

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH, MUMBAI**

BEFORE SHRI G.S. PANNU, AM & SHRI RAVISH SOOD, JM

**ITA Nos. 2020 & 2021/MUM/2017
(Asst. Years : 2010-11 & 2011-12)**

Ashwin J. Sanghavi, 502, Crystal Classic, 154, S.V. Road, Vile Parle (W), Mumbai - 400 056	vs.	DCIT, Central Circle-36 Mumbai.
PAN No. AADPS 4267 Q		
(Appellant)		(Respondent)

Assessee by : Shri Dhirajlal Z Patel, Adv.
Department By : Ms. N Hemlatha, DR

Date of hearing : 29/01/2018.
Date of pronouncement : 11/04/2018.

ORDER

PER RAVISH SOOD, JUDICIAL MEMBER

The present set of appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-53, Mumbai, for A.Ys 2010-11 & 2011-12, dated 24/06/2016 & 29/08/2016, respectively, which in itself arises from the orders passed by the Assessing Officer under section 143(3) and under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short, 'Act') for the said respective years. That as common issues are involved in these appeals, therefore, these are being taken up and disposed off by way of a consolidate order. We shall first take up the appeal filed for A.Y 2010-11, wherein the assessee assailing the order of the CIT(A), had raised before us the following grounds of appeal:

"1a. On the facts and in the circumstances of the case and in law, the learned CIT(A)-53 Mumbai has erred in disallowing Labour expenses of Rs. 8,45,000/- on the ground of non furnishing of the details of site where the work was executed and mismatch of signature with reference to the return of income and PAN no. of the contractors.

The Learned CIT (Appeal) overlook the fact that in the case of the appellate proceedings, the appellant has submitted copy of the ledger accounts, bills and PAN of the labour contractors along with the bank statements highlighting the payment made to them.

1b The Learned CIT (Appeal) went about finding the fault in low net profit / gross profit declared by the appellant in disallowing the claim instead of rebutting or refuting the evidences produced in appellate proceedings.

1c The learned CIT (Appeal) has allowed Labour charges of Rs. 4 lacs to Maa Durga Constructions on following one sets of principle whereas disallowed labour charges to remaining five parties on the different principle which is not only self contradictory but also untenable in the eyes of law.

1d The confirmation of addition of Rs. 8,45,000/- by the CIT (Appeal) requires to be deleted / quashed and the relief may be granted to the appellant.

2a The Learned CIT (Appeal) has erred in confirming an addition of Rs. 2,30,000/- made by the AO on imaginary and estimated basis on account of non existing redevelopment allowance.

2b While confirming the disallowance, the learned CIT (Appeal) observed that existence of assets in the form of room / cottage not established and there was no contractual agreement for the payment or otherwise of redevelopment allowance, overlooking the fact that in the body of the assessment order itself the AO has specifically mention about existence of assets in the form of room at Three different places, moreover a

confirmatory letters was produced from builders and contractors confirming fact that no redevelopments allowance or alternative accommodation rent has been paid to the appellant.

- 2c The learned CIT (Appeal) while confirming an estimated addition on account of redevelopment allowance has merely acted on surmises, suspicion, presumption and preceding assessment order overlooking the documentary evidences produced / available before him.*
- 2d The addition of Rs. 2,30,000/- which is made purely on guess work deserves to be deleted.*
- 3 THE Ld. CIT (Appeal) has erred in disallowing the sum of Rs. 25,746/- being a telephone expenses of two close relatives ignoring the fact that such expenditure has been incurred wholly and exclusively for the purpose of business and they are allowable under the provision of Section 37(1) of the Act in the absence of any evidence in contradictory.*
- 4 The appellant craves leave to add, alter, amend, modify or revise the grounds of appeal.”*

2. Before advert to the issues under consideration, we may herein observe that the present appeal of the assessee involves a delay of 186 days. During the course of last hearing of the appeal, the delay involved was condoned by the bench, subject to the condition that an amount of Rs. 10,000/- shall be deposited by the assessee on or before 10/09/2017 to the credit of the Income Tax Department. We find that the assessee in compliance of the direction of the Tribunal, had deposited the said amount of Rs. 10,000/- on 07/09/2017, vide Challan No. 23724 (copy of challan has been placed on record). We, thus, finding that the assessee had duly complied with the direction of the Tribunal, therefore, proceed with and advert to the issues involved therein.

3. Briefly stated, the facts of the case are that the assessee, who is engaged in the business of civil construction, had filed his return of income for A.Y 2010-11 on 15/10/2010, declaring a total income of Rs. 6,54,286/-. The case of the assessee was taken up for scrutiny assessment under section 143(2) of the Act. During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee had made total labour payments of Rs. 19,87,546/- to various parties. The bifurcated details of the payments along with the addresses of the parties were placed on record by the assessee during the course of assessment proceedings. The Assessing Officer in order to verify the genuineness of the payments, issued notices under section 133(6) to the following parties:

Sr.No.	Name	Address	Amount Rs.
1.	Shri Arun B. Tank	B/32, Shradha Apartments Co-op Housing Society Ltd. Shakti Nagar, Marve Road, Malad (W), Mumbai - 400 064	2,00,000/-
2.	M/s.GuduKanu Enterprises	Room No. 187 Samart Ashok Nagar, Chakkala Vile Parle (E), Mumbai - 400 009	70,000/-
3.	M/s. Kuber Enterprises	H-Plot No.3, Govind Nagar Malad (E), Mumbai - 400 097	2,00,000/-
4.	M/s. Shyam Arts	Flat No. 14 D. Wing, Govardhan Nagar, Barsopada Road, Behind Kandiwali (W), Mumbai - 400 067	75,000/-
5.	M/s. S.L. Construction	Shivaji Nagar, Gate No.2, Madh Village, Madh island, Via Versova, Andheri (W), Mumbai -400 061	3,00,000/-

However, all the aforesaid notices were returned unserved. The Assessing Officer in the backdrop of the aforesaid facts, called upon the assessee to explain as to why the payments made to the aforementioned parties may not be treated as bogus. Subsequently, the Assessing Officer in addition to the aforesaid parties also called upon the assessee to substantiate the genuineness of the payment of Rs. 4.00 lac made to one M/s. Maa Durga Construction. The Assessing Officer directed the assessee to furnish complete details in respect of the aforesaid parties, viz. (i). name & age of the Chief Executive Officer/Proprietor/Principal partner of the aforesaid concerns along with their photographs; (ii). the correct verifiable addresses and PAN of the said parties; (iii). the copies of their returns of income for A.Y. 2010-11 ; and (iv). bank account details of all the parties along with the details as regards their account no., branch & name of the Bank. However, as the assessee failed to file a reply to the aforesaid query letter, thereore, the latter holding the said labour parties as bogus, added the amount of Rs. 12,45,000/- which was claimed by the assessee to have been paid to them to the returned income of the assessee.

4. The Assessing Officer, further, during the course of assessment proceedings, observed that a perusal of the balance sheet of the assessee revealed that he was owning the following assets: -

(i)	Room at Mayanagar (Under Redevelopment)	Rs. 5,00,000/-
(ii)	Room at Rajeevnagar (Under Redevelopment)	Rs. 8,00,000/-
(iii)	Room at Rajeevnagar (Under Redevelopment)	Rs. 10,00,000/-

The Assessing Officer held a conviction that in the process of redevelopment, once the property goes for redevelopment, the occupants of the property either start getting redevelopment allowance or are given an alternative dwelling by the redeveloper. The Assessing Officer was of the opinion that in case of slums and huts since the redevelopment allowance is a small amount, therefore, the same is usually disbursed monthly in cash. The Assessing Officer further deliberating on the facts of the case observed that in Rajivnagar the redevelopment work had already started, which in itself was evident from the fact that the assessee had claimed to be working as a contractor at the site of redevelopment, which proved the said fact to the hilt. That on the basis of the aforesaid observations, the Assessing Officer concluded that though the assessee was in receipt of redevelopment allowance, but however, the same was not reflected by him in his return of income for the year under consideration. The Assessing Officer on the basis of the aforesaid conviction estimated the value of redevelopment allowance @10% of the value of the property and made an addition of Rs. 2,30,000/- to the total income of the assessee under the head **'income from other sources'**. The Assessing Officer while making the aforesaid contentions also observed that a similar addition was made in the case of the assessee for A.Y. 2009-10, which though was pending in appeal before the CIT(A), but however, as there was no change in the facts of the case during the year under consideration, therefore, made the addition in the hands of the assessee for the year under consideration. The Assessing Officer

inter-alia made certain other additions and vide his order dated 28/02/2013, assessed the income at Rs. 21,92,880/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). During the course of the appellate proceedings the assessee submitted copies of ledger accounts, bills and PAN nos. of labour contractors along with their bank statements highlighting the payments made to them. The assessee taking support of the aforesaid documentary evidence claimed that the same clearly proved that the above mentioned six parties were genuine and payments were made to them for the labour work carried out by them. The CIT(A) after deliberating on the contentions raised by the assessee in the backdrop of the facts available on record, was however, not persuaded to be in agreement with the claim raised by the assessee before him. The CIT(A) taking cognizance of the fact that the assessee had declared 'net profit' of a paltry sum of Rs. 11,940/- (after excluding interest on FDR and other income) on civil contract receipts of Rs. 40,64,785/- during the year under consideration, which worked out to 0.29%, concluded that the same was clearly found to be unreasonable, for the reason that in the case of civil construction business, the net profit rate of 8% was generally accepted as reasonable. The CIT(A) taking support of the aforesaid observations held a conviction that the assessee had inflated the expenses with a view to reduce his business profits. It has further observed by the CIT(A) that a cursory glimpse over the past history of the assessee revealed that even in the immediately preceding year, viz. A.Y. 2009-10, the assessee had failed to discharge the onus of proving the

genuineness of the labour charges amounting to Rs. 7,69,810/-, as a result whereof the same was disallowed by the Assessing Officer and was sustained on appeal by him, vide his appellate order dated 28/01/2016. The CIT(A) further adverting to the documentary evidence placed on record by the assessee to substantiate the genuineness and veracity of his claim, observed that the assessee despite specific directions on the part of the Assessing Officer, had however, failed to furnish confirmations from the aforesaid parties, as a result, whereof the genuineness of the labour expenses could not be proved. It was further taken note of by the CIT(A) that the assessee had neither submitted copies of the relevant work orders, nor provided copies of the bank statements and returns of income of the aforesaid six parties, who were claimed to have received labour charges from him. The CIT(A) was of the view that merely furnishing of the copies of ledger accounts, PAN cards and jurisdiction details of the said respective persons as gathered from the e-filing portal of the department would not lead to discharge of onus cast upon the assessee to prove the genuineness of his aforesaid claim of labour expenses. The CIT(A) further observing that as the copies of all the bills furnished by the assessee (except that in the case of M/s. Shyam Arts), which were purportedly raised by the aforesaid six parties on the assessee were prepared on computer, and neither of them (except for in the case of M/s. Maa Durga Construction) did make any mention of the site at which the civil work was carried out, therefore, the same did not inspire much of confidence to support the claim of the assessee. The CIT(A)

further after carrying out a comparative analysis of the bills raised by the aforementioned parties as against their respective PAN cards, recorded his observations as regards the discrepancies emerging therefrom, as under: -

- " The bill of Shri Arun Tank is found to be signed by him in English while his PAN card bears his signature in Gujarati.*
- *The signatures of Shri Guddu Kanu (Prop. M/s.Gudu Kanu Enterprises) and Shri Shalikram Yadav (Prop. M/s.S.L.Construction) on the bills are totally different from the ones on the respective PAN cards.*
 - *Shri Govind Tiwari, Prop. Kuber Enterprises is seen to have signed the bill in English as "G Tiwari" which has no similarity at all with his signature on the PAN card.*
 - *The bill of M/s. Shyama Arts dated 27.03.2010 is found to be signed by "Shayam Kumari Soni" (female) in English whereas the PAN card is in the name of Mr.Satrohan C. Soni (male) and bears his signature in Hindi.*
 - *The addresses of M/s.Kuber Enterprises [H-Plot No.3, Govind Nagar, Malad (East), Mumbai-400097] and M/s.S.L.Construction [Shankar Villa, Marve Road, Malad West, Mumbai-4000951 cannot be said to be complete as these do not bear particulars of location of office viz.flat No./ floor, name of the building, name of the road etc."*

However, the CIT(A) being of the view that unlike the bills raised by 5 parties (out of six), the bill raised by M/s. Maa Durga Construction for Rs. 4.00 lakhs not only did bear the details of the sites at which the work was undertaken, viz. Tranjesh Camp and Rajivnagar, but rather, even the signature on the two bills pertaining to the said party were also found to be clearly matching with that borne on the PAN card. Thus, on the basis of the aforesaid observations, though the CIT(A) dislodged the disallowance of Rs. 4.00 lakhs made by the Assessing Officer in

respect of the payment of labour charges made by the assessee to M/s. Maa Durga Construction, but however, being of the view that as the assessee had failed to discharge the onus of proving the genuineness of the labour charges aggregating to Rs. 8.45 lakhs claimed to have been paid to the other parties, therefore, concluded that no fault could be found with the action of the Assessing Officer in disallowing the same. The CIT(A) in the backdrop of his aforesaid observations, sustained the disallowance in the hands of the assessee to the extent of Rs. 8.45 lakhs.

6. The CIT(A) further adverted to the addition of Rs. 2.30 lac made by the Assessing Officer on account of redevelopment allowance/deemed rental income in the hands of the assessee. The assessee submitted before him that the huts under consideration after being demolished were under construction, therefore, as there was no question of earning any income there from, thus, the Assessing Officer had erred in estimating an **income of Rs. 2.30 lakhs under the head 'income from other sources' in his hands. It was submitted by the** assessee that the additions made by the Assessing Officer were merely backed by his whimsical presumption that the builder might have made payments, without verifying the factual position from the said builder, neither of whom as a matter of fact had made any such payments to the assessee. The assessee in order to drive home his aforesaid contention that no payment was received from the builder, placed on record the confirmation letter, dated 05/01/2016 received from the redevelopers, viz. M/s. Hubtown Ltd. for Mayanagar Project and M/s. Aarti Projects & Constructions

for Rajivnagar Project, wherein both the said respective builders had clearly stated that no redevelopment allowance or alternate accommodation rent was paid by them to the assessee. However, the CIT(A) being of the view that as the assessee had failed to produce the relevant redevelopment agreements either during the course of assessment proceedings or before him, therefore, the Assessing Officer had rightly drawn adverse inference in the matter of estimation of annual redevelopment allowance to the best of his judgment. The CIT(A) was further of the view that as the assessee himself was working as a contractor at the Rajivnagar (redevelopment site), therefore, the confirmation letters obtained by the assessee from the redevelopers, viz. M/s. Hubtown Ltd. and M/s. Aarti Projects & Constructions, wherein the respective builders had denied making of any payments by way of redevelopment allowance or alternate accommodation rent to the assessee, could safely be characterised as a self serving evidence, which thus, could not be relied upon. The CIT(A) observed that as similar addition which was made by the Assessing Officer in the case of the assessee in A.Y. 2009-10 was confirmed by him, vide his appellate order dated 28/01/2016, therefore, as there was no change in either facts or law relating to the issue under consideration, thus, no fault could be found in the action of the Assessing Officer in making an addition of Rs. 2.30 lakhs during the year under consideration. The CIT(A) on the basis of the aforesaid observations sustained the addition of Rs. 2.30 lakhs made by the Assessing Officer.

7. The assessee being aggrieved with the order passed by the CIT(A) had carried the matter in appeal before us. The Ld. Authorised Representative (for short, 'A.R') for the assessee at the very outset of the hearing of the appeal, taking us through the facts of the case submitted that the assessee is a labour contractor, who in the course of his business had hired the labour, as he had no employed labour of his own. The Id. A.R submitted that as the notices sent by the Assessing Officer to the parties to whom labour payments were made by the assessee were returned '**unserved**', therefore, merely for the said reason the Assessing Officer had drawn adverse inferences as regards the genuineness and veracity of the said labour expenses and characterised them as bogus. It was submitted by the Id. A.R that in order to fortify his claim as regards genuineness of the payments made to the aforesaid parties for the labour work undertaken by them, the bills and ledger accounts of the parties were furnished with the Assessing Officer, which clearly evidenced the factum of making of payments towards labour expenses to the said respective parties. It was further submitted by the Id. A.R that the genuineness of the aforesaid payments could be well gathered from the fact that the same were made vide account payee cheques, and as and where an obligation was so cast, necessary tax was deducted at source while making the payments as per the mandate of law. The Id. A.R submitted that the main reasons which had weighed in the mind of the CIT(A) while upholding the order of the Assessing Officer were, viz. (i) the profit of the assessee was less as in comparison to that prevailing in the trade line of contractors; and

(ii) the signatures of the respective parties as appearing on the bills did not match with those borne on their PAN cards. The Id. A.R further in order to drive home his contention that no adverse inference as regards the veracity of the payments made to the aforementioned five parties was liable to be drawn, submitted that the assessee in order to remove any scope of doubt, had placed on record of the lower authorities the copies of the bank statements evidencing the making of the aforesaid payments. The Id. A.R adverting to the addition of Rs. 2.30 lac made by the Assessing Officer on account of redevelopment allowance/deemed rental income, submitted that the said addition was merely backed and supported by whimsical presumptions of the Assessing Officer, and there was no basis for making of such addition. That as regards the ground of appeal No.3 raised by the assessee in respect of disallowance of Rs. 25,746/- made by the Assessing Officer as regards the telephone expenses, it was averred by the Id. A.R that the same was not being pressed. Per contra, the Id. **Departmental Representative (for short, 'D.R')** relied on the orders of the lower authorities and submitted that as the assessee had failed to substantiate the genuineness and veracity of the payments made towards labour expenses, therefore, the disallowance of the same was rightly made by the Assessing Officer, which thereafter was sustained as such by the CIT(A). The Id. D.R in order to impress upon us that there was failure on the part of the assessee to discharge the onus so cast upon him to prove the authenticity of his claim of having made the payments to the respective parties by way of labour expenses, drew our

attention to the observations recorded by the CIT(A) at Page No.3 - Para 4.3.2 of his order. The Id. D.R further in order to justify the aforesaid disallowance of labour charges in the hands of the assessee, submitted that on similar facts, disallowance of labour charges was made by the Assessing Officer in the case of the assessee for immediately preceding year, viz. A.Y. 2009-10, which thereafter was upheld in appeal by the CIT(A). The Id. D.R submitted that as the assessee had not carried the matter in further appeal before the Tribunal in A.Y. 2009-10, therefore, the said order of the CIT(A) upholding the disallowance had attained finality. The Id. D.R adverting to the addition of Rs. 2.30 lakhs made by the Assessing Officer on account of redevelopment allowance /deemed rental income, submitted that as the assessee had failed to place on record the relevant redevelopment agreements, therefore, the Assessing Officer had rightly drawn adverse interference in the matter and estimated the annual redevelopment allowance to the best of his judgment. The Id. D.R in support of the above issue relied on the orders of the lower authorities. It was submitted by the Id. DR that as a similar addition of Rs. 2.30 lakhs which was made in the hands of the assessee in the immediately preceding year, viz. A.Y. 2009-10 was upheld in appeal by the CIT(A), having not been carried in further appeal, thus, had attained finality. It was submitted by the Id. D.R that as the appeal of the assessee was devoid of any force, therefore, the same may be dismissed.

8. We have heard the Id. authorised representatives for both the parties, perused the orders of the lower authorities and the

material available on record. We find that our indulgence in the present appeal has been sought for adjudication of two issues, viz. (i) the validity of disallowance of labour expenses of Rs. 8.45 lac sustained by the CIT(A); and (ii) the sustainability of the addition of Rs. 2.30 lakhs made by the Assessing Officer on account of redevelopment allowance/deemed rental income, which thereafter had been sustained as such by the CIT(A). We shall first take up the issue as regards the disallowance of Rs. 8.45 lakhs made by the Assessing Officer in respect of labour expenses which was claimed by the assessee to have been paid to the aforementioned five parties. We find that it remains as a matter of fact that the assessee in order to fortify his claim as regards the genuineness of the payments made to the aforementioned parties, had placed on record copies of ledger accounts, bills and PAN numbers of the labour contractors along with the bank statements which duly evidenced the factum of making of respective payments by the assessee to the said parties. We further find that the assessee, who was directed by the authorities below to place on record the copies of the returns of income of the respective parties to whom the payments towards labour charges of Rs. 8.45 lakhs was claimed to have been made, not being in a position to obtain the copies of such returns of income from the said parties, therefore, had in all fairness furnished with the lower authorities the jurisdiction details of all of the said parties where they were being assessed, as was so gathered by him from the e-filing portal of the Department (<https://incometaxindiaefiling.gov.in>). We have perused the orders of the lower authorities and find that it

remains as a matter of fact that the assessee in order to prove the genuineness of the payments, aggregating to Rs. 8.45 lakhs to the aforementioned five parties, had furnished their complete addresses along with the copies of their PAN cards before the lower authorities. We though, are not oblivious of the fact that the notices sent by the Assessing Officer to the aforesaid parties under section 133(6) of the Act were returned unserved, but however, are unable to persuade ourselves to be in agreement with the lower authorities that merely for the said reason the genuineness of the claim of the assessee of having made payments made towards labour charges to the said parties could safely be characterised as being bogus in nature. We are of the considered view that now when the assessee had placed on record of the lower authorities, the copies of the PAN numbers along with complete details of the Assessing Officer with whom they were being assessed, therefore, it was open to the authorities to have verified the genuineness of the said claim of the assessee by looking into the income tax records of the said respective parties which were absolutely under its control. We though, are not canvassing a view that mere furnishing of income tax credentials of the parties by the assessee with the Assessing Officer would thus, shift the onus to the revenue, but however, are of the view that in case such material details in respect of income tax credentials of the said parties were furnished with the Assessing Officer and the assessee was in no position to obtain the copies of the returns of income of the aforesaid parties, for any reason, therefore, to some extent an obligation was cast upon the

Revenue to have verified the actual position by calling for and looking into its own records pertaining to the said parties, before hushing through the matter and jumping to drawing of adverse inferences in the hands of the assessee. We further find it beyond our comprehension that as to how the exercise carried out by the CIT(A) by making a comparative analysis of the signatures of the aforesaid parties as appearing on the bills, as against those borne on their respective PAN cards could form a basis for drawing of adverse inference as regards the genuineness of the claim of the assessee. We find that the CIT(A) had observed certain discrepancies in the signatures, for the reason that either the signatures in certain cases as appearing on the bills were in English, while for those on the PAN cards were in Gujarati or/and in certain situations signatures on the bills did not tally with those borne on the respective PAN cards. We however, are unable to persuade ourselves to justify drawing of adverse inferences on the basis of the aforesaid reasoning, for the reason that now when the said respective parties were holding the PAN cards issued by the department and the complete income tax credentials of the said respective parties along with their addresses were available with it, thus, nothing stopped them from verifying the authenticity of the claim of the assessee by looking into the income tax records of the said respective parties. We are further of the view that even otherwise, there is no restriction or bar on the part of an assessee to put his signature in vernacular or in English, as per his choice, and thus no adverse inference on the said count could have validly be drawn in the hands of the assessee. We are of the view that it

is not the case of the A.O that on verification got done from the forensic laboratory, it was proved that the said two signatures were not of the same person/persons. We, thus, are of the view that as the assessee had placed on record substantial documentary evidence to substantiate the authenticity of his claim of expenses towards labour charges, which we are afraid had not been thoroughly verified by the lower authorities, who rather adopting a half hearted approach had hushed through the matter and on the basis of premature observations have drawn adverse inferences in the hands of the assessee, therefore, are unable to persuade ourselves to sustain the addition of Rs. 8.45 lac sustained by the CIT(A) in respect of payments made by the assessee to the aforesaid five parties. Thus, the addition of Rs. 8.45 lac sustained by the CIT(A) is deleted.

9. We shall now advert to the addition of Rs. 2.30 lakhs made on account of redevelopment/deemed rental income received by the assessee from the units owned by him. We find that the lower authorities had taken a general view that in the process of redevelopment, once the property goes for redevelopment, the occupants of the property start getting redevelopment allowance or they are given an alternate dwelling by the redeveloper. We find that the lower authorities on the basis of the aforesaid general view and not on the basis of any concrete material made available on record, had estimated the value of redevelopment allowances @10% of the value of the property, leading to a consequential addition of the aforesaid amount of Rs. 2.30 lakhs in the hands of the assessee. The Assessing Officer while making

the aforesaid addition had further observed that in case the addition on account of redevelopment allowance does not survive, then the addition would be called for in the hands of the assessee towards deemed house property income. We are unable to persuade ourselves to accept the aforesaid observations of the lower authorities. We find that not only it remains as a matter of fact that the addition towards redevelopment allowance of Rs. 2.30 lakhs was made by the Assessing Officer on an estimate basis, but rather, very surprisingly though the assessee in order to dispel any such doubts on the part of the lower authorities had placed on record the confirmation letters dated 05/01/2016 from the redevelopers, viz. (i) M/s. Hubtown Ltd. for Mayanagar Project; and (ii) M/s. Aarti Projects & Constructions for Rajivnagar Project, wherein the said respective redevelopers had categorically stated that no redevelopment allowance or alternate accommodation rent was paid to the assessee, but however, the said material documentary evidence which seized the issue under consideration was discarded by the CIT(A) for the reason that as the assessee was himself working as a contractor at the Rajivnagar site, therefore, confirmation letters submitted by him from M/s. Hubtown Ltd. and M/s. Aarti Projects & Constructions during the course of appellate proceedings, wherein the said respective parties had denied making of any payment or any alternate accommodation rent to the assessee were to be rejected as being nothing better than self serving evidence. We find it beyond comprehension as to how such well substantiated claim of the assessee could have been rejected by the CIT(A) by characterising

the same as a self serving evidence. We feel that in case the CIT(A) had any doubts as regards the veracity of the said documents, he could have directed the Assessing Officer to have made necessary verifications from the said respective builders, so that the truth may have surfaced. We are further of the view that as the assessee had claimed that the huts under consideration were demolished, therefore, the alternative view of the Assessing Officer that in case the addition made towards redevelopment allowance does not survive, the addition would be called for in the hands of the assessee on account of deemed rental income also cannot be accepted. We are of the view that as claimed by the Id. A.R, now when the huts in itself were demolished and were no more in existence, therefore, the aforesaid alternative contention of the department cannot be sustained. Nothing has been placed on our record or canvassed before us by the Id. D.R to controvert the aforesaid contention of the Id. A.R. We thus, in terms of our aforesaid observations, delete the addition of Rs. 2.30 lakhs made by the Assessing Officer on account of redevelopment/deemed rental income.

ITA 2021/Mum/2017

A.Y 2011-12

10. We shall now take up the appeal for A.Y. 2011-12, wherein the assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal: -

- "1. The Id. CIT(A) has erred in law in confirming the AO's action in reopening the assessment without actually ascertaining or dwelling upon whether or not there was a*

tangible material on records which necessitate formation of belief by the AO under section 147 of the Act. The body of the assessment order as well as appellate order does not state about the nature of tangible material and therefore the finding of the CIT(A) in the absence of verification of the tangible material is bad in law. And therefore, the reopening of the assessment is invalid.

2. *On the facts and circumstances of the case and in law, the CIT(A) -53 Mumbai has erred in disallowing Labour expenses of Rs. 1,58,271/- on lumpsum basis being 30% of the cash labour expenses of Rs. 5,27,569/- disregarding the provision of section 40(A)(3) read with rule 6DD of the Act.*
- 3a *The Learned CIT (Appeal) has erred in confirming an addition of Rs. 2,30,000/- made by the AO on imaginary and estimated basis on account of non existing redevelopment allowance.*
- 3b *While confirming the disallowance, the learned CIT (Appeal) observed that existence of assets in the form of room / cottage not established and there was no contractual agreement for the payment or otherwise of redevelopment allowance, overlooking the fact that in the body of the assessment order itself the AO has specifically mention about existence of assets in the form of room at Three different places, moreover a confirmatory letters was produced from builders and contractors confirming fact that no redevelopments allowance or alternative accommodation rent has been paid to the appellant.*
- 3c *The learned CIT (Appeal) while confirming an estimated addition on account of redevelopment allowance has merely acted on surmises, suspicion, presumption and preceding assessment order overlooking the documentary evidences produced / available before him.*
- 3d *The addition of Rs. 2,30,000/- which is made purely on guess work deserves to be deleted.*
- 4 *The appellant craves leave to add, alter, amend, modify or*

revise the grounds of appeal.”

11. Before advert to the issues under consideration, we may herein observe that the appeal of the assessee for the year under consideration, viz. A.Y. 2011-12 involves a delay of 120 days. During the course of last hearing of the appeal, the delay involved was condoned subject to the condition that an amount of Rs.10,000/- shall be deposited by the assessee on or before 10/09/2017 to the credit of the Income Tax Department. We find that the assessee in compliance of the direction of the Tribunal, had deposited the amount of Rs. 10,000/- on 07/09/2017, vide Challan No. 23798 (copy of challan had been placed on record). We, thus, finding that the assessee had duly complied with the direction of the Tribunal, therefore, proceed with and advert to the issues involved therein.

12. Briefly stated, the facts of the case are that the assessee filed his return of income under section 139(4) on 30/03/2013, declaring a total income of Rs. 12,26,879/-. Subsequently, the case of the assessee was reopened and notice under section 148 of the Act was issued and served upon him. The assessee objected to reopening of his case, which however, after necessary deliberations was rejected by the Assessing Officer. The Assessing Officer after perusing the facts of the case *inter-alia*, disallowed 30% of the labour expenses of Rs. 5,27,569/- and made an addition of Rs. 1,58,271/- in the hands of the assessee. Still further, the Assessing Officer made an addition on presumptive basis of Rs. 2.30 lakhs in respect of redevelopment allowances

pertaining to the properties owned by the assessee. The Assessing Officer after making certain other additions/disallowances assessed the income at Rs. 16,39,080/-.

13. The assessee carried the matter in appeal before the CIT(A), who vide his order dated 21/04/2015 dismissed the appeal.

14. Aggrieved, the assessee assailing the aforesaid additions/disallowances sustained by the CIT(A), had carried the matter in appeal before us. The assessee had assailed before us the validity of the reopening of the assessment under section 147 of the Act, for the reason that there was no tangible material available on record which could have justified the formation of belief on the part of the Assessing Officer for reopening the case. However, during the course of hearing of the appeal, no contention was advanced by the Id. A.R to support the challenge thrown to the validity of the reassessment proceedings before us. We, thus, in absence of any contention having been raised by the Id. A.R on the issue under consideration, are unable to find any infirmity in the order of the CIT(A) upholding the validity of the reopening of the assessment made by the Assessing Officer under section 147 of the Act.

15. The assessee had further assailed before us the validity of the confirming of the disallowance of labour expenses of Rs. 1,58,271/- and an addition of Rs. 2.30 lac on an estimate basis in respect of redevelopment allowances by the CIT(A). We find that as the facts and the issues pertaining to both the aforesaid additions/disallowances remain the same, as were there before us

in the appeal of the assessee for A.Y. 2010-11, viz. ITA No. 2020/MUM/2017, therefore, our observations recorded therein shall apply *mutatis mutandis* for disposal of the respective grounds of appeal, viz. ground of appeal No.2 and grounds of appeal No. 3(a) to 3(d), so raised by the assessee in the present appeal before us. Thus, the appeal of the assessee is partly allowed in terms of our aforesaid observations.

16. In the result, appeal of the assessee for A.Y. 2010-11 in ITA No. 2020/MUM/2017 is allowed, while for, the appeal of the assessee for A.Y. 2011-12 in ITA No. 2021/MUM/2017 is partly allowed.

Order Pronounced in open Court on this 11th day of April, 2018.

Sd/-
(G.S. PANNU)
Accountant Member

sd/-
(RAVISH SOOD)
Judicial Member

Dated : 11th April, 2018.

vr/-

Copy to:

1. **The Assessee**-Ashwin J. Sanghavi, 502, Crystal Classic, 154, S.V. Road, Vile Parle (W), Mumbai – 400 056
2. **The Revenue** – DCIT, Central Circle-36, Mumbai.
3. **Ld.Pr.CIT, Central-3, Mumbai.**
4. **Ld. CIT(A)-53, Mumbai.**
5. **The D.R., Mumbai.**
6. **Guard file.**

By order

(Dy./Asst. Registrar),
ITAT, Mumbai.