

**IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR****BEFORE SHRI P. K. BANSAL, VICE PRESIDENT  
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER**I.T.A. No.52/Nag/2016  
Asstt. Year.:2010-11

A.C.I.T., Central Circle-2(1), Nagpur.	Vs.	Shri Kesharsingh G. Rotele, 1, KhushalVihar, Zenda Chowk, 2 <sup>nd</sup> Bus Stop, Gopal Nagar, Nagpur. PAN:ADAPR 1792 D
(Appellant)		(Respondent)

Appellant by	Shri A. R. Ninave
Respondent by	Shri K. P. Dewani
Date of hearing	20/06/2017
Date of pronouncement	27/06/2017

**ORDER****PER P. K. BANSAL, V.P.**

This appeal has been filed by the Revenue against the order of CIT(A) dated 28/01/2016 by taking the following grounds:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in deleting the addition of Rs.1,10,75,879/- made on protective basis?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.1,10,75,879/- without appreciating the fact that the assessee has not executed any sub-contract work and was only name lender?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.14,09,929/- made by the Assessing Officer on the basis of seized documents?*





4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs. 40,00,000/- made by the Assessing Officer on the basis of seized documents?*
5. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in ignoring the evidences found in the incriminating diaries which conclusively proved that the cash withdrawals made from the bank accounts of the assessee were returned back and credited in the incriminating diaries maintained by Bhangdiya group?*
6. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that sub contract work was executed by the assessee ignoring the fact that the contract amount received from the Bhangdiyas was returned to them as evident from the incriminating diaries and no expenses were incurred for executing the contract?*
7. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in thwarting the very purpose of search and seizure provisions of the Act by ignoring seized incriminating documents?"*



2. Ground Nos. 1 & 2 in Revenue's appeal relate to the deletion of addition of Rs.1,10,75,879/- made on protective basis on account of cash being shown as receipt in the diary seized during the course of search in Bhangdiya Group.

3. The facts of the case, in brief, are that a search & seizure action u/s 132 of the I.T. Act, 1961 was carried out in the Bhangdiya Group of cases on 19/07/2011. During the course of search conducted at residential and office premises of Shri Mitesh Bhangdiya, certain incriminating papers and documents belonging to the assessee Shri Kesharsingh G. Rotele were found and seized. Therefore, notice dated 06/05/2013 u/s. 153C of the I.T. Act, 1961 was issued and served on the assessee on 17/07/2013

requesting him to file the return of income within 30 days from the receipt of notice. The assessee had filed the returns of income in response to notice u/s 153C for all the years of the block period. Shri Mitesh Gotumal Bhangdiya is the key person of the group. Shri Mitesh Bhangdiya has two sons namely Shri Kirtikumar M. Bhangdiya and Shri Srikant M. Bhangdiya and one daughter Neha. The business of the Bhangdiya group is being looked after by Shri Mitesh Bhangdiya and his two sons. The other key persons associated with the group are Shri Sanjay Rameshchandra Heda, husband of Mitesh Bhangdiya's sister, Smt. Pradnya, resident of Amravati and Smt. Manisha O. Maniyar, widowed sister of Shri Mitesh Bhangdiya who lives with Bhangdiya family. The main business concerns of the group covered under the search action are as under:

1. M/s M.G. Bhangdiya (AERP B 2503 E) (Prop. MGB) converted into a company M/s M.K.S. Constro-venture Pvt. (AAHCM 0383 T) Ltd. from 01/04/2011
2. Mahendra Construction, Prop. Shri Sanjay Heda . (MC) (AADPH 7109J)
3. M/s Mahendra Construction & M.G. Bhangdiya (JV) (AANFM5658B)
4. M/s Kirtikumar M Bhangdiya (Prop. KMB); converted into a company M/s MRS Acme Buildcon Pvt. Ltd. (AAHCM0382R) from 01.04.2011. (AGYPB1659G)
5. M/s R.M. Bhangdiya & Mahendra Construction (JV) (AARFR1820C)
6. M/s Shrikant M Bhangdiya (Prop. SMB) (ATCPB1337J)
7. Mitcon Infraproject Pvt. Ltd. (MIPL) (AAGCM1868H)
8. MITZ Infraproject Pvt. Ltd. (AAGCM3047A)
9. Sakshi Gruh Nirman Pvt. Ltd. (SGNPL) (AAOCS7974G)
10. Balaji Stone Crusher & Infraventure Pvt. Ltd. (AADCB5273C)

The Bhangdiya Group has also entered into joint ventures with various other civil contractors. Some of them are as under:





1. M/s. M.G. Bhangdiya & Hitbhav Engg. (JV) (AAOFM4745L)
2. M/s. M.G. Bhangdiya & S.s. Patil & Co. (JV) (ABIFS3645L)
3. M/s. Darshan Construction (JV) (AAHFD0654N)
4. M/s. M.R. Dhoble & R.M. Bhangdiya (JV) (AAPFM0622B)

The nature of the business of the Bhangdiya group primarily is executing civil contracts. The group works mainly for Government departments like M/s Vidarbha Irrigation Development Corporation and has been engaged in executing various contracts pertaining to the irrigation projects in the state of Maharashtra. During the course of search operations incriminating documents were found and seized from the residential premises of Shri Mitesh Bhangdiya. Item no. 1 to 65 of Annexure-B seized from his residence are the diaries containing ledgers, daily cash books and bank books maintained by the Bhangdiya group. A statement of Shri Mitesh Bhangdiya was recorded on oath on 20.07.2011. In his sworn statement recorded during the course of search action, Shri Mitesh Bhangdiya was confronted with the entries borne out from the seized diaries marked as B-1 to B-65 and to explain the contents of these diaries, Shri Mitesh Bhangdiya in his statement recorded has submitted that the entries in the diaries and the ledger pertain to the business receipts and business expenditure. The Assessing Officer in the assessment order has recorded a finding that as per the item no. 1 to 65 of annexure-B, it is apparent that the amounts withdrawn from the bank accounts of the subcontractors were credited to the daily cash balance of Bhangdiya group which was confirmed by Shri Mitesh G. Bhangdiya in his statement dated 14/09/2011. The Assessing Officer has reproduced the statement of Shri Mitesh Bhangdiya recorded on 14/09/2011 in para 6 of the assessment order. The Assessing Officer in the assessment order has also recorded a finding that the seized documents being B-1 to B-65 contain entries of all expenses incurred by the Bhangdiya group in cash from F.Y. 2006-07 onwards and expenses



incurred through the bank accounts from F.Y. 2009-10 onwards. Thus, the Assessing Officer found that the actual expenses incurred do not match with those shown to have been incurred in the books. The Assessing Officer thus concluded that the books of account of Shri M.G. Bhangdiya maintained for income-tax purpose do not reflect the true business affairs and are not at all reliable. The Assessing Officer has also referred to the statement of Shri Kesharsingh Rotele, the assessee, recorded on 19/07/2011, 12/09/2011 and 13/09/2011 during the course of survey. The Assessing Officer has reproduced the statement of Shri Kesharsingh Rotele in the assessment order. The Assessing Officer, on the basis of the statement of Shri Kesharsingh Rotele, concluded that the bank accounts of the assessee were being handled by Shri M.G. Bhangdiya group. The Assessing Officer has given a summary of all the bank accounts maintained by the assessee in the tabular form to show that the cheques deposited by the Bhangdiya group in the bank accounts of the assessee were subsequently withdrawn in cash which were found credited to daily cash book seized. On this basis the Assessing Officer made the protective addition in the hands of the assessee in each of the assessment year holding that there were no expenses incurred and no contract work was executed by the assessee who, according to the Assessing Officer, is merely a name lender to the Bhangdiya group. The assessee came in appeal before the CIT(A) challenging the notice issued u/s 153C as well as the addition for cash withdrawals from bank on protective basis. The CIT(A) deleted the said addition in both the years.

4. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the Assessing Officer has made the addition in each of the assessment year in the case of the assessee on protective basis in respect of the cash being





shown as receipt in the diary seized during the course of search in Bhangdiya Group. When the matter went before the CIT(A), the CIT(A) deleted the said addition in all the assessment years by observing as under:

*"9.1 Before adjudicating the issue in hand, it would be relevant to briefly discuss the background of additions made in the case of Shri Mitesh G. Bhangdiya & Group concerns on the basis of seized evidences as per Annexure-B-1 to B-65. The Ld. AO has made the total addition of Rs.182.52 Crs in the hands of various concerns of Bhangdiya group in various assessment years falling within the block period on prorata basis for want of proper correlation between the amounts credited to the seized diaries and the withdrawals made from the bank accounts of the sub-contractors. Out of the total addition of Rs.182.52 crores, an addition of Rs.54.40 Crs. has been made on account of entries of withdrawals from the bank account of sub-contractors recorded in the seized diaries in proportion to the cheque payments made to the sub-contractors by various entities of the Bhangdiya group. The various concerns of the Bhangdiya group had made the payments by account payee cheques to the sub-contractors. The Ld. AO after analyzing the bank accounts of 21 sub-contractors out of total more than 100 sub-contractors has arrived at the conclusion that the cash withdrawn from the accounts of the subcontractors has been found deposited on the credit side of the seized diaries marked as Annexure B-1 to B-65 seized from the premises of Shri Mitesh G. Bhangdiya. Thus, the Ld. AO had inferred that the Bhangdiya group by adopting such modus-operandi had inflated the expenditure by making cheque payments and subsequently withdrawing the cash from the bank accounts of the sub-contractors who, according to the AO, are merely name lenders. The contention of Shri Mitesh Bhangdiya was that the cash withdrawn from the account of the subcontractors which is found reflected in the diaries was kept with Late Shri Gotulajji Bhangdiya, father of Shri Mitesh Bhangdiya by such sub-contractors which was being issued to various sites for the use of subcontractors as per the requirements at the site. Further that the money kept by sub-contractors was returned to them or through any of the intermediaries in the course of handling of cash. The Assessing Officer however,*





*declined to agree with the explanation filed by the appellant and has held that all the 21 sub-contractors examined by him are merely name lenders and the amounts paid to them under the head sub-contracts are bogus payments, therefore, the corresponding receipts by way of withdrawals from the bank accounts of the subcontractors is liable to be added as unaccounted income in the hands of various concerns of Bhangdiya group in various assessment years of the block period in proportion to the cheque payments made by such group concerns.*

*9.2 In the case of Bhangdiya group, the assessments under section 153A of I.T. Act 1961 have been framed for assessment years 2006-07 to assessment year 2012-13. The nature of activity being execution of government contracts was the same during all the assessment years. In assessment year 2006-07, the nature of work executed for Vidarbha Irrigation Development Corporation remains the same as in the case of assessee for subsequent assessment years. The sub contractors who have executed the works are also similar in the various assessment years.*

*9.3 The A.O. has observed that the sub contractors in the case of Bhangdiya group are name lenders and bogus. In this regard, it is significant to mention that the sub contractors including the appellant have been assessed by the ACIT, Central Circle-2 (1), Nagpur who is also the A.O. of Bhangdiya group. Notices under section 153C of I.T. Act 1961 were issued to subcontractors and returns were submitted by such sub contractors pursuant to receipt of notice under section 153C of I.T. Act 1961. The assessments have been framed under section 153C of I.T. Act 1961 by the same A.O. wherein the income returned in respect of business income shown arising to such sub-contractors out of receipt received from the Bhangdiya group have been accepted. Thus, the A.O. having accepted the business receipts in the hands of sub-contractors including the appellant for determining the income in the cases of sub-contractors could not have concluded that the payments made by Bhangdiya group to such sub contractors are bogus.*

*9.4 In view of the huge variance in the income assessed as percentage to receipts by the AO and various infirmities as*





emanated from the order of the AO, net profit has been estimated @ 16% of gross receipts in the hands of various concerns of the Bhangdiya group in view of the decision of the Hon'ble ITAT, Nagpur Bench, Nagpur in the case of the Bhangdiya group entities in ITA No.268, 269 & 285/Nag/2012 dated 03/04/2013. A survey action was conducted on 17/02/2009 in the Bhangdiya Group of cases, wherein the similar situation as payments to sub-contractors was disputed and doubted by the AO. The survey action comprises AY 2006-07 to AY 2008-09 which are also forming part of the block periods for the search action conducted on the assessee group on 19.07.2011. The Hon'ble ITAT, Nagpur Bench, Nagpur after having considered the similar activity of business and deficiencies in subcontract payments found during the survey action conducted on 17.02.2009 has decided the appeals for AY 2006-07 to 2008-09. The Hon'ble ITAT, Nagpur Bench, Nagpur after considering the impounded material has directed the AO to adopt the net profit @ 12% as against net profit adopted by AO @ 14%.



9.5 In view of the above facts and circumstances and keeping in view of various infirmities and various judicial decisions relied upon by the appellant and to meet ends of justice, to my considered opinion, it was considered fair and reasonable to adopt the net profit @ 16% on the gross receipts of Rs.579 Crs.; being the turnover of the various Bhangdiya group concerns for the block period from AY 2007-08 to AY 2012-13 in the respective years of the block and bring the same to the taxation on the guidelines determined by the Hon. ITAT, Nagpur Bench, Nagpur in ITA No. 268, 269 & 285/Nag/2012 vide order dated 07/03/2013 on the similar activities of business under the similar circumstances. However, in order to cover up the undisclosed investment of Rs. 26 crores in immovable properties and the undisclosed investment in jewellery to the tune of Rs. 2.37 crores, enhanced net profit @ 16% of total turnover was estimated in the appellate orders dated 31/12/2015 in the cases of Bhangdiya group as against net profit of 12% estimated by Hon'ble ITAT, as the issue of undisclosed investment in assets was not there before the Hon'ble ITAT in the survey appeals.

10. Thus, I have considered the submissions made by the appellant and evidence on record. It is seen that the appellant



*is a sub-contractor and executing work for various business entities belonging to Shri Mitesh Bhangdiya group. The assessee has been regularly assessed to income tax much prior to the date of search on Shri Mitesh Bhangdiya group on 19/07/2011. In the case of assessee notice has been issued u/s 153C of I.T. Act 1961 after there being search on Shri Mitesh Bhangdiya group 19/07/2011 and assessments have been framed for assessment years 2006-07 to 2010-11 & A.Y. 2012-13 in the month of March, 2014.*

*10.1 It is seen from the assessment order that the A.O. has reproduced the statement recorded u/s 132(4) of Shri Mitesh Bhagdiya and has referred to seized documents inventorized as B-1 to 65. In the case of Shri Mitesh Bhagdiya, the AO has found that the withdrawals made from the bank account of assessee are matching with the credits appearing in the seized documents found at the premises of Shri Mitesh Bhagdiya. The A.O. has concluded that appellant is only name lender of Shri Mitesh Bhagdiya. The A.O. accordingly observed that Shri Mitesh Bhangdiya is the ultimate beneficiary of the bogus contract payment which laundered through appellant and is disallowed and added in the respective assessments framed in Bhangdiya group. The A.O. further observed that the cash withdrawn from the bank is added as income on protective basis as there was no expenses as no contract work was really executed.*



*10.2 The appellant submitted return declaring income from sub-contract work in his regular return as well as in the return submitted in response to notice issued u/s 153C of I.T. Act 1961. In the return of income assessee has shown income arising out of receipts being amount received from the various business entities of Shri Mitesh Bhagdiya group. The perusal of the assessment order does not indicate any adverse observation with regard to regular books of account on the basis of which income was declared in the return of appellant. It is seen that the profit and loss account and balance sheet submitted along with the return of income have not been discredited in the assessment framed in the case of the appellant. The A.O. in fact has assessed income returned without inviting any adverse observation as to income declared from sub-contract work.*

10.3 It is seen that the withdrawals from the bank account are reflected in the books of account on the basis of which income has been returned. The withdrawals from the bank having already been considered for the purpose of determining income at the hands of appellant as shown in the return cannot separately constitute income liable to be assessed in the hands of appellant. The addition made by A.O. is thus unjustified and unsustainable.

10.4 It is further seen that the A.O. has made observation in the assessment order to the effect that in the case of Shri Mitesh Bhagdiya group disallowance has been made for various expenses claimed on account of sub-contract expenses which includes payment to appellant. It is settled proposition of law that the substantive assessment must precede framing of protective assessment. In the facts and circumstances of the case, it is difficult to rationalize how withdrawals from the bank account can constitute assessable income much less on protective basis in the case of the appellant. The A.O. has made disallowance of sub-contract expenses being amount paid to appellant while determining the income of business entities of Shri Mitesh Bhagdiya group. Such payments are already considered for income shown in the return and assessed as business receipt in the hands of the appellant. Addition of such amount again on protective basis defies logic. I do not find any rationale to make such protective assessment of the withdrawals made from bank account of assessee in the hands of assessee himself. The income assessed on protective basis therefore, is held to be unjustified and unsustainable on this count as well.



10.5 The gross receipts in the case of the appellant as well as returned income along with the percentage of income has been tabulated by the appellant for various assessment years and the same is reproduced herein under:

Shri Kesharsingh G. Rotele  
TURNOVER, RETURNED INCOME AND ASSESSED INCOME  
AY :2010-11

ASSESSMENT YEAR	2010-11
GROSS RECEIPTS	34476816



RETURNED INCOME	9535220
% OF GROSS RECEIPTS	27.66%
ADDITIONS UNDER SECTION 153C	16505598
ASSESSED INCOME	26040818
% OF GROSS RECEIPTS	75.53%

*10.6 It is seen from the above that the income returned has been accepted in the case of appellant without inviting any adverse inference and considering the addition made in the hands of assessee, the income assessed as percentage of gross receipt clearly reflected absurdity in the action of the Id. A.O., while determining the income in the hands of assessee. The addition made by Id. A.O. thus, is unsustainable for the aforesaid reason also. Therefore, the protective addition made in the hands of the appellant is directed to be deleted in all the years of the block period."*

4.1 We noted that the CIT(A) has given the finding of fact. This is a fact that the substantive addition has been made in the hands of the assessee in respect of the income received by the assessee as sub-contractor in each of the assessment year. The withdrawal made by the assessee from his bank account in which the deposit of the sub-contract receipts has been accepted arises out of the said deposit. Such withdrawal, in our opinion, by no stretch of imagination can constitute assessable income in the hands of the assessee. The Assessing Officer while determining the taxable income of the business entities of the Bhangdiya Group made the disallowance of sub-contract expenses being the amount paid to the assessee but these payments were already considered in income shown in the return and receipt as business receipt in the hands of the assessee. Addition of such amount again on protective basis in the hands of the





assessee does have any leg to stand. We, therefore, do not find any illegality or infirmity in the order of the CIT(A) which warrants our interference. The CIT(A) has rightly deleted the addition. We accordingly confirm the order of CIT(A). Thus, both the grounds taken by the Revenue stand dismissed.

5. Ground No. 3 of the appeal relates to the deletion of addition of Rs.14,09,929/- made by the Assessing Officer on the basis of seized documents.

6. After hearing rival submissions and considering the material available on record, we noted that the said addition has been made by the Assessing Officer on protective basis on account of entries in the income and expenditure found in the seized material. The Assessing Officer has discussed this issue in para 13 of the assessment order. The Assessing Officer noted that the seized material inventorized at item No. 2 of Annexure-B1 shows that the hand written noting of the assessee gives the summary of balance payment to different parties for Dharampeth office and Kamal Palace aggregating to Rs.14,09,299/- on 8/6/2009. The scanned copies of these pages were reproduced on page no. 12 of the assessment order. The Assessing Officer asked the assessee to explain the source of these expenses and to correlate the same with the regular books of account. The Assessing Officer further found that in the course of survey operation on 19/7/2011 at Kushal Vihar, Gopal Nagar, Nagpur, the assessee had made statement on oath that he had received a sum of Rs.14,09,299/- from Shri Vijay Wadettiwar for payment to various parties for renovation and interior decoration at Kamal Palace, Nagpur which belongs to Shri Vijay Wadettiwar. Shri Vijay Wadettiwar denied any cash payment made to the assessee, the Assessing Officer, therefore, added



the sum of Rs.14.09.299/- incurred on the renovation in assessee's income. When the matter went before the CIT(A), we noted that CIT(A), on examination of the material on record found that the cash payment to the tune of Rs.14,09,299/- has been shown in the seized documents as 'balance payment' which indicates that the payment was yet to be made. The CIT(A) also impressed with the contention of the assessee that since Kamal Palace does not belong to the assessee therefore, any expenditure incurred on the renovation of the said property cannot be regarded to be the investment made by the assessee, even though the thirty party had denied to make any payment to the assessee. Before us, learned D. R. even though relied on the order of the Assessing Officer but could not bring to our knowledge any cogent material or evidence which may prove that the finding given by the CIT(A) is contrary to the facts found on record. It is not denied that the property Kamal Palace belongs to the assessee therefore, no question of incurring the expenses by the assessee arises. Even noting on the document 'balance payment' supports the case of the assessee. We, therefore, confirm the order of the CIT(A) deleting the addition of Rs.14,09,299/-. Thus, this ground of the appeal is dismissed.

7. Ground No. 4 of the appeal relates to the deletion of addition of Rs.40 lakhs made by the Assessing Officer on the basis of seized documents.

8. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the Assessing Officer has made the said addition on the basis of the seized document being item No. 7 of Annexure-B1 being the hand written noting of the assessee giving summary of expenses of Rs.40 lakhs incurred on making of film "Adhar" during the relevant financial year. The Assessing





Officer called for the explanation of the assessee and to correlate the same with his regular books of account. The assessee contended that the seized document does not belong to him and he has not incurred any expenditure. He has merely mediated the payments noted in the seized documents. The Assessing Officer did not agree with the assessee and therefore, made the addition. When the matter went before the CIT(A), we noted that the CIT(A) has deleted the addition. The CIT(A) has categorically given a finding that the transactions of expenditure on film "Adhar" do not belong to assessee. The assessee has acted only as a mediator. Even there was no evidence on record which may prove the ownership of the film "Adhar" to the assessee. Even before us also learned D.R. although relied on the order of the Assessing Officer but could not adduce any evidence which may prove that the finding given by CIT(A) are beyond the facts on record. In view of this fact, we do not find any infirmity or illegality in the order of CIT(A). We accordingly confirm the order of CIT(A) deleting the addition of Rs.40 lakhs. Accordingly, this ground is dismissed.

9. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 27/06/2017)

Sd/.  
**(AMARJIT SINGH)**  
Judicial Member

Sd/.  
**( P. K. BANSAL )**  
Vice President

Dated:27/06/2017  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R.,

⑥ *Good File*

~~Acctt. Registrar~~

