

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3449/M/2019
Assessment Year: 2012-13**

**ITA No.3450/M/2019
Assessment Year: 2013-14**

**ITA No.3452/M/2019
Assessment Year: 2014-15**

**ITA No.3451/M/2019
Assessment Year: 2015-16**

**ITA No.3453/M/2019
Assessment Year: 2016-17**

M/s. J. Kumar Infraprojects Ltd., 16A, Andheri Industrial Estate, Veera Desasi Road, Andheri (West), Mumbai – 400 053 PAN: AAACJ9161C	Vs.	Dy. CIT, Central Circle-5(1), Mumbai
(Appellant)		(Respondent)

**ITA No.3884/M/2019
Assessment Year: 2014-15**

**ITA No.3883/M/2019
Assessment Year: 2015-16**

**ITA No.3882/M/2019
Assessment Year: 2016-17**

Jt. CIT (OSD) CC-5(1), R.No.1926, 19 th Floor, Air India Bldg., Nariman Point, Mumbai – 400 021	Vs.	M/s. J. Kumar Infraprojects Ltd., 16A, Andheri Industrial Estate, Veera Desasi Road, Andheri (West), Mumbai – 400 053 PAN: AAACJ9161C
(Appellant)		(Respondent)

Present for:

Assessee by : Dr. K Shivaram, A.R.
Revenue by : Shri Jacinta Zimik Vashai, D.R.

Date of Hearing : 12.01.2021
Date of Pronouncement : 22.02.2021

ORDER**Per Rajesh Kumar, Accountant Member:**

The above titled cross appeals have been preferred against the order dated 28.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17.

ITA No.3883/M/2019(Revenue's Appeal) & ITA No. 3451/Mum/2019(Assessee Appeal) A.Y. 2015-16

2. The grounds raised by the Revenue are as under:

"i. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 51,73,243/- being 20% of Rs. 2,58,66,2167/- on account of labour sub contract expenses made by the AO u/s 37(1) for non-maintenance of books of accounts and acceptance of accommodation entries in the light of the fact that details of bills raised against the company were not produced during the assessment proceedings?

ii. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 51,73,243/- being 20% of Rs. 2,58,66,2167/- on account of labour sub contract expenses made by the AO u/s 37(1) by ignoring the aspect of admittance of fact of non-maintenance of books of accounts in the course of statement recorded by the AO of Mr. Kamal Jagdish Gupta Director of the assessee company during the course of assessment proceedings?

iii. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricting the addition to Rs. 1,03,24,685/- from Rs. 6,88,31,236/- u/s 69C in respect of Cement purchases from Sagar Cement Ltd. and Chettinad Cement Corpn. Ltd., by ignoring the fact that assessee company failed to produce details of transport etc?

iv. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricting the addition to Rs. 1,03,24,685/- from Rs.

6,88,31,236/- u/s 69C in respect of Cement purchases from Sagar Cement Ltd. and Chettinad Cement Corpn. Ltd., by ignoring the fact that the assessee company has deviated from following standard operating procedure and also such deviation by the assessee remained unexplained in the course of assessment proceedings?

v. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 1,48,60,959/- being 20% of Rs. 7,43,04,797/- by ignoring the fact that the assessee company has failed to produce the bills raised against it by the parties to the labour sub contract?

vi. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 1,48,60,959/- being 20% of Rs. 7,43,04,797/- by ignoring the aspect of admittance of fact of non-maintenance of books of accounts in the course of statement recorded by the AO of Mr. Kamal Jagdish Gupta Director of the assessee company during the course of assessment proceedings?

The appellant prays that the order of Commissioner of Income Tax (Appeal) on the above ground be set aside and that the JtCIT(OSD) be restored. The appellant craves, leave to amend or alter any grounds or add a new ground, which may be necessary. Last date for filing second appeal is 02.06.2019. However, the appeal should be filed immediately.”

The grounds raised in the assessee’s appeal are as under:-

“1. On facts and circumstances of the case and law on the subject, the learned Assessing Officer erred in making addition of Rs.6,88,31,236/- on account of bogus purchases of cement as unexplained expenditure and the learned Commissioner of Income Tax (Appeals) erred in upholding disallowance to Rs.1,03,24,685/- (being 15% of Rs.6,88,31,236/-) on account of bogus purchase of cement as unexplained expenditure.

On facts and circumstances of the case & law on the subject, the addition made be deleted.

2. The appellant craves leave to add/modify, delete the grounds of appeal on or before the date of hearing.”

3. The issue raised in ground No.1 & 2 is against the deletion of addition of Rs.51,73,243/- by Ld. CIT(A) as made by the AO equal to 20% of the total labour sub contract expenses of Rs.2,58,66,216/- on the ground that assessee has not maintained any books of accounts.

4. The facts in brief are that assessee filed the return of income on 29.09.2015 declaring an income of Rs.112,90,96,360/- which was processed under section 143(1) of the Act. Thereafter, a search and seizure action under section 132(1) of the Act was conducted on the J. Kumar Group on 30.08.2016 at the business premises at 16-A, Andheri Industrial Estate, Vasai Road, Andheri West, Mumbai- 400 058 and also at the residential premises of Shri Jagdish Kumar Madanlal Gupta, promoter of the J Kumar Group located at Ritu Apartment, Plot No.42, JVPD Scheme, N.S. Road No.3, Vile Parle (West), Mumbai. The assessee is engaged in the business of infrastructure development like roads, bridges, flyover bridges, railway over bridges, irrigation products, railway buildings, sports complexes and airport contracts, metro and mono rail projects etc. A notice under section 153A of the Act dated 24.04.2017 was issued to the assessee and duly served on 03.05.2017 which was complied with by the assessee by filing return of income on 25.05.2017 declaring the same income as was offered in the original return of income. During the course of assessment proceedings, a statement under section 132(4) of the Act was recorded of CFO Shri Arvind Gupta and Director Shri Kamal Gupta wherein these persons have admitted to have done bogus transactions in the assessee and other entities. The assessee has claimed labour sub contract expenses of Rs.11,63,72,187/- during F.Y. 2009-10 to F.Y. 2014-15 relevant to A.Y. 2010-11 to A.Y. 2015-16 the details whereof are given in para 11.1 of the assessment order. The AO observed that during the year assessee has claimed labour contract expenses of Rs.2,58,66,216/- in the profit and loss account and came to the

conclusion that the recipient of these payments Shri Manoj U Gupta, Shri Nandan Bharat Sharma, Shri Shankar A Poddar, Shri Balu M. Jhadav and Mr. Ajajul Molidin Miyan do not justify the kind of payments made to them and thus raised suspicion about the veracity of the claim of the assessee. The AO issued summons to these persons and their statements were recorded. During the statements recorded under section 131 all these individuals have confirmed that they have supplied labour to the assessee. However, the AO mainly harped on the statement of Shri Arvind Gupta CFO of the assessee and the director of the assessee Shri Nalin Gupta and disallowed a sum of Rs.51,73,253/- being 20% of Rs.2,58,66,216/- being the total claim of the assessee and added the same to the income of the assessee.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“4.4. I have considered the facts and submissions carefully, The issue is regarding claim of labour sub-contract expenses for the period AY 2010-11 to AY 2015-16 totaling to Rs 11.63 crores paid to five labour sub-contractors viz. Manoj U Gupta, Nandan Bharat Sharma, Shankar APoddar, Balu M Jhadav and Ajajul Molidin Miyan. The assessing officer has disallowed 20 % of such labour sub contract payments. Copy of the statements recorded at the time of search reproduced in the assessment order shows that all the labour sub-contractors confirmed that they were labour contractors of the appellant company and had supplied labour to the appellant company; that they had not maintained books of accounts; the bills are prepared by the appellant company; that their bank accounts were opened by the appellant company; that they have started giving the address where they are now staying for about last one year when they got a fixed place to stay. The statement recorded of the CFO did not specify or admit that such labour sub-contract expenses were bogus. Shri Nalin Gupta Director of the appellant company also did not accept that these expenses claimed were bogus as seen from the extracts of the statements reproduced in the assessment order. A show cause notice was issued by the assessing officer as to why the expenses claimed as labour sub-contract expenses of Rs 11.63 crores over AY 2010-11 to AY 2015-16 should not be disallowed. The appellant replied that these labour sub-contractors are associated with the company for last 10 years. When they started work they were small contractors and did not have any permanent address and lived in

temporary labour colony at the project sites of the appellant. Their bank accounts were opened at same bank where appellant was having bank for their convenience and instant credit to their account. Thus the appellant explained the reason for opening the accounts of the labour contractors at bank where appellant was having their accounts. It was emphasized that none of these persons had denied that they had provided labour to the appellant company.

4.5. The assessing officer had issued notices u/s 133(6) to these labour sub-contractors which was duly served and replies furnished. Sample copy of bills, TDS certificate, P.P. details, copy of return of income and Tax audit report was furnished. Two of the labour sub-contractors viz. Shri Nandan Bharat Sharma and Shri Manoj Kumar Uchit Gupta appeared before the assessing officer. Their written submission is reproduced in the assessment order. Perusal of the same shows that they have again confirmed that they have been providing service to the appellant company for last 10-12 years. Earlier they did not have any permanent address so they used the address of the company. After they got their permanent address, the new address was used in the bills and returns filed. Current registers maintained were filed and it was stated that old registers have been misplaced. A written reply was also filed by Shri Ajajul Molidin Miyan in response to notice u/s 133(6) which is also reproduced in the assessment order. Perusal of the same shows that he has specified the labour work carried out such as loading ;and unloading of MS Bars, cleaning, sprinkling water on cement works, putting up barricade boards etc. He explained that he brought labour from Jharkhand and Bihar for this purpose. He also explained that he did not have permanent residence and hence lived on labour sites of the company.

4.6 Thus it is clear that the labour sub-contractors have all along confirmed that they have actually supplied labour. They have explained why address of appellant was used earlier and why bank account was opened and the billing procedure. It is noted that they have been filing tax returns also. Looking at the nature of business of the appellant, use of labour through labour contractors is normal practice. The amount of expenditure is not dis-proportionate to the volume of operations. It is noted that details of PF is also provided by the contractors which further indicates genuineness of engagement of labour. Even if adverse view is taken for the labour subcontractors not maintaining books (though in most of the years they may not have been obliged to maintain the same based on their turnover below the prescribed limits- most of the years turnover is less than Rs 50 lakhs), the appellant cannot be penalized for the same. No evidence has been brought on record to show that labour was not provided. The nature of labour work has also been narrated. It is not unusual for labour contractors to rely on measurements of work and bill preparation by customer. Since the construction sites are varied and temporary, they do not have permanent establishment and employees to maintain accounts in the earlier years when the turnover was low. The labour contractors merely arrange for unskilled manual labourer and pay the daily wage to such labourer in cash. This is the reason for cash withdrawals. The assessing officer has disallowed 20% of labour sub-contract expenses on an ad-hoc basis. Looking at the entire fact matrix, in my view the ad-hoc disallowance is not warranted. The same is deleted. Hence the disallowance of Rs.51,73,243/- is deleted and ground of appeal no 1 is allowed.”

6. We have heard the rival submissions of both the parties and perused the material on record. We find that these individuals have been supplying labour to the assessee for the last for the last 10 years though they do not any permanent residences/addresses. These individuals arrange unskilled labourers for the assessee who are engaged by the assessee in its business activities. The assessee has made payments to these individuals for the further disbursement to these labourers. We note that AO has not pointed out any defect in the books of accounts of the assessee and in these labour contractors bills and just made the disallowance that these are not allowable under section 37(1) of the Act being not wholly and exclusively incurred for the purpose of business of the assessee. We find that Ld. CIT(A) has taken into account all the aspects of the matter and documents while allowing the appeal of the assessee as has been stated hereinabove copies of bills and vouchers, TDS certificates, copies of PF payments and payment through banking channels etc. The case of the assessee also finds support from the decision of TUV India Pvt. Ltd. vs. DCIT (supra) wherein it has been held that where the assessee submits complete details of expenses and AO not finding any defects in the books of accounts, the adhoc disallowance of expenses by the AO are not justified. Similarly, in the case of CIT vs. Mundra Port and SEZ Ltd. (2014) 45 taxmann.com 361 (Guj.) it has been held that where the payment has been made through banking channel and tax were deducted at source and the recipient was not found to be related party, the AO could not treat the expenses as bogus expenses. We, further, note that admittedly no incriminating material qua

these sub contract expenses were found during the course of search and it is a trait and settled law that that no addition can be made in the unabated assessment which has attained finality on the date of search without any incriminating material. The case of the assessee is supported by the decision of the Apex Court in the case of PCIT vs. Meeta Gutgutia (supra) wherein the Hon'ble Supreme Court has held that invocation of section 153A to reopen the concluded assessment was not justified in absence of any incriminating material found during the course of search and thus dismissed the SLP filed by the Revenue against the decision of Hon'ble Delhi High Court as reported in PCIT vs. Meeta Gutgutia (2017) 82 taxmann.com 287 (Delhi). The Hon'ble High Court has also laid the similar ratio in the case of CIT vs. Gurvinder Singh Bawa (supra), CIT vs. Deepak Kumar Agarwal (supra) and CIT vs. Continental Warehousing Corporation (Nhava Sheva) (supra) wherein it has been held that no addition can be made in respect of assessment which have become final on the date of search if no incriminating material was found during the course of search. Therefore, we are inclined to dismiss the ground No.1 & 2 raised by the Revenue.

7. The issue raised in ground No.3 & 4 is against the restriction of addition to Rs.1,03,24,685/- by Ld. CIT(A) as against the addition of Rs.6,88,31,236/- made by the AO under section 69C of the Act in respect of bogus cement purchases from M/s. Sagar Cement Ltd. and M/s. Chettinad Cement Corporation Ltd. on the ground that assessee has deviated from SOP which could not be explained during the assessment proceedings.

8. The facts in brief are that the AO during the course of assessment proceedings observed that assessee has made huge cement purchases, however, followed no standard operating procedure in respect of such purchases. The AO noted that as is apparent from the statement recorded of transporters, suppliers and other personnel of the assessee company these purchases are bogus as all these bills of purchases of cement were being received by the head office directly and thus not following the standard of operating procedure and consequently AO added a sum of Rs.6,88,31,236/- by rejecting the books of accounts under section 145(3) of the Act and thus treated the purchases made from parties as discussed in para 10.2 to be bogus in nature and added same to the income of the assessee. The AO, however, admitted that all the payments to these parties were made by cheques and the assessee has produced the invoices cum delivery challans before the AO.

9. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the allowance to the tune of Rs.1,03,24,685/- being 15% of purchases made from 7 parties thereby deleting the addition to the extent of Rs.5,85,06,551/- by observing and holding as under:

“5.4 I have considered the facts on record, the assessment order and submissions of the appellant carefully. In the appellate proceedings, various further details were called.

5.5. The appellant is engaged in construction of infrastructure projects such as bridges, flyovers, roads etc. These projects require consumption of cement. The appellant has been regularly making purchases of cement from various parties. The assessing officer has picked up out purchases from seven suppliers as suspect and has disallowed the entire purchases from these parties. Para 10.1. of the assessment order lists out such purchases. In AY 2012-13 purchases of Rs.97,12,820/- are from Panna Cement Industries Ltd. and Chettinad Cement Corporation Ltd. which has been disallowed. In AY 2013-14 purchases of Rs

52,93,100/- are from Bhavya Cement Ltd. and Chettinad Cement Corporation Ltd. which has been disallowed. In AY 2014-15 purchases of Rs 2,53,84,674/- Sagar Cement Ltd and Chettinad Cement Corporation Ltd. which has been disallowed. In AY 2015-16 purchases of Rs 6,88,31,236/- are from Sagar Cement Ltd and Chettinad Cement Corporation Ltd. which has been disallowed. In AY 2016-17 purchases of Rs 37,73,14,1627- are from all the seven entities Sagar Cement Ltd , Panna Cement Industries Ltd., Bhavya Cement Ltd., Prasakti Cement Industries Ltd., Chettinad Cement Corporation Ltd., South India Cement Ltd., and Deccan Cement Ltd. which has been disallowed.

5.6. The assessing officer has primarily based his conclusion on the view taken by the investigation wing in the course of search action. The main issue raised was the documentation maintained in respect of purchases from Ambuja Cements Ltd., which was treated as genuine and the impugned purchases which were considered to be bogus. Statements were recorded of the store keepers and project managers at three Ready Mix Plants (RMC) at Wadala, Gaymukh and Kandiwali. Some bills for February 2016 of Parasakti Cement Industries having marks of RMC division Gaymukh, some bills for January /February 2016 of Sagar Cement and Bhavya Cement having marks of Wadala RMC and some bills for February 2016 of Parasakti Cements and some bills of March 2016 of Bhavya Cements having marks of Kandivali RMC were shown, and in respect of which these persons at the RMCs could not explain why they did not appear in the cements registers at the respective RMCs. Statement of the accountant and account manager, and CFO were also recorded. Shri Ravi Airan Account manager and Shri Ravindra Kulkarni Vice President were shown two bills of Sagar Cements Ltd. dated 24.8.2015 which were compared with a bill of Ambuja Cement Ltd. dated 19.10.2015 and questioned on the differing documentation on them. Shri Arvind Gupta CFO stated that he was aware that some bogus purchases of cement are being made and named Sagar Cements Ltd, Parasakti Cement Industry Ltd., Bhavya Cement Ltd., and South India Cements Ltd. To Shri Devendra Rajput Account Manager , the authorized officer asked directly that seven cement suppliers were suspect and Shri Rajput admitted that the purchases are bogus. However when Shri Kamal Jagdish Gupta was confronted with these statements he denied that the purchases were bogus and stated that there may have been breaches of SOP due to urgency of work and the fact that operations are carried out at several projects in different parts of India. One of the bills of Sagar Cement Ltd had a mention of K C Transport with address at Yavatmal. However on enquiry in the course of post search action this party could not be traced.

5.7. The assessing officer issued show cause for disallowance of entire purchases from the seven parties over the entire period of AY 2012-13 to AY 2016-17 totaling to Rs 48.65 crores. The assessee submitted that the impugned seven suppliers of cement are well known manufacturers of cement. Their cement production attracts excise duty and the production and dispatch are monitored by Excise Department. It was explained that cement is used at RMC site as well as project sites. The cement was not consumed at RMC site but was transferred to project sites. Hence registers maintained for cement consumed at RMC site did not have entries in respect of some of the impugned bills. The gate inward register at the RMC plants were not seized. The assessee furnished copies of internal transfer challans and

goods inward register. It was also pointed out that the seized bills itself contained transport details giving truck no.

5.8. The assessing officer issued notices u/s 133(6) to the seven suppliers who responded to the notices. The assessing officer did not point out any adverse ; inference or finding arising from the replies received from these seven cement manufacturers which suggests that the sales to appellant were duly confirmed by these suppliers.

5.9. The assessing officer however held that the entire purchases from these seven parties was bogus. He held that deviations from SOP is not explained, the movement and delivery of goods are not verifiable.

5.10. The copy of bills reproduced in the assessment order such as Parasakti Cement Industries Ltd of 12 February 2016, Chettinad Cement Corporation Ltd. dated 20.8.2015 itself shows the transport vehicle registration nos lending support to the claim of the appellant that transport details were mentioned on the bills itself but was ignored by the assessing officer. Further the copy of bills reproduced in the assessment order such as Deccan Cements Ltd. dated 25.7.2016 shows consignee details as Belapur Barrage, Thane and similarly bill of Penna Cement Industries Ltd dated 24.12.2015 shows consignee details as work site Osman Nagar, Kandhar, Nanded District This does suggest that the conclusion that delivery details are not available or that transport mode is not mentioned is not correct. Further, this also lends credence to the claim of the appellant that the delivery is to project sites and not to the three RMC plant which were covered in hot pursuit. It is also observed that based on a few bills with marking as RMC Gaymukh, Wadala and Kandivali, a sweeping assumption has been made that the entire purchases from all these seven parties for the AY 2012-13 to AY 2016-17 are bogus.

5.11. The assessing officer has conducted verification by calling for details from the seven suppliers of cement. It is clear that they have not denied supply to the appellant, as no adverse findings are indicated in the assessment order. It is noted that the seven companies are manufacturers of cement and not some reseller or dealer. The assessing officer has declined to examine the gate entry registers, internal transfer challans produced before him by the appellant. The assessing officer has not examined the claim that the bills seized have transport details mentioned on it and that in many bills goods are indicated to be delivered at various other sites of the appellant. In this year in particular the appellant has indicated that cement from Chettinad Cement Corporation Ltd has been despatched to RMC Pune at Hapasar site. KC Transport was appearing only in some of the bills of Sagar Cements Ltd. The assessing officer has mainly gone by the statements recorded of the staff at the time of search, which as per appellant stands retracted.

5.12. The cement purchases claimed and reflected in the various years, the disallowance, the operating revenue and purchases are tabulated below.

J Kumar Infraproject Ltd. Details of Cement purchase with ratios

AY	Total revenue	Net operating revenue (RMC & contract)	Total cement purchase	%of cement purchase to operating income	Alleged cement purchase disallowed	Net cement purchase	%of alleged purchase to total cement purchase
2012-13	9,318,675,737	5,247,085,466	362,113,433	6.90	9,712,820	352,400,613	2.68
2013-14	10,011,295,094	6,980,306,677	579,635,284	8.30	5,293,100	574,342,184	0.91
2014-15	11,871,263,684	11,641,841,841	865,150,210	7.43	25,384,674	839,765,536	2.93
2015-16	12,437,442,760	13,096,815,572	593,441,755	4.53	68,831,236	524,610,519	11.60
2016-17	14,093,957,665	12,725,730,815	757,922,840	5.96	377,314,162	380,608,678	49.78

The above data shows that the cement purchases ranges from 4.5 to 8.3 % of the operating revenue. For an infrastructure construction company, the cement purchases is not unusual. The above table also shows that the disallowance made as % of cement purchases during the year ranges from 0.91% to as high as 49.78 %. The appellant has vehemently contended that how projects can be completed without consuming cement? The customers have approved the construction which implies that cement was used.

5.13. At this stage, the profits disclosed by the appellant was analyzed and was compared with the industry as available from published data. The comparison is tabulated below.

Comparability chart of different companies in same industry

Name of the company	A.Y.	Gross profit margin %	Operating margin/ (PBT %)
JKIL	2011-12	15.11	11.27
	2012-13	16.10	10.86
	2013-14	16.73	11.11
	2014-15	17.34	10.47
	2015-16	18.65	10.38
	2016-17	17.62	10.91
	2011-12	8.71	4.17
	2012-13	7.78	2.26

Simplex Infra	2013-14	8.04	1.55
	2014-15	9.36	1.55
	2015-16	10.07	1.68
	2016-17	11.55	2.57
	2011-12	17.05	10.46
Supreme Infra	2012-13	16.17	8.39
	2013-14	15.52	8.04
	2014-15	14.42	6.75
	2015-16	16.48	2.20
	2016-17	16.11	(-) 2.66
Patel Engineering	2011-12	14.49	5.34
	2012-13	13.44	3.75
	2013-14	14.22	2.47
	2014-15	13.75	1.34
	2015-16	17.42	0.88
	2016-17	14.88	(-) 1-28
NCC	2011-12	9.57	5.23
	2012-13	7.61	1.01
	2013-14	8.23	1.71
	2014-15	6.62	0.05
	2015-16	7.83	1.92
	2016-17	8.86	3.87
	2011-12	13.22	2.73
	2012-13	10.79	(-) 7.98

HCC	2013-14	9.50	(-) 5.05
	2014-15	15.58	2.25
	2015-16	18.91	3.08
	2016-17	19.29	3.35

The above table shows that the margins of the appellant are comparable and somewhat better than the industry.

5.14. I find that the appellant has made out a case that treating the entire cement purchases from seven cement manufacturers for the entire AY 2012-13 to AY 2016-17 is excessive. Almost 50% of cement purchases in AY 2016-17 has been disallowed. In the assessment proceedings the assessing officer has not been able to find any fault in the verification made from the seven cement manufacturers. These are reasonably large players in the cement industry: The appellant has explained that cement was used at several locations and not just three RMCs that have been verified in the search action. There is no evidence brought on record that cheque payments to the seven cement manufacturers came back as cash from these cement companies. At the same time there is merit in the contention of the assessing officer that record keeping in respect of cement consumption did arouse suspicion. There are differences in documentation in respect of bills from Ambuja Cements and the other suppliers. At some places the bills from these suppliers were added at the end of the register and the handwriting, suggested that these were added later. Though the employees have since recanted from their statements recorded in search action, it is possibly motivated. The appellant did admit to SOP not being followed in respect of recording of movement and consumption of cement as seen from the statement recorded of Shri Kamal Jagdish Gupta. Possibility cannot be ruled out that some cement purchased was sold out of books to generate cash. This is not the same thing as entire purchases being bogus and cash being received from the cement supplier. Considering the overall facts and findings in this case and in light of the discussion in the earlier paragraphs, in my view a disallowance of 15% of such purchases from these seven entities would be most reasonable. The disallowance for AY 2015-16 is therefore restricted to Rs.1,03,24,685/- The appellant gets a relief of Rs. 5,85,06,551/-. Ground of appeal no 2 is partly allowed.”

10. The Revenue has challenged before us the deletion of disallowance to the extent of 85% by raising ground No.3 & 4 whereas the assessee has challenged in its appeal the sustaining of addition to the extent of 15% by the 1d CIT(A). The Ld. A.R. submitted before the Bench that the assessee is having a fairly large operation and maintaining proper books of accounts qua

all the transactions including purchases and the accounts of the assessee are audited and return is filed accordingly. The Ld. A.R. submitted that during the course of assessment proceedings, the AO carried out verification by calling details from cement suppliers which has been confirmed by the suppliers and none of them denied to have supplied materials to the assessee. The Ld. A.R. submitted that all these suppliers are listed companies of repute in the market. The Ld. A.R. also submitted that payments are made through banking channel and taxes such as VAT and excise have been paid by them. The mere fact that SOP has not been followed can not be a ground for treating these purchases as bogus. The Ld. A.R. submitted that assessee has several sites at which the works are going on and therefore it is very difficult to follow the SOP with regard to small purchases. The Ld. A.R. also drew our attention to the invoices cum delivery challans of these suppliers and submitted that even the part confirmations of disallowance to the extent of 15% of so called bogus cement purchases is contrary to law. The Ld. A.R. relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Tejua Rohitkumar Kapadia (2018) 94 taxmann.com 324 (Guj) (HC) and submitted that the SLP filed by the Revenue against the High Court Order has been dismissed by the Hon'ble Supreme Court as reported in (2018) 256 taxmann.com 213 (SC). Similarly, the assessee relied on the decision of jurisdictional High Court in the case of PCIT vs. Vaman International Pvt. Ltd. (2020) 422 ITR 520 (Bom) (HC) and also on the co-ordinate benches of the Tribunal in the case of Earthmoving Equipment Service Corporation vs. DCIT (2017) 84 taxmann.com 51 (Mumbai) and Pravesh Kejriwal vs. ITO

(2019) 101 taxmann.com 170 (Kolkata-Trib.). The Ld. A.R. also made a without prejudice contention that since no incriminating was found during the course of search, no addition can be made in the assessment framed under section 153A of the Act by relying on a series of decisions of Hon'ble Apex Court and jurisdictional High Court.

11. The Ld. D.R., on the other hand, strongly supported the order of AO by assailing the part restriction of disallowance on account of bogus purchases. The Ld. D.R. maintained that the assessee has deviated the standard of operating procedures with regard to requirement and purchase of cement from 7 suppliers as discussed by the AO in the assessment order. Therefore, the order of Ld. CIT(A) needs to be set aside on this issue and the order of AO may be restored.

12. After hearing both the parties and perusing the material on record, we observe that assessee has made purchases to the tune of Rs.6,88,31,236/- from 7 parties M/s. Sagar Cement Ltd., M/s. Panna Cement Industries Ltd., M/s. Bhavya Cement Ltd., Prasakti Cement Industries Ltd., M/s. Chettinad Cement Corporation Ltd., M/s. South India Cement Ltd. and M/s. Deccan Cement Ltd. The assessee had made a total purchases of Rs.48,65,35,992/- during the A.Y. 2012-13 to A.Y. 2016-17. The AO disallowed the purchases by treating the same as bogus by referring to the statements of CFO and director of the assessee company recorded during the course of search and also the statements recorded during the course of assessment proceedings of various employees of the assessee and thus rejected the claim of the assessee primarily on the ground that

SOPs have not been followed. We find that assessee is a fairly big company having various work sites and therefore the contentions of the AO that it has not followed SOPs in the matter of purchase of materials without bringing any concrete/substantive evidences to corroborate bogus purchases on record and thus the same can not be sustained. The undisputed facts are that the payments were made through the banking channels, materials were received through invoices cum delivery challans which were furnished before the authorities below and even the suppliers have confirmed to have supplied these materials to the assessee before the AO. We find that even Ld. CIT(A) has prepared a comparability chart of different companies in the same industries comparing their GP and operating margin in para 5.13 of the appellate order and observed that the margin of the assessee are comparable and even better than the average margin in the industry. The gross profit of the assessee has been in the ratio of 23.64% to 31% whereas the net profit before the tax was between 10% to 11% with no abnormal fluctuations in the profits. Further, the Ld. CIT(A) has even observed that AO has declined to examine the gate entry registry, internal transfer challans produced before him. The Ld. CIT(A) has even noted that AO has not examined the claim of the assessee that bills furnished were in fact invoices cum delivery challans with all details and AO has primarily relied on the statements recorded which had been retracted since then in para 5.14. The Ld. CIT(A) has also recorded a finding that there is no evidence brought on record that payments to cement manufacturers have come back to the assessee. Under these facts and circumstances, we are not in

agreement with the conclusion drawn by the Ld. CIT(A) that a disallowance to the extent of 15% can be sustained. We note that AO has not pointed out any defects in the books of accounts of the assessee. The case of the assessee finds support from the decision of Hon'ble Gujarat High Court in the case of CIT vs. Tejua Rohitkumar Kapadia (supra) wherein it has been held that purchases made by the assessee were duly supported by bills and payments and account payee cheques and further confirmed by the seller and the AO not bringing any evidence on record to show that amount is recycled back to the assessee beside accepting the sales out of the purchases, then addition under section 69C was not called for. We note that even the SLP has been dismissed by the Hon'ble Supreme Court as reported in (2018) 256 taxmann.com 213 (SC). Under these circumstances we are of the considered view that no disallowance can be made towards bogus purchases and thus the order of Ld. CIT(A) can not be sustained on this. Accordingly we set aside the order of CIT(A) and AO is directed to delete the addition. Ground No.3 & 4 of the Revenue's appeal are dismissed and assessee's appeal is allowed.

13. The issue raised in ground nos.5 & 6 is against the deletion of addition of Rs. 1,48,60,959/- by Ld. CIT(A) as made by the AO @ 20% of Rs.7,43,04,797/- being payment for labour sub contracts.

14. The facts in brief are that the assessee has claimed sub contract expenses in the profit & loss account to the tune of Rs.187,81,86,294/- during F.Y. 2011-12 to F.Y. 2015-16 relevant A.Y. 2012-13 to A.Y. 2016-17, the details whereof are

given in para 9.1 of the assessment order. Accordingly, the AO called upon the assessee to furnish the details of the said sub contract expenses during the course of assessment proceedings and accordingly same was furnished by the assessee along with bills and vouchers. Thereafter, the AO issued a show cause notice to the assessee as to why the bogus award of sub contract to paper companies/entities should not be disallowed. The said show cause notice was replied by the assessee vide written submission dated 02.04.2018 submitting therein that the profit made in sub contracting of contracts to five entities M/s. Safal Infraprojects Pvt. Ltd., M/s. Potential Infraprojects Ltd., M/s. Silicon Infracon Pvt. Ltd., M/s. Akruti Infraprojects Ltd. and M/s. Akruti Infrastructure Pvt. Ltd. during financial year 2012-13 relevant to assessment year 2013-14 and profit from sub-contracting to two entities NaftoGaz India Pvt Ltd and Vayu Tradelink Pvt Ltd. during financial year 2011-12 relevant to assessment year 2012-13 have duly been offered to tax in the respective assessment years. The assessee submits that the contracts awarded to assessee from various entities have been sub contracted to these entities on back to back basis after keeping its margin. The assessee filed the copies of work orders, RA bills, sub contract bills, agreements, working of profit earned on sub contracts and bank statements as documentary evidences in support of its claim and thus submitted that income derived from awarding the sub contracts have already been accounted in the books of accounts of the assessee. The AO also issued notices to the sub contractors and recorded their statements. However, nowhere these sub contractors have admitted these sub contracts to be bogus ones. The said sub

contractors replied to the show cause notices issued by AO with sample copies of bill, TDS certificates, PF details, tax audit reports, ITR reports and confirmed that they were the sub contractors of the assessee and were verified during original as well as search proceedings. The assessee submitted before the AO that since income arising from these contracts have already been offered to tax, no addition is required to be made qua these sub-contracts. In respect of Umang Town Planner Pvt Ltd. and M/s O.P. Engineering, the assessee submitted detailed reply before the AO which is reproduced in para 9.2 and of the assessment order. The AO also issued notices under section 133(6) of the Act to these two subcontractors and they appeared before the AO on 1.05.2018 and submitted the details before the AO. Summons under section 131 of the Act issued to Shri Vijay Yadav and Rupesh Kumar and their statements were recorded. The AO observed that some measurement books were not signed and due to voluminous records it is not possible to reconcile the each and every running bill raised by these two sub-contractors. These sub contract expenses were paid to M/s. Umang Town Planners Pvt. Ltd. and M/s. OP Engineering and accordingly added the same to the income of the assessee on adhoc basis. It is pertinent to state that out of the total 9 entities to whom the sub contract expenses have been paid by the assessee during the year, the AO found the seven entities to be genuine and only the above said two entities were doubted by the AO on the basis of statements recorded of the directors of these entities of Shri Rupesh Kumar, Director of M/s. Umang Town Planners Pvt. Ltd. and Shri Vjay Yadav, Director of M/s. OP Engineering. The AO observed that due to voluminous seized material and

documentary evidences submitted by the assessee and the difficulty in reconciling the same, the adhoc disallowance of 20% was made as stated above. Finally ,the AO not accepting the contentions of the assessee, observed that sub contract expenses are not wholly and exclusively incurred for the business of the assessee and made adhoc disallowance equal to 20% of the total sub contracting expenses claimed by the assessee of Rs.7,43,04,797/- which worked out to Rs.1,48,60,959/- with there being any finding as to the expenses being non genuine and bogus.

15. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“6.5 I have considered the facts, the assessment order and the submissions of the appellant carefully. The issue that was investigated in the assessment proceedings was the claim of sub-contract expenses of Rs 187.81 crores for AY 2012-13 to AY 2016-17. In the appellate proceedings, some further details in respect of contracts and sub-contracts were called. From the details filed it is noted that the amount of contracts and subcontracts are as follows.

Amount in Rs/ crores

AY	2012-13	2013-14	2014-15	2015-16	2016-17
Contract Revenue	879.25	954.72	1145.93	1284.56	1327.66
Total Sub-contract Expense	564.40	417.07	362.70	362.27	478.30

Amount in Rs/ crores

AY	2012-13	2013-14	2014-15	2015-16	2016-17
Contract Revenue	879.25	954.72	1145.93	1284.56	1327.66

Out of which contracts Outsourced	383.68	280.06	No back to back subcontracting	No back to back subcontracting	No back to back subcontracting
Subcontract expense	372.91	271.21	No back to back subcontracting	No back to back subcontracting	No back to back subcontracting

6.6. In respect of seven parties for which sub-contracting expenses of Rs 88.61 crores in AY 2012-13 and Rs 77.14 crores in AY 2013-14 is claimed, totaling to Rs 165 crores, the same has been accepted as genuine by the assessing officer. These were cases of back to back sub-contracting. The assessing officer has only made disallowance in respect of sub-contracting expenses paid to M/s.O.P. Engineering and M/s.Umang Town Planner Pvt. Ltd. of Rs 4.82 crores and Rs 18.63 crores respectively during AY 2012-13 to AY 2015-16. Here contracts were received by the appellant company and part of the work was executed/supplied by these parties. In the course of search action statements were recorded of one Shri Vinay Kumar Singh Director of M/s.Umang Town Planner Pvt.Ltd. and one Shri Vijay Yadav managing partner of M/s.O.P. Engineering u/s 131 of the Income Tax Act as per which it was concluded that they had not carried out any work for the appellant company. However, when confronted, Shri Kamal Gupta, Director of the appellant company in his statement recorded during search proceedings on 20.10.2016 in response to Q 39 denied that this was true and stated that these parties have in fact carried out work for the appellant company. This is seen from the extract of his statement reproduced in the assessment order.

6.7. In the assessment proceedings, the assessee explained that M/s. Umang Town Planner Pvt. Ltd. ("UTTPL") was given specific work related to the Delhi Metro Project, details of which were mentioned. Shri Rupesh Kumar Director of UTTPL in his statement recorded on 2.5.2018 has confirmed that work was executed by UTTPL. Similarly M/s.O.P. Engineering had been given work in respect of ESIC Hospital & Medical College at Alwar, the scope of which was elaborated. Shri Vijay Yadav Partner of M/s.O.P. Engineering in his statement recorded on 1.5.2018 before the assessing officer has also confirmed that work has been executed by M/s.O.P. Engineering. Both Shri Rupesh Kumar and Shri Vijay Yadav were called by and appeared before the assessing officer in the assessment proceedings. Their statements recorded are reproduced in the assessment order. Shri Vijay Yadav confirmed that the firm is engaged in fabrication and erection work. When questioned about his response in the statement recorded at the time of search earlier on 30.8.2016, he clarified that they are not engaged in labour supply. They in fact carry out labour contract. The payment is received on the basis of per KG of steel fabrication work carried out. The Measurement Book contains the details of measurement which is signed by them and is then taken by JKIPL, the appellant company, for

preparation of bills. The originals are kept there. After verification, JKIL makes payments after deducting TDS and retention money. Returns of Income have been duly filed for AY 2011-12 onwards. Shri Vijay Yadav explained that when his statement was recorded on 30.8.2016, he was very nervous and was under stress and to get rid of the questioning, he agreed to whatever was stated by the authorized officer. Thus it is clear that Shri Vijay Yadav has rescinded from the earlier statement recorded and has confirmed that work was actually carried out.

6.8. In his statement recorded on 2.5.2018 before the assessing officer, Shri Rupesh Kumar Director of UTTPPL has stated that the company is engaged in construction and infrastructure development as sub-contractor. In Q 17 he has listed down the various Projects and the main contractors for whom he has carried out work. Apart from the appellant company, UTTPPL has carried out work for IL & FS Engg Constn.Co.Ltd., L & T, Ashoka Buildcon among others. He also stated that the statement recorded on 30.8.2016 should be discarded as it was recorded under duress and without appreciation of the implication of the statement. Thus it is clear that he has rescinded from the earlier statement recorded and has confirmed that work was/actually carried out.

6.9. The assessing officer has stated that due to voluminous nature of seized material and details submitted in the assessment proceedings, it is difficult to reconcile each and every running bill issued by the subcontractor. Hence the assessing officer has made an ad-hoc disallowance of 20 % of such expenses claimed by the appellant in respect of payment made to these two sub-contractors.

6.10. Now the fact remains that the Shri Arvind Gupta CFO whose statement was referred to by the assessing officer did not identify or name any party which had been involved in bogus subcontract billing. Shri Kamal Gupta, director of the appellant company, in his statement recorded in the course of search (reproduced in the assessment order) in answer to Q 39 categorically stated that work has been actually carried out by both UTTPPL and OP Engg. Thus the only evidence left is the third party statement of the key persons of the two sub-contractors recorded u/s 131 at the time of search. However, these persons have clearly stated before the assessing officer that they have actually carried out the work and that there is no bogus billing. Thus there is no longer any third party statement against the appellant to support the allegation that bogus sub-contract billing is done. These two entities have given details of the bills raised and the work carried out by them. The details are also available in the papers impounded in the course of search action. These two parties are also carrying out work for other customers. They are also filing their tax returns. The assessing officer has been overwhelmed by the volume of documents and hence has not been able to verify the documents as regards measurement mentioned on the bills and certification. However the fact remains that nothing incriminating has been brought on record to sustain the disallowance. On verification the assessing officer has accepted the sub-contract expenses of

Rs.165 crores in respect of seven sub-contractors. In this fact matrix, I do not find the adhoc disallowance made by the assessing officer of 20 % of the expenses claimed in respect of sub-contract paid to M/s. O.P. Engineering and M/s. Umang Town Planner Pvt. Ltd. of Rs 4.82 crores and Rs 18.63 crores respectively during AY 2012-13 to AY 2015-16, to be Justified. Hence the disallowance made of Rs.1,48,60,959/- being 20% of Rs.7,43,04,797/- claimed as sub contract expenses, is deleted. **Ground of appeal no 3 is allowed."**

16. The Ld. D.R. vehemently submitted before the Bench that the assessee during the course of search action was found to be indulged in entering into bogus sub contracts with various sub contractors. The Ld. D.R. submitted that this was admitted by the CFO and director of the assessee in their statements recorded under section 132(4) of the Act that they are entering into bogus sub contracts. The DR submitted that it is possible for the AO reconcile the voluminous details and thus justified the adhoc addition. The Ld. D.R., therefore, prayed that the addition has been made by the AO though on adhoc basis may kindly be restored by setting aside the order of Ld. CIT(A) on this issue.

17. The Ld. A.R. vehemently submitted before us that the issue raised in ground No. 5 and 6 by the Revenue that assessee has failed to produce the bills raised against the above two parties to whom the sub contracts were given is wholly wrong and against the facts on record. The Ld. A.R. submitted that it is clear from the findings and observations of AO and Ld. CIT(A) that AO has not verified the documents placed before him by citing the reasons that the details were too voluminous. Therefore, the stand of the Revenue taken is factually incorrect. The second reason for the adhoc disallowance was that that Shri Jagdish Gupta, Director of assessee company during the course of

assessment proceedings admitted the fact of non maintenance of books of accounts. The Ld. A.R. submitted that Shri Kamal Jagdish Gupta during the course of assessment has only stated that there is no SOP followed by the company for receiving government contracts as well as private contracts nor is there any SOP for awarding sub contracts to private parties. Therefore, grounds raised by the Revenue are factually incorrect and deserved to be dismissed. The Ld. A.R. also submitted that all these sub contract expenses have been paid to the sub contractors against the work executed by them after doing the necessary formalities such as measurement of their work verification, deduction of TDS and ultimately payment by banking channels. The Ld. A.R. submitted that the AO has not rejected the books of accounts and therefore the adhoc disallowance made by the AO deserved to be deleted. The Ld. A.R. relied on the decision of TUV India Pvt. Ltd. vs. DCIT (2019) 110 taxman.com 175(Mum) in defense of his arguments and submitted that the adhoc disallowance made by the AO has rightly been deleted by the Ld. CIT(A). The Ld. A.R. also made a without prejudice plea before the Bench that Ld. CIT(A) has rightly pointed out that in absence of any incriminating documents found during search, no disallowance can be made for which he relied on the various decisions namely PCIT vs. Meeta Gutgutia (2018) 96 taxmann.com 478 (SC), CIT vs. Gurinder Singh Bawa (2017) 79 taxmann.com 398 (Bombay), CIT vs. Deepak Kumar Agarwal (2017) 86 taxmann.com 3 (Bombay) and CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 58 taxmann.com 78 (Bombay). Finally, the Ld. A.R. prayed before the Bench that the order of

Ld. CIT(A) may kindly be sustained by dismissing the ground Nos. 5 & 6 of the Revenue.

18. We have heard the rival submissions of both the parties and perused the material on record. We note that in this case the CFO and director of the assessee company have admitted to taking bogus sub contract expenses but the same was retracted. Thereafter, out of these 9 entities to whom the sub contract work was awarded by the assessee only two were found to be bogus by the AO namely M/s. Umang Town Planners Pvt. Ltd. and M/s. OP Engineering. The Director of M/s. Umang Town Planners Pvt. Ltd. Shri Vijay Kumar Singh and the Managing Director Shri Vijay Yadav of M/s. OP Engineering had admitted while recording statement under section 131 of the Act that they have carried out any work for the assessee as sub contractors and not as labour contractors. When these statements were confronted to Kamal Gupta, Director of the assessee company, he specifically stated that these two sub contractors have been given specific works. M/s. Umang Town Planners Pvt. Ltd. was given sub contracts in Delhi Metro projects, the details whereof were mentioned by Rupesh Kumar, Director of M/s. Umang Town Planners Pvt. Ltd. in his statement recorded on 02.05.2018 which has confirmed that work was executed by the said entity. Similarly, the M/s. OP Engineering was given sub contract work in respect of ESIC hospital and medical college at Alwar and even Shri Vijay Yadav during the course of his statement recorded on 01.05.2018 confirmed that they have executed work for the assessee. We note that AO has not brought any concrete evidences on record to support his

contentions that assessee has claimed bogus sub contract expenses and just cited the reason of voluminous nature of seized material for making adhoc disallowance equal to 20% of the sub contract expenses paid to these parties, therefore, in any way, the action of the AO can be sustained. Moreover, we find that the AO has not rejected the books of accounts of the assessee while making the disallowance. The case of the assessee is supported by the decision of co-ordinate bench of the Tribunal in the case of TUV India Pvt. Ltd. vs. DCIT (supra) wherein it has been held that where the assessee has submitted complete details of expenses and AO has not pointed out any defects in the books of accounts, the adhoc disallowance made by the AO is not justified. We, further, note that admittedly no incriminating material qua these sub contract expenses were found during the course of search and it is a trait and settled law that that no addition can be made in the unabated assessment which has attained finality on the date of search without any incriminating material. The case of the assessee is supported by the decision of the Apex Court in the case of PCIT vs. Meeta Gutgutia (supra) wherein the Hon'ble Supreme Court has held that invocation of section 153A to reopen the concluded assessment was not justified in absence of any incriminating material found during the course of search and thus dismissed the SLP filed by the Revenue against the decision of Hon'ble Delhi High Court as reported in PCIT vs. Meeta Gutgutia (2017) 82 taxmann.com 287 (Delhi). The Hon'ble High Court has also laid the similar ratio in the case of CIT vs. Gurvinder Singh Bawa (supra), CIT vs. Deepak Kumar Agarwal (supra) and CIT vs. Continental Warehousing Corporation (Nhava Sheva) (supra)

wherein it has been held that no addition can be made in respect of assessment which have become final on the date of search if no incriminating material was found during the course of search. Considering these facts and circumstances in the light of the ratio laid down in the decisions as discussed above, we are inclined to uphold the order of Ld. CIT(A). The ground No. 5 & 6 are dismissed. Consequently the appeal of the revenue is dismissed and appeal of the assessee is allowed.

19. The issue of bogus purchases raised in ground no. 1 in ITA No. 3449/Mum/2019 AY 2012-13, 3450/Mum/2019AY 2013-14, 2452/Mum/2019(All Assessee's Appeals) and ground no. 3 & 4 in ITA No.3884/Mum/2019 AY 2014-15 the cross appeal by the revenue are identical to one as decided by us in Ground No. 1 in ITA No.3451/Mum/2019 assessee's appeal and ground no. 3 & 4 in ITA No.3883/Mum/2019 AY 2015-16 ,cross appeal by the revenue wherein we have allowed the assessee's appeal and dismissed the revenue's appeal on the issue of bogus purchases. Accordingly our decision on ground No. 1 in ITA No.3451/Mum/2019 & ground no. 3 & 4 in ITA No.3883/Mum/2019 AY 2015-16 would, mutatis mutandis, apply to the above grounds as well. Consequently the issue of bogus purchases in assessee's appeals is allowed and in revenue appeals dismissed.

20. The issue of bogus labour sub contract raised in ground no. 5 & 6 in ITA No. 3884/Mum/2019 AY 2014-15 by the revenue is identical to one as decided by in ground no. 5 and 6 in ITA No. 3883/Mum/2019 AY 2015-16 wherein we have dismissed the appeal of the revenue. Accordingly our

finding/decision in ITA No. 3883/Mum/2019 would, mutatis mutandis, apply to ground 5 and 6 of this appeal as well. Consequently the ground no. 5 and 6 in the revenue appeal are dismissed.

21. The issue raised by the revenue in respect of deletion of bogus sub contract expenses in ground no. 1 & 2 in ITA No. 3884/Mum/2019 AY 2014-15 is identical to one as decided by us ground in ground no. 1 and 2 in ITA No. 3883/Mum/2019 AY 2015-16 dismissing the revenue appeal on this issue. Accordingly the ground no.1 and 2 in the revenue appeal are dismissed by applying our decision as stated above.

22. In the result all the appeals of the assessee are allowed and all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 22.02.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.02.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.