



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.126/Rpr/2013
Assessment Year : 2010-2011

Asst. Commissioner of Income Tax 1(1), revenue Building, Civil Lines, Raipur	Vs.	M/s. Atharva Infrastructure, 401, Matrachhya, Priyadarshani Nagar, Raipur
PAN/GIR No.		
(Appellant)	..	(Respondent)

Assessee by : Shri R.B.Doshi, AR
Revenue by : Shri R.K.Singh, CIT DR

Date of Hearing : 11/01/ 2018
Date of Pronouncement : 15 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-Raipur, dated 21.6.2013 for the assessment year 2010-2011.

2. The sole issue involved in this appeal is that the CIT(A) erred in deleting the addition of Rs.6,87,89,605/- made by the Assessing Officer on account of alleged payments to sub-contractors.

3. The relevant facts of the case are that the assessee is a partnership firm deriving income from civil construction business. The return of income for the assessment year 2010-2011 was filed on 28.6.2010 declaring income



of Rs.1,10,66,160/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee firm has debited an amount of Rs.6,87,89,605/- to the profit and loss account under the head "sub-contract". Before the Assessing Officer, it was submitted by the assessee that the assessee firm has executed 28 work orders including old work sites. Some of the construction work was given on sub-contract basis and all the payments have been given to the sub-contractors by cheque. The Assessing Officer required the assessee to file details to substantiate its claim. The assessee firm has filed copies of work order allegedly issued to each of the sub-contractors and bills claimed to have been raised by these sub-contractors. A mere look at these documents makes it amply clear that these documents have been prepared hurriedly in one go as these bear the same signatures with same pen. The format of the bills submitted by the sub-contractors is also same and that these appear to have been prepared recently. It is highly unlikely that all the subcontractors situated at different places would furnish the bills in the same format. The Assessing Officer was of the opinion that these documents have been prepared by the assessee firm as an after-thought to give the color of genuineness to the payment made by it to various sub-contractors. The Assessing Officer observed that the action of the assessee firm is to be seen in the light of reply submitted by it on 08.03.2013 wherein vide para no.5, it had categorically stated that it is not possible to correlate the sub-contract work with the main work order



because the sub-contractors sometimes give services for more than two work orders. From the above it can be inferred that the assessee firm was not in possession of these documents which have been submitted by it as an attempt to cover up the false claim of alleged payments to the sub-contractors. The assessee firm has furnished copies of work order, copies of bills submitted by the sub-contractor and acknowledgement of return of income along with computation of income, from where, the Assessing Officer found that in the case of Shri Mehboob Ansari, an amount of Rs. 11,61,584/- claimed to have been paid as sub-contract payment, who is in the business of transporting business. The Assessing Officer further noticed that an amount of Rs.1,45,350/- paid to Jain Transport and Rs.5,60,508/- paid to M/s. Ganapati Transport, who are engaged in the transport business and not in civil construction business. Similarly, Shri sitaram Singhal to whom an amount of Rs.1,74,88,106/- was paid by the assessee for sub-contract work, it was found that the assessee has received contract receipts of Rs.1,73,31,665/- from Executive Engineer, RWD, Dharmagarh against the work order No.15/81, from which, the Assessing Officer observed that these documents prove of fabricating the bills and vouchers. The Assessing Officer found that the acknowledgements of returns of income in 7 other cases have also been filed but no computation of income has been attached with these acknowledgements and that from the copy of acknowledgement of return of



income filed by the assessee firm in these cases, the following picture emerges:

SI. No.	Name of the sub-contractor	Sub-contract payment claimed to have been made during the year	Income returned	TDS deducted	Refund claimed
1.	Shri Shakoor Sayyad	25,19,967	2,01,600	30,240	25,960
2.	Shri Suraj Mahaskey	12,42,991	1,47,930	14,915	14,915
3.	Shri Saraanta Megha	26,13,400	2,10,100	44,373	39,214
4.	Shri Biswaranjan Meswa	21,15,592	1,69,640	25,389	24,400
5.	Shri Avinash Kumar Mishra	8,75,629	1,50,450	10,518	10,520
6.	M7s Kishorilal Luma & Sons	12,09,974	1,02,140	28,953	Nil
7.	Shri Upendra Yadav	20,95,835	1,67,666	25,150	24,360

The Assessing Officer stated that in most of the cases, the TDS deducted by the assessee to give these transactions the color of genuineness has been claimed as refund by the respective subcontractors. In most of the case, the income returned by them is in the vicinity of Rs. 1,50,000/-which is below the taxable limits; that although no details of the nature of business done by these persons and whether they are possessing any paraphernalia to do the civil contract work, have been given by the assessee firm despite specific



query raised by the Assessing officer's letter dated 08.03.2013, and, therefore, it is highly unlikely that these persons are capable of doing the work attributed to each of them, as is clear from the facts brought out above. In view of above as also the various anomalies and discrepancies found in the explanation/documents furnished by the assessee firm, the Assessing Officer concluded that the claim of the assessee firm in regard to payment made by it under the head "Sub-Contract¹ to various sub-contractors amounting to Rs.6,87,89,605/- has not been incurred by it wholly and exclusively for the purpose of its business although it is true that payment have been made through cheques and payments have been subjected to TDS but the assessee firm has failed to establish that the so called sub-contractors have rendered any service to it as is the case made by assessee firm and, therefore, Rs.6,87,89,605/- was added to the income of the assessee.

4. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), the assessee reiterated the submissions made before the Assessing Officer and also submitted that before the Assessing Officer, the assessee has already furnished vide his letter dated 13.12.2012, the name of the sub-contractor, place where the work was executed, PAN, TDS deducted and bill amount for sub-contractor ship, TDS deposited in Government exchequer and TDS



return. The assessee also submitted the complete postal address of 22 sub-contractors but the Assessing Officer did not issue any letter to them but asked the assessee to produce the sub-contractors for the first time on 8.3.2013, which the assessee does not have any statutory power to produce the sub-contractor before the Assessing officer.

5. After considering the submissions of the assessee, the assessment order, judicial decisions by the assessee and the Assessing Officer, the CIT(A) deleted the additions by observing as under:

6. I have carefully gone through the assessment order, written submissions of the appellant and various judicial decisions relied upon by the appellant and the A.O. It is seen that the books of accounts of the appellant are audited u/s 44AB. The books of accounts, bills, vouchers and other supporting evidences were produced and test checked as stated by the A.O in Para 1 of the assessment order. I find that, the A.O accepted the trading results in Para 2 of the assessment order. It is gathered that the appellant continued to be engaged in the business of civil construction and was executing work orders awarded by the Government departments and also undertook subcontract work. The case of the appellant was under scrutiny even in A.Y 2009-10.

7. The financial results of the appellant are reproduced hereunder for better appreciation of facts:

Particulars	F.Y 2009-10	F.Y 2008-09	F.Y 2007-08
Gross contract receipts	250373871.20	178493908.00	111289649.00
NP	10815023,11	8826989.91	6908307.82
Add: <u>Payment to Partners:</u>	3648348.87	2704765.00	2046925.00
Interest Remuneration	120000.00	120000.00	120000.00
Depreciation	10709930.00	6612123.00	4047618.00



Net profit before Depreciation and payment to partners	25293301.98	18263877.91	13122850.82
% of Net Profit	10.10	10.23	11.79

8. It is seen that, during the year under consideration, the A.O has entirely disallowed the deduction claimed by the appellant on account of payment to the subcontractors amounting to Rs.6,87,89,605/- mainly on account of following reasons:

- a) The appellant deliberately delayed furnishing of complete postal address of the subcontractors so as to defy any enquiry;
- b) The appellant did not produce the sub-contractors.
- c) According to the A.O, the bills and work orders appeared to have been prepared hurriedly and recently as these bear the same signature and in the same ink and with the same pen.
- d) The payment to the subcontractors is not genuine.
- e) The expenditure on account of subcontract payment has not been incurred wholly and exclusively for the purpose of its business.

9. I have perused the assessment order of A.Y 2009-10 and also the audited financial statements of previous year 2008-09, it is seen that the appellant had made similar payments to the subcontractors even in the last year and no adverse inference was drawn by the A.O in the preceding years assessment proceedings as the deduction on account of Payment to subcontractors was fully allowed.

10. It is seen that, the A.O has not pointed out any inconsistency/discrepancy in the books of accounts, bills/vouchers in respect of sub contract work, work orders issued to the subcontractors nor did the A.O dispute fact of payment and TDS made by the appellant, the A.O has not pointed out any instance of bogus claim or expenditure claimed that remained unverified for want of bill or voucher, I am of the considered opinion that the obvious reflection of a bogus claim is reduction in GP/NP rate or abnormally low GP/NP rate in comparison to the industry average. In the instant case, as stated supra, the A.O has accepted the NP rate declared by the appellant. Even on an independent examination of the net profit declared by the appellant during the year under consideration, the NP rate declared by



the appellant at 10.10%, in my considered view, considering the nature of business of the appellant i.e. civil construction and merely drawing reference from the provisions of Section 44AD as it stood during the relevant year, is quite reasonable. Hence, as the profitability is not low, rejection of books of accounts was not warranted in the instant case. Another reason for raising the suspicion could have been the disproportionate increase in the amount of expenditure under a particular head, the appellant was asked to furnish the copies of financial statements of previous year 2008-09 and 2007-08. From the perusal of financial statements, it is gathered that the expenditure on account of sub contract expenses is showing a declining trend as it emerges from the table below:

Particulars	Previous Year		
	2009-10	2008-09	2007-08
Turnover	250373871.20	178493908.00	111289649.00
.Sub-Contract Expenses	68789605	51879961	35492711
Percentage to Turnover	27.47	29.07	31.89

11. I find that there is no disproportionate increase in the amount/proportion of expenditure on subcontract expenses. As there was no disproportionate increase in the expenditure, the rejection of books of accounts was not warranted even on this ground. It is settled principle of law that no addition can be made on the ground of lower GP/NP rate, until and unless, the books of accounts have been rejected by the A.O, by invoking the provisions of Section 145, after giving the appellant a reasonable opportunity of being heard. Further, it is equally settled legal position that the books of accounts cannot be rejected merely on the ground of low GP/NP rate. Rather, the A.O has to bring on record specific defect in the books of accounts of the appellant as a result of which reasonable profits cannot be deduced.

12. The assessment records were called for from the A.O. From the perusal of assessment records, it is seen that the appellant did furnish complete postal address of the sundry creditors with balances more



than Rs.1 lac which also contained the details of twenty subcontractors. I do find force in the submission of the appellant that the A.O, after being satisfied with the genuineness of the creditors, did not make any addition on account of unexplained cash credit, hi this backdrop, I am convinced that the action of the A.O in holding the entire sub contract expenditure as bogus is self defeating and contradictory.

13. I have carefully perused the details of the subcontractors furnished by the appellant, ledgers of the subcontractor, bills hi respect of sub contract work executed, work orders issued to the subcontractors by the appellant firm. It is seen that the bills in respect of sub-contractor work and work orders issued by the appellant bear the signature of the sub-contractor and authorized signatory of the appellant, hence, I find no reason to disbelieve the evidences placed on record by the appellant. There is considerable force in the submission of the appellant that this is not always possible to correlate the work done by the sub-contractor with the main work order as the subcontractor does not render services only for one work order and raised the bill for the sub-contract work on consolidated basis rather than for each main contract separately. It is seen that the payments have been made to the subcontractors through banking channel and TDS has also been made by the appellant from the payments to the subcontractors. The appellant had also furnished the PAN of the subcontractors. No inconsistency was noticed on the verification of evidences relied upon by the appellant. The findings of the A.O that the documents appear to have been prepared hurriedly in one go etc may be a ground for suspicion., however, the same cannot be pted as evidence to justify the disallowance made by the A.O. It is not the case of the A.O that the appellant failed to furnish the name, address or PAN of the subcontractors nor it is the case of the A;O that the payments were made in cash only to the subcontractors. 1 am of the considered opinion that the mere delay in furnishing the information or non production of the subcontracts alone cannot be construed as sufficient ground for disallowing the entire expenditure when there are sufficient circumstantial evidences justifying the admissibility of the deduction. The decisions relied upon by the appellant in this regard are certainly providing strength to the case of the appellant.

14. As regards income declared by the subcontractors, I do find force hi the argument of the appellant that the filing of income tax return and payment of tax by the payee cannot be regarded as a decisive test for the genuineness of the expenditure. I am of the considered opinion that if the sub contractor does not file the return or pay legitimate tax



which is due, in such a case, the A.O is free to take action against the subcontractor who received the payment and there is no justification to disallow the expenditure for the mischief of the subcontractor. Hence, I do not find any merit in the allegation of the A.O that some of the sub contractors had reported below taxable income in the income tax return.

15. If the conclusion of the A.O that the subcontractors had not been engaged by the appellant is accepted as correct, then, given the fact that the A.O has not disturbed the NP rate declared by the appellant, reasonable and fair presumption is that the appellant had itself carried out the entire work. I am of the considered opinion that the execution of the work could not have been possible without the involvement of the subcontractors.

16. It is seen that the A.O has not rejected the books of accounts of the appellant, however, had the A.O. rejected the books of accounts and proceeded to complete the assessment to the best of his judgement, it was necessary for the A.O. to justify the estimation of income. In the instant case, the A.O. has, after disallowing the entire sub-contract payment, estimated the income of the appellant at 38% of the gross receipts which, in my considered view, is exorbitant in this line of the business nor there is precedence to justify the estimation of income at 38%.

17. As regards finding of the A.O. in para 12 of the assessment order regarding inconsistency in the amount of sub-contract payment made by the appellant to Shri Sitaram Singhal on one hand in respect of work order no.15/81 and corresponding contract receipts in respect of said work order, I am in agreement with the submissions of the appellant that the findings of the A.O are clearly based on misinterpretation of facts in as much as the contract price was for a sum of Rs.2,41,75,361/-and not for a sum of Rs. 1,73,31,665/- as conceived by the A.O; I do find force in the submissions of the appellant that it is not necessary that every work order yield profits only given the fact that the appellant has been awarded the work by virtue of it being the lowest bidder and there may be judgement error in estimation of cost. The appellant has made submissions justifying the sub-contract payment on account of same being commercially expedient and has also relied upon various judicial pronouncements; I find that the case of the appellant is certainly deriving strength from the decision relied upon by the appellant.



18. As regards the payment to M/s Jain Transport and M/s Ganpati Transport, I am of the considered opinion that there is no merit in the disallowance made by the A.O. merely due to reason that the appellant had debited the payments on account of transportation expenses to subcontract expenses as the said expenses are verifiable from the bills and vouchers.

19. As regards the project wise contract receipts, I do find force in the submissions of the appellant that there is no provision in the Act which mandates preparation of project wise Profit & Loss Account. It is sufficient compliance even if the Profit & Loss Account is prepared on consolidated basis. I have perused the ledger of contract receipts, I am of the considered opinion that the action of the A.O. is clearly hi violation of the general principles of accounts and if the appellant had debited to sub-contract expenses to the ledger of contract receipts, then in that case, there would not have been any debit to the Profit & Loss Account on account of payment to subcontract and in such a case, it would not have been come to the surface and knowledge of the A.O. The decisions relied upon by the appellant in this regard are certainly providing strength to the case of the appellant.

20. It is seen that even in the last year, the appellant had not maintained project wise Profit & Loss Account nor did the appellant debit the sub-contract expenses or any other expenditure for that matter to the contract receipts ledger, hence, there was no reason to take a contrary view during the year under consideration.

21. It is seen that the A.O. has made self contradictory remarks in the assessment order in as much as in para 14 of the assessment order, the A.O. has stated that no actual payment has been made by the appellant, whereas, as rightly pointed out by the appellant, in para 15 of the assessment order, the A.O. has accepted the fact of payment of TDS but has diverted the issue. I am of the considered opinion tht the AO has not brought on record any evidence to disbelieve the nexus .of sub-contract payment with the business of the appellant. The decisions relied upon by A.O. have been found not applicable in the facts of the instant case due to divergent facts. I am of the considered opinion that the A.O. has merely stated his conclusion, however, he has not given any cogent reason or evidence to substantiate his conclusion that the expenditure has not been incurred wholly and exclusively for the purposes of its business. It is seen that the appellant was executing the various work orders at the different locations, this fact coupled with the fact that there is more than 40% increase in the turnover of the appellant are sufficient to establish nexus of sub-contract expenses



with the business of the appellant apart from the work orders, bills of the sub-contract work.

22. I find that no evidence whatsoever has been brought on record by the A.O to conclusively prove that the appellant, in fact, earned more than that returned by the appellant. The A.O had also not brought any evidence on record to substantiate the impugned additions made on wild estimations and suspicions, hi the event of any doubt or disagreement with the stated facts, before any adversity was held against the appellant to assess the appellant on such unsubstantiated estimations, it was incumbent upon the A.O to have brought the needed evidence to support such estimation. In the instant case, no such evidence has been brought on record against the appellant to substantiate the impugned estimated addition.

23. I am of the considered opinion that the adhoc disallowances made on estimations and presumptions is unsustainable on facts and in law because the declared results accepted by the AO were on the basis of audited books of accounts and no suppression in sales or inflation in purchases was detected - much less was any serious discrepancy pointed out in the method of accounting consistently being employed by the appellant. There was no finding of fact to the effect that, the method employed was such that, correct profits could not be deduced there from. No evidence whatsoever was brought on record to prove that the appellant, during the relevant previous year, had earned more than that returned as per audited books of accounts. Unless these are conclusively proved against the appellant, any estimated enhancement to the income declared on the basis of audited books, was unsustainable on facts and in law. Since the declared profit was accepted as reasonable, it was not permissible for the AO to go back to the expenses claimed under P/L A/c to make the disallowances. The quantum of expenses claimed under the various heads were reasonable and in consonance with reference to the turnover. The AO had not specified the quantum of expenses which, according to him, were either unverifiable or disallowable. As already stated, the accounts are statutorily audited and the declared version on the basis of such audited accounts was virtually accepted since there was no estimation of GP or NP. In the given facts and circumstances, there was no justification for making adhoc disallowances out of expenses claimed, as held in *Monarch Foods Pvt. Ltd. v. ACIT* (1996) 54 TTJ (AHD.) 405 and *Raj Enterprises v. ITO* (1995) 51 TTJ (Jaipur) 408.

24. When books were not rejected and when the income was not estimated and when the income returned was accepted as correct,



without disturbing the same, it is not understood as to how in a scrutiny assessment such adhoc disallowances were permissible, particularly, when no evidence whatsoever was brought on record against the appellant to justify such adhoc disallowances. Since, the income returned on the basis of audited books was accepted as correct, it is implied that, the correctness and genuineness of the expenses claimed in the accounts, which were subjected to Audit, stood undisputedly accepted. The Auditors who conducted Statutory Audit had not adversely commented regarding the incomings / outgoing. Such adhoc disallowances are also unsustainable in view of the decision of the Hon'ble ITAT, Nagpur Bench (Camp at Raipur) in its order in ITA No.240/NAG/05 dated 19.01.2006 in Sashi Singhania, Raipur vs. ITO 1(1), Raipur wherein while dealing with the adhoc disallowance out of material purchased and out of earth transporting charges, held that, since the expenses under these heads were incurred for the purposes of business, respectfully following the decision of the SC in Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775 (SC) it was held that, such adhoc disallowances made on the basis of guess work were not sustainable.

25. Record evidences the fact that the turnover this year had increased as compared to last year and as rightly submitted on behalf of the appellant, this could not be possible without involvement of the sub contractors, for progression of its business and hence, there was no reason to hold that the expenses have not been incurred exclusively for business purposes, hi the case of the appellant, under consideration, since the reasonableness of the GP and NP was not disputed by the AO, the genuineness and quantum of the expenses, contradictory to his own decision in not disturbing the book results. Since the GP and NP shown as per audited books of account, having been undisputedly accepted as reasonable, in my considered view, the AO had no option to go back to the trading and P & L account, for making adhoc disallowances out of expenses claimed therein, Since this was done in the case of the appellant, under consideration, it was against the concept of the GP and NP defined as per the basic principles of accountancy. Reliance for this proposition is respectfully placed on the numerous judicial pronouncements, including the one in Indwell Constructions v CIT (1999) 151 CTR (A.P.) 207 CIT v. Banwari Lal Banshidhar (1998) 148 CTR (All.) 533,

26. Looking to the facts and circumstances of the case, as also decisions cited above, the adhoc disallowance made by the A.O cannot be sustained. Hence, the disallowance is deleted."



6. Before us, Id D.R. supported the order of the Assessing Officer. He pointed out that from the details filed by the assessee, it is amply clear that the assessee has fabricated the bills and vouchers and produced the same for claim of deduction. He also submitted that in some cases, the parties are engaged in transport business but the assessee has tried to prove them to be engaged in civil construction business. In view of above, the CIT(A) is not justified in considering those documents without confronting the same with the Assessing Officer.

7. Contra, Id A.R. reiterated the submissions made before the Assessing Officer as well as before the CIT(A). The gist of the assessee's submissions is as under:

"1. Net profit before interest, remuneration and depreciation comes to 10.10%, which is almost in line with last year. Comparative chart of net profit is placed at page no. 33 of paper book. Having regard to the nature of business of assessee, such net profit rate is quite reasonable and which is also indicative of the fact that all the expenses claimed by assessee, including sub-contractors cost, are also reasonable.

2. The assessee incurred similar sub-contractor cost in the past years also and in scrutiny assessment u/s 143(3) of AY 2009-10, after necessary verification, entire claim was accepted by AO and no disallowance was made in that year. Assessment order of AY 2009-10 is placed at page no. 139 to 142 of PB. Audited profit & loss account of last two years is placed at page no. 143 & 144 and 145 & 146 of PB wherein the claim of similar cost incurred in last years is reflected. When the claim of assessee was examined in the past years and was found to be acceptable, there was no reason to disallow entire expenses claimed by



the assessee in this year specially when all the required details as called by AO were submitted before him.

3. It may be noted that many of the sub-contractors who were allotted work in this year were also allotted work by the assessee in the last year also and cost attributable to such common names in the two years was worth Rs. 2,85,91,571/-. Therefore, when some of the sub-contractors were common in last year and expenses relating to such sub-contractors was allowed in the previous year in scrutiny assessment, there was no reason to disallow the expenses in this year as the claim of cost of such sub-contractors already stood verified in last year and was found to be genuine.

4. If the disallowance made by AO is considered, the net profit rate after addition made by AO comes to about 32% after remuneration, interest and depreciation and about 38% before remuneration, interest and depreciation. Such huge and phenomenal net profit is beyond apprehension and is not possible in the line of business of assessee. Howsoever favourable the circumstances may be, earning such phenomenal profit is impossible. The business of assessee is highly competitive and generally, net profit earned by similar assessees is of the same magnitude as has been declared by the assessee.

It is a settled proposition that it is only the real income which is chargeable to tax. The disallowance made by AO has resulted into a phenomenal imaginary income having been brought to tax which is against the basic principles of income tax law.

5. Copy of work orders issued by the assessee to sub-contractors were submitted before the AO, which contain threadbare details of the work allotted to them like place, area of work, volume of work and rate etc. Copy of such work orders are placed at page no. 120 to 138 of paper book. In view of this, it was wrong on the part of AO to observe that details of work allotted were not provided by assessee. None of these work orders have been found to be in-genuine.

Copy of bills of sub-contractors was also submitted before AO, which have been placed at page no. 74 to 110 of paper book. The AO has not found any of these bills to be in-genuine. In the bills, details of work performed



by them are mentioned and there is nothing on record to disprove the carrying on of work.

6. PAN and other details of sub-contractors were submitted to the AO on 13.12.2012 vide letter dt. 12.12.2012. Copy of letter dt. 12.12.2012 is at page no. 60 to 62 of PB. After obtaining these details, if the AO was serious about making direct enquiry, he should have initiated the same by issuing summons on the basis of PAN numbers available on record. However, the AO did not do so and is blaming the assessee for not producing the sub-contractors. All payments were made through banking channel and proper TDS was made. If the AO wanted, he could have also made some verification about the sub-contractors from the Departmental records as he was having PAN of most of them.

7. Thereafter, further details were called by AO as late as on 28/02/2013, requiring assessee to give details of work contracted, copy of work order and to establish correlation of sub- contracted work with the main work order. All the required details were filed by assessee on 08.03.2013. Thus, here also compliance as directed by AO was made.

8. For the first time, on 08.03.2013, the AO directed assessee to produce sub- contractors. The case was getting time barred on 31st March. Time available with assessee for producing the sub-contractors was too short. Various works were undertaken by assessee at remote and distant places. Work sites were about 28 spread over Chhattisgarh and Orissa. Sub-contractors were engaged mostly locally. Sub-contractors being small time businessmen, they keep on moving from one place to other in connection with their work. During the year under consideration, the assessee had about 82 sub-contractors. In short time available, it was not possible for assessee to contact all the sub-contractors and to make them appear before the AO. In the month of March, generally all contractors and sub contractors are too busy in completing all Government works to adhere to the deadlines which are very strictly followed and observed by the Government. Due to this, given such a short time, it was humanly impossible for assessee to produce them.

9. None of the work orders, bills, Bank payments etc. have been disproved. Legal and cogent evidences have remained uncontroverted. Assessee discharged its onus by submitting all the details required by the AO. Thereafter it was for AO to disprove the claim of assessee by bringing positive material on record. Without disproving anything, no disallowance



could be made. The disallowance made by AO is based on presumption and surmises and not on any definite finding.

10.. All the evidences running into more than 600-700 pages were submitted before the AO and CIT(A). Even the CIT(A) verified all the evidences and has recorded cogent findings in his appellate order.

11.. As regards similarity in format of the bills of sub-contractors, since they are from unorganized sector and for uniformity, standardization and facilitation of easy processing of payment by employees of assessee, bills were got in a convenient format. Observation of AO about alleged appearance of bills to have been prepared recently is on presumption.

There were about 82 sub-contractors, who worked at remote locations and they do not bring their administrative staff to the site and therefore assessee had to assist them in preparation of bills.

12.. All sub-contractors have declared profit on presumptive rate, exceeding 8%. Chart is placed at page no. 19 of PB. The rate of 8% of profit is prescribed in Statute and no adverse view could be taken simply because the entire TDS made by assessee was claimed as refund by the sub-contractors. It is also not the case that any discrepancy was found in the claim/return of the sub-contractors.

13. The assessee places reliance on the decision in the case of Mehar Projects India (P.) Ltd. vs ACIT (2004) 88 ITD 585 (Chd.) wherein it was held that execution of the work could not have been possible without incurring expenditure on wages and therefore, disallowance of entire amount of wages is not justified. It was also held that the assessee made similar payments in the earlier and subsequent assessment year which were allowed by the Department. Therefore, there does not appear to be any justification in not allowing such payments for the assessment year under reference. The mere fact that the payee was not produced, would not by itself justify the disallowance as the contract was for a limited period.'

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In this case, the Assessing Officer noticed that the assessee firm has debited an amount of



Rs.6,87,89,605/- to the profit and loss account under the head "sub-contract". Before the Assessing Officer the assessee filed the documents and bills and vouchers in respect of payments made to sub-contractors and also proof of tax deducted at source from those payments. However, the Assessing Officer observed that these documents have been prepared hurriedly in one go as these bear the same signatures with same pen. The format of the bills submitted by the sub-contractors is also same and that these appear to have been prepared recently. He doubted the genuineness of the payment to various sub-contractors and observed that the documents prepared by the assessee firm as an after-thought to give the color of genuineness to the payment made by it to various sub-contractors. The Assessing Officer inferred that the assessee firm was not in possession of these documents which have been submitted by it as an attempt to cover up the false claim of alleged payments to the sub-contractors. He also observed payment to Shri Mehboob Ansari of an amount of Rs.11,61,584/-, who is in transportation business. Likewise payment of Rs.1,45,350/- paid to Jain Transport and Rs.5,60,508/- to M/s. Ganapati Transport are not in the civil construction business. Similarly, Shri Sitaram Singhal to whom an amount of Rs.1,74,88,106/- was paid by the assessee for sub-contract work, it was found that the assessee has received contract receipts of Rs.1,73,31,665/- from Executive Engineer, RWD, Dharmagarh against the work order No.15/81, from which, the Assessing Officer observed that these documents



prove of fabricating the bills and vouchers. The Assessing Officer found that the acknowledgements of returns of income in 7 other cases have also been filed but no computation of income has been attached with these acknowledgements and that from the copy of acknowledgement of return of income filed by the assessee. Accordingly, the Assessing Officer rejected the claim of the assessee and disallowed Rs.6,87,89,605/-.

9. On appeal, the CIT(A) deleted the addition.

10. We find that the Assessing Officer has doubted the bills and vouchers furnished by the assessee. We have also gone through the paper book, audited profit and loss account of the assessee for the last two years, copy of work orders and bills of sub-contractors. The work orders contained the detailed work order allotted to the assessee and in turn to sub-contractors. We also find that payments to sub-contractors have been made through banking channel and TDS was deducted therefrom. As regards to production of sub-contractors before the Assessing Officer, it was pleaded that as the sub-contractors were working in the remote areas, in a short span of time, it was not possible to produce them before the Assessing officer. The assessee has produced all the details before the Assessing Officer. Hence, it was incumbent on the part of the Assessing officer to disprove the claim of the assessee. One of the reason for disallowing the claim of the assessee is that some of the sub-contractors are engaged in the transportation business and



not in civil construction business. From the above point of view, it cannot be inferred that the persons to whom the AO has doubted of not having civil contract business, are not engaged in the construction business. They have been given only small part of work. It is an undisputed fact that the assessee submitted complete names, addresses, PAN, confirmation of I T Returns, bank statement of the sub-contractors along with details of proof of payment before A.O., Ld. CIT(A) and also before us. Ld. CIT(A) while deleting the addition has given finding that the turnover of this year had increased as compared to last year and this could not have been possible without the involvement of the sub-contractors and the assessee has fully discharged the onus of proving the sub-contract expenses. Ld CIT(A) has further held that there is no reason to hold that the expenses have not been incurred exclusively for the business purposes. The aforesaid finding of Ld. CIT(A) could not be controverted by the revenue by bringing any contrary material on record. Further, the assessee has also discharged its onus by submitting names, addresses and PAN of the contractor before the A.O. as well as before Ld. CIT(A). With the details made available by the assessee to the A.O., he has also not summoned any of the sub- contractor to verify the genuineness of contracts. The decision of ITAT Chandigarh Bench in the case of Meher Projects India Pvt Ltd vs. ACIT, 88 ITD 585 (Cha) relied on by the assessee support its case. In view of these facts, we are of the view that



no interference is called for in the order of Ld. CIT(A) and thus, the ground of the revenue is dismissed.

11. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 15 /01/2018.

Sd/-

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 15 /01/2018

B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : Asst. Commissioner of Income Tax 1(1), revenue Building, Civil Lines, Raipur
2.	The respondent: M/s. Atharva Infrastructure, 401, Matrachhya, Priyadarshani Nagar, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur