact given to some parties which as not cash credit, most of the creditors were old creditors whose loans were accepted in earlier years and further when the AO did not grant proper time and reasonable opportunity to submit the loan confirmations which in fact were filed before the Ld AO before the service of assessment order on the assessee.

2. For that the Ld. CIT(A), on the facts and in the circumstances of the case should have admitted the loan confirmation letters supporting the facts on record.

3. For that the Ld. CIT(A) is not justified in confirming the addition of Rs.5,56,62,541/- u/s 68 when the transactions were squared of.

4. For that the Ld. CIT(A) is not justified in enhancing the assessment and directing the AO to disallow interest on unsecured loans without giving the prior notice of enhancement to the assessee.

5. For that the Ld. CIT(A) confirming the estimated disallowance of Rs.3,07,03,743/- at the rate of 10% of total construction cost incurred during the year when no such disallowance was made in any year, more so the cost of Construction was added in WIP and further, no reasonable opportunity of being heard was given by the AO and even otherwise such disallowance without rejecting the books of accounts was bad in law.

6. For that the Ld CIT(A) erred in giving direction to the AO to treat the cases where 60% advances have been received or registration of the property has been done, as sales ignoring the method of accounting regularly followed by the assessee recognizing the sale on registration of conveyance, or giving the possession or when 90% of the sales price is received and more so when there is no logic or basis to treat the sale as complete when 60% of the price is received. Furthermore the entire sale of the project was duly accounted for in different years duly taxed by the department and further direction of Ld CIT(A) will tantamount to double taxation on the sales and income of the same flats of the project which is not permissible in law.

7. For that the Ld. CIT(A) is not justified in setting aside the difference of Rs.28,19,460/- being rental income shown in Form No.26AS and that reflected in the P/L account when reconciliation of the same was duly filed.”

3. **Ground Nos.1 to 4** – The assessee through these Grounds has agitated against the confirmation of addition of Rs.5,56,62,541/- made

by the Assessing Officer u/s 68 of the Act treating the loans/credits as unexplained income of the assessee. The assessee through these grounds has contested the validity of the additions on merits as well as on the legal ground that the Assessing Officer did not give proper opportunity to the assessee to present its case and passed the assessment order in a haste manner and even on a holiday, violating the principles of natural justice.

4. The ld. AR of the assessee, at the outset, has invited our attention to the impugned assessment order to submit that the same is dated 25.12.2018. He has submitted that 25.12.2018 was a gazetted holiday on account of Christmas. The ld. counsel has further invited our attention to page 414 of the paper-book, which is a copy of show-cause notice dated 24.12.2018 issued at 17:43 hrs. (05:43 p.m), which was served upon assessee through Income Tax portal/email. The assessee through this notice has been asked to furnish the necessary details/evidences, pointwise rebuttal etc. relating to each of the issue involved in this case and the date of hearing and time has been fixed at 25.12.2018 at 11.42 a.m. The ld. counsel has submitted that the Assessing Officer had sent the show-cause notice through email/portal in the evening of 24.12.2018, whereby, the assessee was asked to furnish the necessary details and evidences by the morning of 25.12.2018, which date was a gazetted holiday and also fixed the hearing of the case in the morning of 25.12.2018, itself. Though, the assessee could furnish details that were available with it by the morning of 25.12.2018, but was not given sufficient opportunity to present its case. The Assessing Officer passed the impugned assessment order on 25.12.2018 itself. The ld. counsel, therefore, has submitted that the impugned assessment order is liable to be quashed

on this score alone on the ground of violation of principles of natural justice.

5. The CIT-DR, on the other hand, has made the following submissions:

*"1. In course of the hearing the Ld.AR of the assessee raised an oral ground that the assessment order was passed by the Assessing Officer on a government holiday, i.e. 25/12/2018 and therefore, it should be declared as invalid.*

*1.1. It was also argued that all the required details in response to notice u/s.142(1) of the Income Tax Act, dated 17/10/2018 was submitted by the assessee company during the assessment proceedings vide their letter dated 14/11/2018. However, the assessment was completed by the A.O without taking these details into consideration and added back the loans amounting to Rs.5.56 crore u/s 68 of the I.T. Act, 1961.*

*2. In this connection reliance is placed on the following judicial pronouncements on the validity of the statutory orders/assessment orders passed on a holiday-*

*(i) Hon'ble Madras High Court in **Venkatesa Iyengar vs Kamalammal And Ors. on 14 December, 1911***

*Held: We are of opinion that the delivery of judgment on a holiday (we are taking it that the 29<sup>th</sup> December 1909 had been notified as a general holiday) is not illegal. It is not contended that there is any express provision of law prohibiting the performance of any judicial work on a holiday or laying down that a judgment delivered on a holiday shall be void."*

*(ii) Hon'ble Ahmedabad ITAT in the case of Priyal Kauhshal Shah in ITA No. 376/AHD/2022, A.Y. 2017-2018, dated 15/03/2023.*

*Held: "...there was more workload on the Government Officers and therefore they had to work even on the holiday. But that does not mean that such holiday shall be presumed as a working day like any other normal day. As such, the object of working on the holiday was to reduce the workload. Thus, the benefit granted under the General Clause Act as discussed above cannot be deprived to the Revenue."*

*iii) In reply to the LOK SABHA UNSTARRED QUESTION NO. 1647 (TO BE ANSWERED ON 13.02.2019), the office of the Hon'ble PM of India had replied inter alia that -" (d): At present, there is no provision for any compensatory leave benefit available to the **Gazetted Officers for attending to official work on Sundays/holidays**. However, subject to*

*the exigencies of work, Government servants can avail various other kinds of leave under the CCS (Leave) Rules, 1972."*

*[Emphasis provided] (copy enclosed)*

*2.1. It is, therefore, evident that the Govt. servants, who work 24x7 if necessary, are not barred from working on holidays and discharge their normal official duties. Consequently, any order passed by them in course of discharge of their normal official duty cannot and should not be treated as invalid.*

*3. As regards the compliance made by the assessee in response to the requisition of details/particulars made by the AO with respect to the loan creditors, the matter has been verified from the assessment record after procuring the same from the AO. It is found from the assessment record that a notice u/s 142(1) was issued by the AO on 10.12.2018 vide which the assessee was asked to furnish all the relevant details and supporting particulars with respect to the Unsecured Loans on 13.12.2018. The email was duly delivered on 10.12.2018. However, the assessee did not comply to the terms of the said notice. This aspect was also clearly recorded by the AO in Para-3.1 of the assessment order. Copy of the notice along with service evidence is enclosed for ready reference.*

*4. In view of the above, it is humbly prayed before your honours that the above facts with regard to the lack of proper compliance from the assessee before the AO, as well as the proposition of law/Govt's views on the passing of orders on holidays may kindly be taken into consideration while deciding this appeal."*

6. We have heard the rival contentions and gone through the record. The emphasis of the ld. CIT-DR in his written submissions is that there is no bar for the Govt. employees to work on a holiday. That, if there is more workload on the Govt. officer, they have to work on holidays also. There is no doubt about the facticity of the aforesaid submissions of the ld. CIT-DR. However, in this case, what is important is that the show-cause notice to furnish the necessary details and reply was issued in the evening of 24.12.2018 and the date of hearing has been fixed in the morning of 25.12.2018. Though, there is no bar for a Govt. officer to work on a holiday in his office, however, in the case pertaining to the hearing of a matter, the consent of the persons/parties involved is required to be taken for fixing the hearing of a matter on a gazetted

holiday. The Assessing Officer being a Govt. officer may work on a holiday, but, he cannot compel the private person/parties to attend in his office on a holiday. Moreover, giving the show-cause notice in the evening of 24.12.2018 and asking the assessee to furnish lengthy details and evidences and fixing the matter in the morning of the next day, itself, and that too on a gazetted holiday is a clearcut case of violation of principles of natural justice. Any such order passed by the Assessing Officer, in our view, legally cannot have the stamp of validity. In view of the above observation, the assessment order is liable to be quashed. We order accordingly.

However, at the insistence of the ld. representatives of the parties, the issues are adjudicated on merits also.

7. So far as the validity of the loan transaction is concerned, the assessee in the given short span of time, furnished the name and address of the creditors and their PAN number and account numbers etc. The Assessing Officer neither issued any notice u/s 133(6) of the Act nor u/s 131 of the Act to verify/confirm the loan transactions from the creditors. The Assessing Officer without carrying out any enquiry in the matters, simply, held the loan transactions as bogus. This action, in our view, cannot be held to be sustainable in the eyes of law.

7.1 Even before the CIT(A), the assessee duly filed confirmations from all the loan creditors. The assessee also explained that even the Assessing Officer has picked up certain opening balances which were not the loans received during the year. However, the ld. CIT(A), without examining any of the details and evidences furnished by the assessee, simply, confirmed the additions made by the Assessing Officer, holding that the same were fresh evidences filed before the CIT(A). It has been

held time and again that the powers of the Id. CIT(A) are co-terminus with that of the Assessing Officer and the Id. CIT(A) has all the plenary powers as that of the Assessing Officer. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the Id. CIT(A) shows that the Id. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect or discrepancy in the evidences and details furnished by the assessee, but, simply upheld the order of the Assessing Officer in mechanical manner. The order of the Id. CIT(A) is a non-speaking order and the same is not sustainable as per law.

7.2 In view of discussion made above, the action of the Assessing Officer as well as of the CIT(A) in making/confirming the impugned additions, cannot be held to be justified. The impugned additions are, therefore, ordered to be deleted. Further, in view of this, the directions of the CIT(A) in directing the Assessing Officer for disallowance of interest on unsecured loans is also not sustainable. Ground Nos.1 to 4 stand allowed.

8. **Ground No.5** – Vide Ground No.5, the assessee has agitated against the action of CIT(A) in estimating the disallowance @10% of total construction cost incurred during the year.

9. The assessee is a developer of the property. The assessee duly filed all the details of construction expenses along with the details of the parties to whom the payments were made along with their PAN number.

As observed above, the assessee was given a few hours to furnish necessary details, still the assessee furnished all the requisite details, which were available with it. The Assessing Officer, without pointing out any defect or discrepancy about the nature and validity of the expenditure, simply, disallowed 10% of the expenditure on ad hoc basis. The ld. AR has submitted that the assessee has been doing its business since long and in the past such ad hoc disallowance has never been made.

10. The ld. DR could not point out any rebuttal to the submissions of the ld. AR or any other reason for the Assessing Officer to make the ad hoc disallowance in a mechanical manner.

11. In view of the above, the addition made by the Assessing Officer on this issue is not sustainable and the same is accordingly ordered to be deleted.

12. **Ground No.6** – Vide Ground No.6, the assessee has agitated against the action of the CIT(A) in directing the Assessing Officer to treat the sale of the assessee in respect of flats/properties, wherein, 60% advances of the total sale consideration have been received, as complete for the purpose of revenue recognition.

13. The ld. counsel, in this respect, has invited our attention to impugned assessment order, whereby, in para no.5 of the impugned order, the Assessing Officer observed that during the year under consideration, the assessee had disclosed the income from sale of flat at Rs.35,68,01,019/-. He further observed that as per ITS database, the figure of sale of property, as per the AIR Code-07, arise of Rs.58,62,30,101/- and further that the same figure was supported by 26QB uploaded by the purchaser of the property. He asked the assessee

to reconcile the figures of sale. Since, the assessee failed to reconcile the figures, he added difference of Rs.22,94,29,082/- as unexplained income of the assessee.

14. Before the ld. CIT(A), the assessee explained that the data picked up by the Assessing Officer was relating to the sale figures of the assessee for five financial years. The ld. CIT(A) considering the submissions of the assessee did not find merit in the action of the Assessing Officer in making the addition on account of reconciliation of the sale figures. However, the ld. CIT(A) noted that in some cases, the assessee has postponed the revenue recognition. He rejected the claimed of the assessee that revenue was recognised on receipt of 90% of the sale consideration. He, in fact, directed the Assessing Officer to consider the sales in case of properties, wherein, 60% of the receipt of advance has been received.

15. The ld. counsel for the assessee, in this respect has explained that the assessee, for the past many years regularly and consistently, is following a system of accounting, whereby, the assessee books the sales, either on execution of the sale deed or on giving physical possession of the property to the buyer or on receipt of 90% of the consideration. He has submitted that this system has been regularly followed by the assessee and has been accepted in past by the department. He has submitted that CIT(A) was not justified in introducing a new system of accounting of recognition of sale at receipt of 60% of the consideration, when the earlier accounting system of the assessee has been regularly followed and the same has always been accepted by the revenue. The ld. counsel, in this respect, has also relied upon the decision of the Jurisdictional Calcutta High Court in the case of PCIT vs. M/s Salarpuria Simplex Dwelling LLP in ITAT/45/2022 IA

No: GA/2/2022 order dated 26.07.2022, wherein, under similar circumstances, the Jurisdictional High Court held that wherein, the assessee is following project completion method and in the absence of any prohibition or restriction under the provisions of Income Tax Act, the CIT(A) cannot be held to be justified to disturb such accounting method followed by the assessee.

16. In view of the above discussion, the action of the CIT(A) in directing the Assessing Officer to recognise the sales on receipt of 60% of the advances in departure of the regular and consistent method adopted by the assessee, cannot be held to be justified. This ground of the appeal is accordingly allowed in favour of the assessee.

17. **Ground No.7** – Vide Ground No.7, the assessee has agitated against the action of the CIT(A) in setting aside the issue for reconciliation of difference of Rs.28,19,460/- being rental income shown in Form No.26AS as against reflected in P/L account.

18. The ld. counsel has submitted that the reconciliation to that effect was duly filed before both the lower authorities. It was duly explained that the mismatch was due to that some tenants had deducted tax on gross payment inclusive of service tax and that if the amount of service tax excluded, there was no mismatch. The ld. counsel in this respect has relied upon page 1 of paper-book, which is the details/chart of TDS with rent received during the assessment year 2016-17. The ld. counsel has demonstrated that some tenant had deducted the TDS on service tax also, because of which there was mismatch occurred in the rental income shown by the assessee as against depicted in Form 26AS. The said chart, for the sake of ready reference, is reproduced as under:

UTKAL BUILDERS LTD Details of Rent Received (Central Plaza) during the year ended 31.03.2016					
SL NO	NAME	Gross Rent	Rent Amount	TDS	Service Tax
1	Anand Rathi Share & Stock Brokers Limited	124,270.00	110,600.00	11,060.00	13,670.00
3	Torrent Mercandise Pvt Ltd	34,350.00	30,000.00	-	4,350.00
4	Dhanshree Dealers Pvt Ltd	6,870.00	6,000.00	-	870.00
5	Gunjan Nirman Pvt Ltd	6,870.00	6,000.00	-	870.00
6	Image Suppliers Pvt Ltd	6,870.00	6,000.00	-	870.00
7	Impression Abasan Pvt Ltd	6,870.00	6,000.00	-	870.00
8	Laxmiputra Mercantile Pvt Ltd	6,870.00	6,000.00	-	870.00
9	New Guwahati Warehousing & Industries Pvt Ltd	6,870.00	6,000.00	-	870.00
10	Nirala Distributors Pvt Ltd	6,870.00	6,000.00	-	870.00
11	Ohve Agency Pvt Ltd	6,870.00	6,000.00	-	870.00
12	Preview Tie Up Pvt Ltd	6,870.00	6,000.00	-	870.00
13	Parrot Sales Pvt Ltd	6,870.00	6,000.00	-	870.00
14	Salona Vinimay Pvt Ltd	6,870.00	6,000.00	-	870.00
15	Supriya Vinimay Pvt Ltd	6,870.00	6,000.00	-	870.00
16	Munot Fincon Ltd	34,350.00	30,000.00	-	4,350.00
17	Champion Mercantile Pvt Ltd	6,870.00	6,000.00	-	870.00
<b>Total (A)</b>		<b>282,280.00</b>	<b>248,600.00</b>	<b>11,060.00</b>	<b>33,680.00</b>

  

UTKAL BUILDERS LTD Details of Rent Received during the year ended 31.03.2016							
Sl No	Name	Gross Rent	Rent Amount	TDS	Service Tax	TDS	Total TDS
1	Vaidehi Motors Pvt Ltd	3,367,280.00	2,956,259.00	295,625.90	411,021.00	27,144.10	322,770.00
2	Nav Durga Motors Pvt Ltd	888,816.00	788,394.00	75,140.00	100,422.00	-	75,140.00
3	Mahendra Educational Pvt Ltd (Rent)	3,850,736.00	3,381,000.00	338,100.00	469,736.00	6,300.00	344,400.00
4	Icici Prudential Insurance Company Limited(Rent)	1,401,520.00	1,227,538.00	122,753.80	173,982.00	31,396.20	154,150.00
5	pantaloons fashion & retail limited	26,221,488.00	23,023,776.00	2,302,377.60	3,197,712.00	319,771.16	2,622,148.76
6	Blue Swan Ventures	548,800.00	480,000.00	40,500.00	68,800.00	-	40,500.00
7	ICICI Bank Limited	139,461.00	121,800.00	-	17,661.00	-	-
8	City Union Bank Ltd	2,183,875.00	1,917,262.00	187,824.00	266,613.00	-	-
9	Sangramjit Padhi	82,500.00	82,500.00	-	-	-	187,824.00
10	Utkal Team Care Pvt Ltd	58,397.00	51,000.00	5,100.00	7,397.00	-	-
11	Fanindra Kumar Puhon	88,000.00	88,000.00	-	-	-	5,100.00
12	Solocon Systems India Pvt Ltd	16,500.00	16,500.00	-	-	-	-
13	Ram's Assorted Cold Storage Ltd	263,416.00	231,000.00	23,100.00	32,416.00	-	-
14	Orissa Garments Association	100,000.00	89,000.00	-	11,000.00	-	23,100.00
15	Utkal Realtors Pvt Ltd	683,724.00	600,000.00	60,000.00	83,724.00	-	-
16	Sri Adinath Real Estates Pvt Ltd	300,824.00	264,000.00	26,400.00	36,824.00	-	60,000.00
<b>Total (B)</b>		<b>40,195,337.00</b>	<b>35,318,029.00</b>	<b>3,476,921.30</b>	<b>4,877,308.00</b>	<b>384,611.46</b>	<b>3,861,532.76</b>
<b>Total (A+B)</b>		<b>40,477,617.00</b>	<b>35,566,629.00</b>		<b>4,910,988.00</b>		<b>3,872,592.76</b>

18.1 The ld. counsel in this respect has also relied pages 2 to 5 of the paper-book, which is ledger copy of service tax account.

19. The ld. DR could not rebut the aforesaid factual position.

20. In view of the above, there is no justification on behalf of the lower authorities in making/confirming the impugned addition and the same is ordered to be deleted.

21. In the result, this appeal of the assessee is allowed not only on legal ground of violation of principles of natural justice but also on merits.

22. **ITA No.605/Kol/2024** – The legal issue raised in ITA No.604/Kol/2024 does not arise in the present appeal. The only issue raised by the assessee through its grounds of appeal is relating to the action of the CIT(A) in directing the Assessing Officer to treat the revenue recognition/sale of flat on receipt of 60% of the advances. In view of our discussion made above while adjudicating Ground no.6 in ITA No.604/Kol/2024, this issue is, accordingly, decided in favour of the assessee.

23. In the result, both the appeals of the assessee stand allowed.

***Kolkata, the 12<sup>th</sup> September, 2024.***

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 12.09.2024.

RS

*Copy of the order forwarded to:*

1. M/s Utkal Builders Ltd
2. DCIT, Circle-1(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches