

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**  
**[Through Virtual Court]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA.No.1735/Ahd/2017**  
**निर्धारण वर्ष/Asstt.Year : 2013-14**

M/s.Maruti Infrastructure Ltd. 802, Surmount Building Opp: Iscon Megal Mall S.G.Highway Ahmedabad 380 015. PAN: AAACM 7976 L	Vs.	ACIT, Cir.2(1)(2) Ahmedabad.
---	-----	---------------------------------

**ITA.No.1995/Ahd/2017**  
**निर्धारण वर्ष/Asstt.Year : 2013-14**

ACIT, Cir.2(1)(2) Ahmedabad.	Vs.	M/s.Maruti Infrastructure Ltd. 802, Surmount Building Opp: Iscon Megal Mall S.G.Highway Ahmedabad 380 015.
---------------------------------	-----	--

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
-------------------------------	--	---------------------------------

Assessee by :	Shri Tushar Hemani, AR
Revenue by :	Shri Dilieepkumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 31/07/2020  
घोषणा की तारीख /Date of Pronouncement: 05/08/2020

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT**

These are two cross appeals at the instance of the assessee and the Revenue against order of the Id.CIT(A)-2, Ahmedabad dated 13.6.2017 for the assessment year 2013-14. Accordingly, both these appeals are disposed of by this common order.

2. We have gone through the grounds of appeals filed by both the parties. We find that main issue involved in these two appeals are that the assessing officer has made an addition of Rs.2,63,44,508/- on account of bogus purchases by estimating net profit at 40%, which in first appeal restricted by the Id.CIT(A) at Rs.13,19,651/- by taking average estimated net profit at 7%. Assessee is against partly confirming the addition to the extent of Rs.13,19,651/- by estimating net profit @7%; and Revenue is against deletion of addition of Rs.2,63,44,508/- by rejecting estimation of net profit made by the AO at 40%. The assessee has also challenged rejection of books of accounts of the assessee by both the authorities.

3. We shall first deal with appeal of the assessee.

4. Brief facts as emerging from orders of the Revenue authorities are that the assessee is a builder and civil contractors. It filed its return of income on 21.9.2013 declaring total income at Rs.39,46,540/-. After processing the return under section 143(1), the case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) of the Act on 4.9.2014. On verification of the record, it was noticed by the AO that the assessee has debited a sum of Rs.6,45,25,179 being sub-contract charges paid to M/s.Limestone Properties P. Ltd., Kolkata (“LPPL” for short) for the work of excavation of tunnel on behalf of the assessee, which assessee has received from ONGC Petro. The Id.AO vide show cause notice 18.12.2015 sought for details and explanation from the assessee and the said LPPL. In response to

that notice, the assessee company submitted copy of ITR acknowledgment and bank statement copy of LPPL. On verification of the details, the Id.AO observed that the meager return of income of Rs.4,91,609/- shown by the LPPL in its return did not validate huge contract amount it entered into. The Id.AO also noticed deposits and immediate withdrawal of the amount and doubted genuineness of the transaction. The Id.AO further referred to the commission report submitted by the Dy. Director of IT(Inv.) dated 12.1.2016 in which it was stated that as per statement of one Shri Praveen Kumar Agarwal recorded under section 133A of the Act on 11.2.2015 the said "LPPL" is a covered company and formed for providing accommodation entry etc. to different beneficiaries, which allegation the assessee company has completely denied by stating that the said Shri Praveenkumar has no connection of the said "LPPL", and therefore, the statement made by him is without any authority, hence false and incorrect. Assessee further explained that all the transactions were carried out through account payee cheques and the assessee has also effected TDS while paying the invoice amounts to the "LPPL", which demonstrated that contracted work has been done by the said party and invoice has been raised and paid for, and therefore, expenditure could not be disallowed. The assessee has also submitted that copy of ledger account in the books of "LPPL", copy of ITR acknowledgement of "LPPL" for A.Y.2013-14, copy of bank statement of "LPPL" confirming the receipt of payment etc. However, the Id.AO did not accept the explanation of the assessee. He rejected the claim of the assessee on the ground that transaction entered with the said "LPPL" is bogus, and the said company did not exist; that statement of Shri Praveenkumar Agarwal supports this aspect; that the assessee has suppressed the income by getting bogus contract, which was utilized for black money generation. He accordingly rejected the books of accounts of the assessee as the same are not reliable and did not reflect true

and fair picture of assessee's business. He estimated the net profit @40%. He accordingly worked out addition of Rs.2,63,44,508/- and added to the income of the assessee on account of bogus purchases and suppressing profit. Against this action of the AO, assessee went in appeal before the Id.first appellate authority. The Id.CIT(A) has discussed the issue elaborately and gone through the findings of the Id.AO. Before the Id.CIT(A) assessee submitted that rejection of books of accounts by treating subcontracting charge of Rs.6,45,25,179/- as non-genuine was solely on the basis of statement of third party, and in the absence of any corroborative evidence against the assessee, such statement could not be used. For rejecting books of accounts under section 145 of the Act, the Id.AO has not pointed out any material error in the records maintained by the assessee. The assessee has not been provided with copy of commission report of DDIT (Inv.) nor given an opportunity to cross-examine the said Shri Praveenkumar Agrawal for his alleged statement. It was submitted that any material not confronted to the assessee would not constitute as admissible evidence, and consequent action relying on such material was legally invalid and void. Assessee further submitted that it has furnished necessary documents viz. work order given to "LPPL", invoice raised by "LPPL", ledger account of the assessee in the books of "LPPL" and relevant extract of bank statement of "LPPL" showing the receipt from the assessee. It was further submitted that payments made to "LPPL" were through account payee cheque and requisite TDS has also been deducted on such payments; that the addition made by the assessee merely on the basis of presumption and surmises. Further, provisions of section 145 did not apply to the assessee, as the AO has not pointed out any material error in the maintenance of books of accounts of the assessee, and rejection of the books of accounts was bad in the eyes of law and thus consequential addition made on such rejection was liable to be deleted. However, it was

alternatively pleaded by the assessee before the Id.CIT(A) that assessee has been regularly filing its return of income and has been accepted by the department. The average rate of net profit declared by the assessee in the present year and the subsequent years comes to 5.95%, which was close to 5.26% declared by the assessee for the year under consideration, therefore, estimation of net profit @40% by the AO has no logical stand, and at the most the Id.AO should have adopted average net profit at 5.95%; that even special provision under section 44AD prescribes a rate of 8% of the total turnover should be deemed to be the profits and gains of the business chargeable to tax, and therefore, the addition at the most should be restricted to that extent. Before the Id.CIT(A) has also furnished copies of ledger account of “other contract income” along with work orders and other bank account statement. After going through all the materials furnished during the course of assessment as well as during the appellate proceedings, and also submissions of the assessee, the Id.CIT(A) has observed that the AO thought it was fit to make an addition on basis of statement of Shri Praveenkumar Agrawal. However, he did not subscribe to such view of the Id.AO in blindly relying upon on the statement of the Shri Praveen Kumar Agrawal, because such statement was not corroborated with any documentary evidence. On the other hand, the assessee categorically denied role of Shri Praveenkumar Agrawal in the “LPPL” and the impugned transaction, and therefore, the AO was not fully justified as basis for addition. He observed that during the year under consideration, the assessee has shown net profit rate of 5.26% as against the net profit rate of 2.61% in the Asstt.Year 2012-13; 6.53% in the Asstt.Year 2011-12 and 8.62% in the Asstt.Year 2010-11. The estimation of net profit at 40% was without any basis and without considering the above historical accounting results, and held such high rate of net profit to be unexpected and unreasonable. The Id.CIT(A) accordingly worked out net profit at the rate of

7% of the total a turnover of Rs.7,58,32,901/- and estimated suppression of the net profit to the extent of Rs.13,19,651/-. Aggrieved by the relief granted by the Id.CIT(A) to the assessee by restricting addition to the extent of 7% of the total turnover the Revenue is appeal before the Tribunal, while the assessee is in appeal for not giving full relief.

5. Before us, both the parties advanced their arguments more or less on the same line as were before the lower authorities. The Id.counsel for the assessee further emphasized that basis for addition and rejection of books of accounts by the AO is merely on the basis of the statement of Shri Praveenkumar Agarwal; that the Id.AO has not pointed out any specific defects in the books of accounts maintained by the assessee nor the method of accounting regularly followed by the assessee; that the conditions precedent for rejection of books of accounts, as envisaged under section 145(3) of the Act are not fulfilled. As far as addition restricted by the Id.CIT(A), it is submitted by the Id.counsel for the assessee that the average net profit rate for the last four years is 5.15% and present year i.e. A.Y.2013-14 at 5.26% shown by the assessee is on higher side, therefore, Id.CIT(A) was not justified in adopting net profit @7%, and therefore, a reasonable rate of profit may be adopted. On the other hand, the Id.DR supported the order of Id.AO.

6. We have considered rival submissions and gone through the record carefully. So far as rejection of books of accounts is concerned, we do not find any illegality in their finding. However, what we are concerned is that the basis of estimation of net profit by the Assessing Officer at 40% and bring down the same to 7% by the Id.CIT(A). It is not in dispute that ONGC Petro have given a contract for excavation of canal to a party named Shaili Paradigum Infratech P.Ltd., which in turn sub-contracted the same to the assessee-company. Assessee again sub-contracted the work to "LPPL", and

accordingly fulfilled the contractual obligation. The only lapse in the whole transaction is that the assessee might have got the work completed through some third party instead of "LPPL". The "LPPL" would have only facilitated the assessee for providing bill, though this factor could not be proved with positive evidence by the Revenue, but Revenue was unable to collect information about the antecedence of "LPPL". The "LPPL" is the assessee's sub-contractee and the assessee failed to produce any person from "LPPL" for confirming that sub-contractor has carried out the work. The assessee has only produced documents i.e. ledger of the assessee in the books of "LPPL" (page no.18 of the paper book), acknowledgement of ITR filed by the "LPPL", bank statement of "LPPL" and copy of work order. In other words, in terms of documentation, assessee might have fulfilled all necessary ingredients, but still it failed to bring any evidence apart from these peripheral documents to demonstrate actual work done by the "LPPL" or capacity of "LPPL" to carry out such work. Though we could have recommended for carrying out a fresh investigation in order to prove whether the assessee got this work done actually from the sub-contractor or from some third person, but considering the fact that the actual contract has been completed to the satisfaction of the contractee i.e. ONGC in the present transaction routed through "LPPL" assessee might have earned a little more profit than actually shown by it in its books of accounts in earlier years or this year. Therefore, we do not find any error in the finding of the Id.CIT(A) for rejection of the books of accounts as well as estimation of profit at 7% on the total turnover. There is no justification at the end of the AO to estimate profit at 40% of the turnover, which is merely based on some illogical consideration of facts and figures. The AO has not provided any material for estimation that profit must have been earned at 40%. Therefore, considering the above facts and

circumstances, we do not find any merit in both the appeals of the parties. Both are rejected.

7. So far as peripheral issues like charging of interest under section 243A/B/C/D and initiation of penalty under section 271(1)(c) of the Act raised by the assessee in its appeals are concerned, the same do not require a separate adjudication, as they are either consequential or premature at this stage.

8. In the result, both the appeals i.e. of the assessee and of the Revenue are dismissed.

**Order pronounced in the Court on 5<sup>th</sup> August, 2020 at Ahmedabad.**

Sd/-  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(RAJPAL YADAV)**  
**VICE-PRESIDENT**