

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH
(Virtual Court)

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1214/Ahd/2018
Assessment Year 2011-12**

The Deputy CIT, Circle-2(1)(2), Ahmedabad (Appellant)	Vs	JSIW Infrastructure Pvt. Ltd. 4, Astta Mitra Estate, B/h, Jupiter Mill, Dudheshwar Road, Ahmedabad PAN: AABCJ8501F (Respondent)
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**Revenue by: Shri Vidhyut Trivedi, Sr. D.R.
Assessee by: Shri S.N. Divetia, A.R.**

Date of hearing : 26-08-2020
Date of pronouncement : 25-09-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2011-12, arises from order of the CIT(A)-2, Ahmedabad dated 12-02-2018, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

- “1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,60,00,000/- being net income @ 8% of Rs. 44,99,99,999/-.
2. Without prejudice to the above, the Ld. CIT(A) has erred in law and on facts by not holding that (since the contractee had itself admitted that the assessee company i.e. contractor had given bogus bills as accommodation entries) the assessee company had received a commission @ 8% (which is the prevalent rate) for providing the accommodation entries amounting to Rs. 44,99,99,999/- to M/s. Naftogaz India Pvt. Ltd.”
3. The fact in brief is that the return of income declaring income of Rs. 16,57,57,400/- was filed on 30th Sep, 2011. The return was processed u/s. 143(1) of the Income Tax Act. Subsequently, the assessment was reopened by issuing of notice u/s. 148 of the Act on 30th March, 2016 on the basis of information received from DDIT(Investigation) that assessee was sub-contractor of M/s. Naftogaz India Pvt. Ltd. who had booked false entries in its books of account to the amount of Rs. 44,99,99,998/- . During the course of assessment, the Assessing Officer has stated that search action was carried in the case of M/s. Naftogaz India Pvt. Ltd. and it was gathered from the information that assessee company had done the sub-contract for M/s. Naftogaz India Ltd. for amount of Rs. 49,99,99,999/-. The Assessing Officer has stated that the assessee has not recorded the sub-contract work performed to the amount of Rs.49,99,999/- in its books of account. Therefore, the Assessing Officer has rejected the books of account of the assessee and increase the income of the assessee by 8% on total amount of Rs. 44,99,99,999/- shown as sub-contract carried out by the assessee for Naftogaz India Pvt. Ltd. In this way, the Assessing Officer has made addition of Rs. 3,60,00,000/- to the total income of the assessee.

5. We have heard the rival contentions and perused the material on record. Assessment u/s. 143(3) r.w.s. 147 of the Act was finalized in the case of the assessee on 29th Sep, 2016. The Assessing Officer pointed out that assessee had not recorded in its books of accounts sub-contract work carried out to the amount of Rs. 44,99,99,999/- for M/s. Naftogaz India Pvt. The Assessing Officer has rejected the books of account of the assessee and increased its income by 8% of total sub-contract amount of Rs.44,99,99,998/- executed for the contractor M/s. Naftogaz India Ltd. On perusal of material on record, it is observed that findings of the Assessing Officer are not supported with any relevant material/evidences to substantiate that the said transactions were not recorded in the books of accounts. In this regard on the other hand during the course of appellate proceedings, the Id. CIT(A) has categorically explained in his finding that assessee has recorded all the transactions in its books of account and shown the complete contract receipt and contract expenditure duly reflected in the books of account which demonstrate that the Assessing Officer has failed to substantiate the reason for rejecting the books of accounts and estimating the income of the assessee. The Assessing Officer has not pointed out any defect in the books of accounts and failed to point out how the contract receipt and contract expenditure were not recorded in the books of account. The Assessing Officer has not controverted any part of profit and loss account or other record of the assessee in support of his contention that assessee has not shown the amount of sub-contract receipt in its books of account. However, Id. CIT(A) has specifically elaborated at para 2.5 of his order demonstrating that in the profit and loss account the assessee has clearly shown the receipt and expenditure of sub-contract carried out for

M/s. Naftogaz India Pvt. Ltd. The assumption/observation of the Assessing Officer has categorically been disproved by the Id. CIT(A) in his finding at para 2.5 by reproduction of the extract of book of accounts showing that sub-contract transactions were recorded in the books of accounts. In the light of the above facts and findings of Id. CIT(A), we do not find any error in the decision of Id. CIT(A), therefore, the appeal of the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25-09-2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 25/09/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद