

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

श्री प्रमोदकुमार, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष।
BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER And
SHRI KUL BHARAT, JUDICIAL MEMBER

1. आयकर अपील सं./I.T.A. No.2648/Ahd/2011 – A.Y. 2008-09
2. आयकर अपील सं./I.T.A. No.2490/Ahd/2011 – A.Y. 2008-09

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|---|----------------------|---|
| 1. The ITO Ward-9(2) Ahmedabad | बनाम/ Vs. | 1. M/s.Buildcon Engineers 5-B, Vishwa Bharti Society B/h.Navrangpura Tele.Exch Ellisbridge Ahmedabad-380 006. |
| 2. M/s.Buildcon Engineers, Ahmedabad | | 2 The Addl.CIT Range-9 Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABFB 5648 L | | |
| (अपीलार्थी /Appellants) | .. | (प्रत्यर्थी / Respondents) |

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|---------------|--|
| Revenue by : | Shri P.L. Kureel,Sr.D.R. |
| Assessee by : | Shri S.N.Soparakar, A.R. with Shri Vijay L.Shah, CA |

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|--------------------------------------|------------|
| सुनवाई की तारीख / Date of Hearing | 15/07/2015 |
| घोषणा की तारीख/Date of Pronouncement | 21/08/2015 |

आदेश / ORDER

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

These cross-appeals by the Revenue and the Assessee are directed against the order of the Ld.Commissioner of Income Tax(Appeals)-XV, Ahmedabad ['CIT(A)' in short] dated 30/08/2011 pertaining to

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Assessment Year (AY) 2008-09. These appeals were heard together and are being disposed of by way of this consolidated order for the sake of convenience.

2. First, we take up the Revenue's appeal in ITA No.2648/Ahd/2011 for AY 2008-09. The Revenue has raised the following grounds of appeal:-

- 1) The Ld.Commissioner of Income-tax(Appeals)-XV, Ahmedabad has erred in law and on facts in restricting the addition to the extent of Rs.9,68,951/- and granting relief of Rs.27,43,711/- on account of undisclosed turnover difference in Gross Receipts.*
- 2) The Ld.Commissioner of Income-tax (Appeals)-XV, Ahmedabad has erred in law and on facts in deleting the disallowances of Rs.15,52,560/- made by the Assessing Officer on account of bogus labour payments.*
- 3) The ld.Commissioner of Income-tax (Appeals)-XV, Ahmedabad has erred in law and on facts in admitting additional evidences in violation of Rule 46A.*
- 4) On the facts and in the circumstances of the case, the Ld.Commissioner of Income-Tax (Appeals)-XV, Ahmedabad ought to have upheld the order of the Assessing Officer.*
- 5) It is therefore, prayed that the order of the Ld.Commissioner of Income-Tax (Appeals)-XV, Ahmedabad may be set-aside and that of the Assessing Officer be restored.*

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2.1. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as “the Act”) was framed vide order dated 27/12/2010, thereby the Assessing Officer (AO in short) made addition on account of difference in gross receipts of Rs.37,12,662/-, disallowance of labour payments of Rs.11,50,254/- and Rs.15,52,560/- respectively and disallowance of machine repair of Rs.5,000/- and disallowance of supervision charge of Rs.20,000/-. Against the said assessment order, the assessee preferred an appeal before the Id.CIT(A), who after considering the submissions of the assessee, partly allowed the appeal; thereby the Id.CIT(A) restricted the difference in GP to the extent of Rs.9,68,951/- and deleted the balance amount. Further, the Id.CIT(A) upheld the disallowance of labour payments of Rs.11,50,254/- and deleted the disallowance of labour payments of Rs.15,52,560/- and confirmed the addition(s) of Rs.5,000/- and Rs.20,000/- made on account of adhoc disallowance of expenditure. Against the order of the Id.CIT(A), now the Revenue and the Assessee both are in cross-appeals before us.

3. First ground of Revenue’s appeal is against restricting the addition of Rs.9,68,951/- made on account of undisclosed turnover difference in gross receipts. The Id.Sr.DR vehemently argued that the Id.CIT(A) was

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not justified in restricting the addition. He submitted that before the AO, the assessee was unable to reconcile the gross receipts. He submitted that under these facts, the Id.CIT(A) was not justified in restricting the addition.

3.1. On the contrary, Id.counsel for the assessee submitted that it was categorically submitted before the authorities below that the assessee carried out construction work of M/s.Ankur Textiles (a division of Arvind Textiles), which was doing for last several years. It was submitted before the authorities below that the difference occurred because of the contra entries passed by M/s.Ankur Textiles.

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Id.CIT(A) has given a finding on fact by observing as under:-

“4 Ground No.2 is that the Id.AO erred in making the addition of Rs.37,12,662 as alleged undisclosed turnover/receipts.

The addition has been made as per para 2.4 of the assessment order in view of the AO the appellant showed receipts less by Rs.37,12,662 from M/s.Arvind Products Ltd.

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During the course of appellate proceedings the appellant informed that the appellant did construction work of M/s.Ankur Textiles – a division of Arvind Textiles, which it had been doing for last several years and stated the difference occurred because of the contra entries of Rs.28,87,363 passed by Ankur Textiles. The AO objected to the submission stating that the contra entries plea taken by the appellant is not proved. When this objection was made available to the appellant it furnished a certificate from Ankur Textiles dated 30.06.2011 in which Ankur Textiles confirmed that gross receipts of Rs.1,80,14,905 were credited to the account of the appellant which included service tax and actual payments of Rs.1,78,71,253 were made to the appellant. Ankur Textiles has also stated that contra entries were passed, which in the annexures enclosed with the letter of Ankur Textiles are reflected at Rs.28,87,363. This letter is enclosed as Annexure-1 of this order. This letter was admitted as additional evidence and was sent to the AO for counter comments, however the AO in response stuck to his stand that the certificate now produced should not be accepted.

After going through rival submissions it is seen that gross receipts credited to the appellant as per certificate of Ankur Textiles come to Rs.1,80,14,905 whereas the appellant is showing Rs.1,70,45,954, difference of Rs.9,68,951 is not satisfactorily explained therefore the addition is retracted to Rs.9,68,951 (Rs.1,80,14,905 – Rs.1,70,45,954).”

4.1. During the appellate proceedings, the assessee filed a letter from M/s.Ankur Textiles dated 30/06/2011 (Annexure-I to the appellate order). This letter was admitted by the Id.CIT(A) and remand report was called for from the AO and the O vide remand report dated 26/07/2011 submitted as under:-

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“On verification of details submitted, it is noticed that the assessee has tick marked the contra entry amount on debit and credit side and tried to convince that receipts were fully accounted for. However, the tick marked amount do not contain any narration. Without narration correctness of these entries could not be verified. Further, out of total receipts of Rs.2,07,58,616/- contractee has passed contra entry of Rs.28,87,363/- which is impossible as Arvind Textile is a big and old Group who has appointed good accountant who cannot make such type of mistakes i.e. huge amount of Rs.28,87,363/- for which he has passed contra entries. These contra entries are contract receipts but nothing else. The certificate now produced before your honour is only to accommodate the assessee.

Further, during the course of assessment proceedings information u/s. 133(6) of the Act furnished by M/s. Arvind Textile Mills were perused and found that gross payments made by them to the assessee firm was Rs.2,07,58,616/- while on the other hand the assessee had shown Rs.1,70,45,954/- as his gross receipts. The difference of Rs.37,12,662/- was pointed out vide this office letter dt. 3/12/2010. The AR submitted some reconciliation citing 'contra entries'. He was further asked to explain, in writing, about the contra entries and reconciliation vide order sheet date 7/12/2010. Till the date of assessment order the assessee had not come forward with the explanation. Before your honour the assessee has furnished same copy of ledger account which is submitted at the time of assessment proceedings. Thus, the AO had made addition on this point after thorough investigation. The assessee has also failed now to narrate the particulars of contra entry.”

4.2. The Id.CIT(A) after considering the submissions of the assessee and the remand report, restricted the addition to the extent of Rs.9,68,951/-. During the assessment proceedings, the AO admittedly not called for the veracity of the letter of M/s.Ankur Textiles, however, on the basis of conjectures & surmises, submitted the remand report. Therefore, the Revenue has also not placed any contrary material

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suggesting that the letter of M/s.Ankur Textiles is fake and over the contents of the same are contrary to the material available on record. In the absence of such finding by the AO, we do not see any reason to interfere with the order of the Id.CIT(A), same is hereby upheld. Thus, this ground of Revenue's appeal is rejected.

5. Ground No.2 of Revenue's appeal is against deletion of disallowance of Rs.15,52,560/- made by the AO on account of bogus labour payments. The Id.Sr.DR submitted that the Id.CIT(A) was not justified in deleting the addition. He placed reliance on the order of the AO.

5.1. On the contrary, the Id.counsel for the assessee supported the order of the Id.CIT(A) and submitted that all details in respect of labour payments were submitted before the authorities below. He submitted that the AO without considering the submissions of the assessee proceeded to make disallowance of the payments and adding the same to the total income of the assessee.

6. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below.

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We find that the Id.CIT(A) has given a finding on fact by observing as under:-

“Ground No.4 is that the Id.AO erred in making the addition of Rs.15,52,560 as alleged bogus labour payments.

The addition has been made as per narration given in para 3.7.4 of the assessment order on the ground that PAN given for some labour payments are not reliable as according to the AO wrong PAN was furnished for one Contractor & Sons. The AO disallowed 20% of Rs.79,77,371 (Rs.91,27,625 (total labour payment) – Rs.11,50,254 (cash payments to labour without PAN).

During the course of appellate proceedings it was argued by the Id.AR that AO has disallowed amount out of payments with PANs, only on the basis of test check of PAN of one Contractor & Sons. It was stated that this concern is the proprietorship concern of one Mr.Shreyas R Contractor and PAN can be found when searched by the proprietor's name. During the course of appellate proceedings vide page no.104 of the paper book PAN copy was submitted of Shreyas R Contractor which is enclosed as Annexure-2 of this order. In the remand report the AO reite ated the stand taken in the assessment order. As the PA furnished during appellate proceedings is found correct in my view there is no justification for disallowing 20% of labour payments with PAN merely on a presumption which is found wrong.”

6.1 The AO had made disallowance of labour payments on the basis of estimation to the extent of 20% of the expenditure. The AO has not given any basis on which he has based his finding to disallow at 20% of the expenditure on estimate basis. In our considered view, if the payment is bogus, it would be 100%. The Id.CIT(A) has given his finding on the

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fact that the PAN furnished during the appellate proceedings was found to be correct. Under these facts, we do not see any reason to interfere with the order of the Id.CIT(A) since the Revenue has not placed any contrary material on record. Thus, ground No.2 of Revenue's appeal is rejected.

7. Ground No.3 of Revenue's appeal is against admitting the additional evidences in violation of Rules 46A of the IT Rules, 1962. The Id.Sr.DR submitted that the Id.CIT(A) was not justified in deleting the additional evidences.

7.1. On the contrary, Id.counsel for the assessee submitted that assessee has explained before the Id.CIT(A) in respect of filing the letter dated 30/06/2011. He submitted that under these facts, there is no violation of Rules 46A.

8. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the AO has noted that assessee furnished some contra entries. Therefore, it is not the case where the assessee had not taken a stand before the AO and relied upon the evidences. Under these facts, we do not see any merit into the ground raised by the Revenue and the same is rejected.

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9. Ground Nos. 3 & 4 are general in nature which require no independent adjudication.

10. As a result, Revenue's appeal is dismissed.

11. Now, we take up the assessee's appeal in ITA No.2490/Ahd/2011, for AY 2008-09, wherein the following grounds have been raised:-

1. **Rejection of Books of Account:**

- 1.1. *The learned CIT(A) has erred in law and on facts in upholding the rejection of audited books of accounts by invoking provisions of section 145(3) of the Income tax Act, 1961.*
- 1.2. *The learned CIT(A) has erred in not appreciating the fact that in absence of any fault with books of accounts or the method of accounting regularly employed by the assessee, the accounts cannot be held to be defective and as a result the additions cannot be sustained.*

2. **Addition of Rs.968951/- as unexplained work receipt of Ankur Textiles:**

- 2.1. *The learned CIT(A) has erred in law and on facts in sustaining the addition of Rs.968951/- as unexplained work receipt.*
- 2.2. *The learned CIT(A) grossly erred in sustaining the impugned addition by overlooking the Service tax receipts of Rs.966237/- accounted by the appellant. The learned CIT(A) omitted to consider the Service tax receipts of Rs.966237/- and thereby erred in sustaining the impugned addition.*
- 2.3. *The learned CIT(A) erred in sustaining the impugned addition without appreciating the fact that the receipts of Ankur Textiles re fully reconciled and tallied.*

3. **Addition of Rs.1150254/- as alleged bogus labour payments:**

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- 3.1. *The ld.CIT(A) ha erred in law and on facts in confirming the addition of Rs.1150254/- as alleged bogus labour payments.*
- 3.2. *Both the lower authorities has grossly erred in making the impugned addition as there are no evidences to show that the payments to labourors having no PAN number are bogus. Nothing was brought on record to show that any part of the amount given by the appellant to such labourors came back to appellant in any form.*
- 3.3. *Both the lower authorities failed to appreciate that the labour payments in question are fully supported by the bills certified by the site engineer/supervisor showing full particulars of work done and the rate of paymen . The labour payments are fully vouched. The identity of labourors is proved. Under the circumstances the addition cannot be made.*
- 3.4. *Both the lower authorities overlooked the fact that in most of the cases labour payments are made by account payee cheques but exceptionally in few cases payment is made by bearer cheques. As a result the impugned addition is wholly unjustified.*

4. **Adhoc disallowance of Rs.5000/- out of Machine Repairs:**

The learned CIT(A) erred in law and on facts in confirming the adhoc disallowance of Rs.5000/- out of Machine Repair expenses.

The learned CIT(A) overlooked the fact that the appellant has already furnished the proofs of the expenses in the paperbook.

5. **Adhoc disallowance of Rs.20,000/- out of Supervision charges:**

The learned CIT(A) erred in law and on facts in confirming the adhoc disallowance of Rs.20000/- out of Supervision charges.

The learned CIT(A) overlooked the fact that the appellant has already furnished the proofs of the expenses in the paperbook.

PRAYER

The Appellant respectfully prays that:

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- 1. The books of accounts be accepted.*
- 2. The addition of Rs.968951/- as unaccounted work receipt of Ankur Textiles be deleted.*
- 3. The addition of rs.1150254/- as bogus labour payments be deleted.*
- 4. The adhoc disallowance of Rs.5000/- out of Machine Repairs be deleted.*
- 5. The adhoc disallowance of Rs.20000/- out of Supervision Charges be deleted.*
- 6. Such and further relief which the appellant is entitled as the nature and circumstances of the case may require.*

11.1. Ground No.1.1 & 1.2 of assessee's appeal are against in respect of rejection of books of accounts. We find that before the Id.CIT(A) following ground was raised by the assessee:-

1. LEGAL GROUNDS:

1.1. The learned A.O. erred in law and on facts in rejecting book result of the appellant without rejecting books of accounts as there is no single defect in the books of account. As a result the additions which have been made to the returned income must be held no nest in law. The book result therefore be accepted.

1.2 The learned A.O. erred in law and on facts in making various additions purely on conjectures and surmises without any material or basis and as such the said additions are required to be deleted.

11.2. However, the Id.CIT(A) has not decided the ground while passing appellate order. The Id.CIT(A) has held that the ground would be covered in subsequent grounds while deciding the merits of the addition

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because of the appellant stated that the book results were rejected. Under these facts, we are of the considered view that the Id.CIT(A) ought to have given a speaking order. Therefore, we restore this ground to the file of Id.CIT(A) to decide the same afresh.

12. Apropos to Ground Nos.2 to 2.3, it is submitted by the Id.counsel for the assessee that he does not wish to press these grounds. Ld.Sr.DR has no objection. In view of the submission made by the Id.counsel for the assessee, ground Nos.2 to 2.3 are dismissed as not pressed.

13. Ground Nos.3.1 to 3.3 are against confirmation of addition of alleged bogus labour payments. The Id.counsel for the assessee submitted that the authorities below have grossly erred in making the impugned addition as there are no evidences to show that the payments to labourers having no PAN are bogus. Nothing was brought on record to show that any part of the amount given by the appellant to such labourers came back to appellant in any form. He submitted that the authorities below failed to appreciate that the labour payments in question are fully supported by the bills certified by the site engineer/supervisor showing full particulars of work done and the rate of payment. The labour payments are fully vouched.

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13.1. On the contrary, Id.Sr.DR supported the orders of the authorities below and submitted that the AO has given finding and confirmed by the Id.CIT(A) that the list furnished in support of labour payment with no PAN shows that cash had been withdrawn by persons other than the persons in whose name expenses had been debited. The AO has stated in para 3.7.2 that the existence of labour – Rameshbhai Rupabhai, Dilipbhai Devjibhai and Laxmanbhai Bhurabhai could not be proved by the assessee. He submitted that in these circumstances, the authorities below were justified in making the addition and confirming the same.

14. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The AO has given specific discrepancy in paras-3.7.1 to 3.7.4 of his order. The contention of the assessee is that the accounts are fully audited, bills/vouchers are certified by the site engineers/supervisor. Merely because the labourers were not having PANs cannot be the reason for making disallowance. The contentions made before the Id.CIT(A) were reiterated before this Tribunal as well. The gist of the contentions of the assessee are as under:-

“Submissions:

3.1 With a view to verify the labour payments the learned A.O. called upon the appellant to furnish complete details of the labour payments which were examined with the Cash book, Bank book, Labour vouchers and Bank statements.

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3.2 While examining the labour vouchers the learned A.O. observed that in some of the cases where payments are made by bearer cheques there is no PAN or address of the labourer. The learned A.O. therefore obtained photocopies of seven vouchers of labour payments (Five Labourers) and further obtained certified photo copies of cheques for these payments from Indian Bank, Navrangpura and matched the signature on the vouchers with the signatures on the cheques and called for the explanation of the appellant regarding genuineness of these payments.

3.3 (a) The appellant explained that the labour payments in question are supported by the bills certified by the site engineer / supervisor showing full particulars of work done by the labourer and the rate of payment. The labour payments are fully vouched and are audited. Regarding signature of the labourer the appellant furnished its explanation vide letter dated 23-12-2010.

Kindly refer page no. 302.

(b) The appellant further explained that it is customary and normal trade practice to issue bearer cheques to the labourers and it is not within the power of appellant to enforce that the labourer himself must encash the cheque. It is also not within the power of appellant to find out the person who encashed the cheque.

(c) That the labour payments made to five labourers conforms to the normal human conduct and behavior and in accordance with established trade practice.

For details of work done by five labourers kindly refer page **no.60**.

For identity of five labourers and for particulars of work done by them and rate of payment etc. kindly refer pages nos.

63 64,67,68,71,72,75,76,79,80,83 to 85 and 88,89.

3.4 The learned A.O. brushed aside the explanation of the appellant and jumped to the following assumptions:

(a) It is very clear that labour payments to those not having PAN are drawn by the person other than drawee's name.

(b) Labour payments having no PAN and no address are completely unverifiable.

(c) The assessee has not furnished any evidence or detail to establish the existence of Rameshbhai, Rupabhai, Dilipbhai Devjibhai and Laxmanbhai Bhurabhai.

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(d) *It can safely be concluded that labour payments to payees not having PAN are unverifiable and definitely bogus. In such cases the amount has been drawn in cash from Bank by the persons other than the drawees.*

3.5 *The learned A.O. thereafter on his own culled out details of labour payments and prepared Annexure-3 and Annexure-4 from the soft copy (CD) furnished by the appellant.*

3.6 *While preparing Annexure - 3 and Annexure 4 the Id. A.O. made certain glaring errors. .The correct details are as under:*

Annexure-3

| | |
|--|-----------------------|
| <i>Payment through account payee cheques</i> | <i>Rs. 643736</i> |
| <i>Payment through bearer cheque</i> | <i>673425</i> |
| <i>Payment through "self" cheque</i> | <u><i>31807</i></u> |
| | <u><i>705232</i></u> |
| <i>Net payment</i> | <i>1348967</i> |
| <i>TDS</i> | <u><i>15858</i></u> |
| <i>Gross payment</i> | <u><i>1364825</i></u> |

Kindly refer page nos. 90 to 94.

| | | |
|---|---------------------|----------------|
| | <u>Annexure-4</u> | |
| <i>Correct Total</i> | | <i>1122579</i> |
| <i>Payment with PAN</i> | <i>3025</i> | |
| <i>Payment through a/c. payee cheques</i> | <i>655557</i> | |
| <i>Payment through bearer cheques</i> | <i>447442</i> | |
| <i>Payment through self cheques</i> | <u><i>16555</i></u> | |

1122579

Kindly refer page nos. 98 to 101.

3.7 *The appellant respectfully submits that there are no evidences to show that the payments to labourers having no PAN number are bogus. Nothing was brought on record to show that any part of the amount given by the appellant to such laborers came back to appellant in any form.*

There is no material on record to show that the labour payments are bogus and not properly accounted. Addition thus made on conjectures and surmises and hence can

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not be sustained. The learned A.O. has not been able to pin point any piece of evidence which could lead to the conclusion that the payments are bogus.

3.8 The Id. A.O. failed to notice following vital facts:

(a) That all the labour payments are fully supported by the bills certified by the site engineer / supervisor showing foil particulars of work done by the labourer and the rate of payment. The labour payments are fully vouched and are audited.

(b) That in the construction work there is involvement of labourers who are illiterate, casual or migratory. In such cases there may not be PAN or address of the labourers.

(c) That in most of the cases labour payments are made by account payee cheques but exceptionally in some cases where the labourer needs the payment immediately or in case if they do not have bank account the payment is made by bearer cheques.

3.9 It is respectfully submitted that there is no evidence that the labour work done and certified by the site supervisor is not carried out or that the money paid by the appellant to the labourers having no PAN was ultimately returned to the appellant. There is no material on record on the basis of which it can be concluded that the appellant had shown bogus labour payments of Rs.1150254/-. Under these circumstances the learned A.O. is not justified in doubting the genuineness of the labour payments made by the appellant merely on the basis that the labourers do not have PAN.

3.10 The appellant respectfully relies on the following direct decisions in support of the contention that the impugned addition is wholly unjustified.

- (a) COMMISSIONER OF INCOME TAX vs. M. K. BROTHERS [In the Gujarat High Court] 163 ITR 249 (Guj).*
- (b) NISAR BIRI SIKKA NO.1 vs. COMMISSIONER OF INCOME TAX, LUCKNOW. High Court of Allahabad, Lucknow Bench. 174 TAXMAN 51 (ALL)*

3.11 It is respectfully submitted that the Id. A.O. has grossly erred in making such adhoc disallowance simply on the assumption that the labour payments to labourers

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having no PAN are unverifiable and therefore definitely bogus. The impugned addition should therefore be deleted.”

14.1. We find that the Id.CIT(A) has decided this issue as under:-

“5. Ground No.3 is that the ld.AO erred in making the addition of Rs.11,50,254 as alleged bogus labour payments.

The addition has been made as per para 3.7.3 of the assessment order. The AO has stated that the list furnished in support of labour payment with no PAN shows that cash had been withdrawn by persons other than the persons in whose name expenses had been debited.

The AO has stated in para 3 7.2 that the existence of labour – Rameshbhai Rupabhai, Dilipbhai Devjibhai and Laxmanbhai Bhurabhai – could not be proved by the assessee.

It is seen that cash payments to labour totalling to Rs.11,50,254 have not been disputed by the appellant, though it was stated that all payments were genuine but the objections of the AO summarized above could not be answered even during the appellate proceedings. The above three persons were paid by bearer cheques drawn by someone else which amount to cash payment only. Dilipbhai has been informed paid cash payments totalling above Rs.50,000 and also Rs.45,425 by account payee cheques, but then why should not the appellant be in a position to furnish the address of this person at least.

Despite opportunities addresses of persons were not furnished to whom labour payments totalling to Rs.11,50,254 (lists enclosed with the assessment order) had been made during the year on the pretext that labour keep changing. In this background the disallowance made by the AO of cash labour payments not proved out of Rs.91,27,625 labour expenses claimed by the appellant is upheld.”

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14.2. From the above finding of the Id.CIT(A), it is evident that the Id.CIT(A) has not considered the submissions of the assessee. Therefore, the ground is restored to the file of Id.CIT(A) to pass a specific finding on the submissions made by the assessee. Thus, ground Nos.3.1 to 3.3 of assessee's appeal are allowed for statistical purposes

15. Ground Nos. 4 & 5 are against confirming the adhoc disallowance(s) of Rs.5,000/- out of machine repair expenses and Rs.20,000/- out of supervision charges respectively. The Id.counsel for the assessee submitted that the authorities below were not justified in making the disallowances and adding the same to the income of the assessee. He submitted that the disallowances have been made only on the basis of conjectures and surmises.

15.1. On the contrary, Sr.DR submitted that the vouchers were submitted could not be verified that the vouchers are self-made.

16. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the authorities below have disallowed the expenditure on the basis that vouchers are self-made and unverifiable. However, there is no finding from both the authorities as to what efforts were made for verifying the same and whether the payments made to the persons were

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called for examination is not clear from the order. Therefore, we hereby direct the AO to delete both the disallowances. Thus, ground Nos.4 & 5 of assessee's appeal are allowed.

15. In the result, Revenue's appeal is dismissed, whereas Assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the Court on Friday, the 21st day of August, 2015 at Ahmedabad.

Sd/-
(प्रमोदकुमार)
लेखा सदस्य
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 21/ 08 /2015

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रहित/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)-XV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

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