

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 93 to 99/RPR/2019

(निर्धारण वर्ष / Assessment Years : 2011-12 to 2017-18)

<b>M/s. Parthivi Constructions Pvt. Ltd.</b> Parthivi Pacific, 3 <sup>rd</sup> Floor, Commercial Complex, Near Axis Bank, G.E. Road, Raipur (C.G.)	<b>बनाम/ Vs.</b>	<b>Asst. Commissioner of Income Tax</b> Central Circle-1, Raipur (C.G.)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCP4406G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से /Appellant by :		Shri R. B. Doshi, C.A.
प्रत्यर्थी की ओर से/Respondent by :		Shri R. K. Singh, CIT.DR
सुनवाई की तारीख / Date of Hearing		09/08/2021
घोषणा की तारीख /Date of Pronouncement		26/10/2021

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned seven appeals have been filed at the instance of the assessee against the common order of the Commissioner of Income-Tax (Appeals), Bhopal ('CIT(A)' in short), dated 11.04.2019 arising in the common assessment order dated 28.12.2018 passed by the Assessing Officer ('AO' in short) under Section 153A r.w.s. 143(3) of the Income-tax Act, 1961 ('the Act' in short) concerning Assessment Years 2011-12 to 2016-17 and under Section 143(3) of the Act in Assessment Year 2017-18.

2. As per grounds of appeal for the respective assessment years spanning over Assessment Years 2011-12 to 2017-18, the assessee has challenged the action of the revenue towards additions of varied amounts on account of unaccounted on-money.

3. Briefly stated, the assessee company is engaged in the real estate business and deriving income there from. In the instant case, search and seizure operation under Section 132 of the Act was carried out at the premises of the assessee on 19.09.2016. Consequent upon search, notice under Section 153A of the Act was issued to the assessee and the assessment was completed under Section 153A r.w.s. 143(3) of the Act. It was observed by the Assessing Officer that during the search operation, certain loose papers/incriminating documents were found relating to all the assessment years in question wherein some notings were found in respect of certain amounts of receipts. Such loose papers/incriminating documents were inventorized as "BS" and "LPS-20". The statement of Shri Shailesh Verma, Director of the assessee-company was recorded on 22.09.2016 wherein Shri Verma statedly surrendered an amount of Rs.11,42,00,900/- voluntarily as unaccounted and undisclosed income in the hands of the assessee-company on the basis of loose-papers/books so seized. Thereafter, another statement of Director Shri Shailesh Verma was recorded on 20.12.2016 and another surrender of Rs.75 lakhs was made on the basis of document "LPS-17". The aggregate surrender thus stood at Rs.12,17,00,900/- as a result of the search. The Assessing Officer, however, noted that, as against the aforesaid surrender of Rs.12,17,00,900/-, the assessee has filed the Return Of Income (ROI) for AYs 2011-12 to 217-18 wherein the aggregate additional income of Rs.1,05,90,100/- only was offered for taxation out of such surrender. On being questioned on the mismatch, it was explained by the assessee to the Assessing Officer that the aggregate unrecorded amounts, as reflected in the seized documents, represented the on-money received from different customers as a part of consideration on which only net profit element is chargeable to tax; and, accordingly the net profit element by applying the net

profit rate for the respective financial year was worked out to Rs.1,05,90,100/- and has been correctly offered as additional income in the return filed in response to notice under Section 153A of the Act.

3.1 The year-wise surrender of amount by the assessee and corresponding income disclosed in the Return Of Income (ROI) as tabulated in paragraph No.6.1 of the assessment order is reproduced hereunder for ready reference:-

S. No.	AY	Amount surrendered during the course of search	Net Profit Ratio as per Audited Balance Sheet	Income Voluntarily disclosed u/s 132(4) at Net Profit Ratio
1	2011-12	69,34,000/-	5.19%	3,59,900
2	2012-13	2,22,69,000/-	6.40%	14,25,300
3	2013-14	2,88,96,900/-	6.03%	17,42,500
4	2014-15	2,02,96,000/-	4.44%	9,01,200
5	2015-16	1,34,59,000/-	4.72%	6,35,399
6	2016-17	1,12,15,000/-	4.47%	50,24,500
7	2017-18	1,86,31,000/-	7.94%	50,24,500
	Total	12,17,00,900/-		1,05,90,100

3.2 The Assessing Officer observed that the assessee surrendered a sum of Rs.12,17,00,900/-, in aggregate, in different assessment years in the course of search. The corresponding income declared in the ROI against such surrender stands at Rs.1,05,90,100/- only and for such underreporting of income in the ROI, no cogent explanation is available. It was further observed that such action of the assessee is without any formal retraction of the earlier statement. The Assessing Officer consequently placed reliance on the surrendered amount made in the statement under Section 132(4) and concluded that such statement given by the assessee can be used as an evidence against the assessee and the assessee can have no grievance for taxation of income as per the surrender made in the statement. The Assessing Officer further observed that the disclosure of lesser

amount in the return of income qua the amount surrendered in the statement tantamount to retraction which has no basis. In the absence of any coercion or force, as nowhere alleged, the statement made by the assessee has to be construed as voluntary statement and is required to be applied as such. The assessee has not discharged the onus lay upon it to prove that such declaration is made out of any misconception of facts or law. The Assessing Officer consequently rejected the explanation of the assessee towards its offer on additional income and concluded that the amounts surrendered in the statement under Section 132(4) is liable for taxation without any adjustment. As a sequel to such observations, the Assessing Officer replaced the additional income offered by the assessee with that of amount surrendered in the statement under Section 132(4) in the respective assessment years. Consequently, the Assessing Officer made an addition of Rs.11,11,10,800/-, in aggregate, in different assessment years which amount represented the difference between amounts surrendered during the search and amounts offered in the return of income under Section 153A in different assessment years.

3.3 Aggrieved by the additions towards difference between amount surrendered under Section 132(4) and additional income offered in the respective return of income (on the basis of estimation of the net profit element embedded in such surrender as per assessee), the assessee preferred appeal before the CIT(A). The CIT(A), however, did not find merit in the plea of the assessee for restricting the addition to the extent of profit element only instead of surrender made at the time of search which, according to assessee, denoted gross unaccounted receipts. The CIT(A) mainly relied upon the evidence of testimony and declined to agree with the plea of the assessee on the ground that the statement was neither

retracted nor obtained under any threat or coercion. It was observed by the CIT(A) that declaration made in the return of income at lesser amount tantamount to retraction which is not tenable and liable to be rejected. The CIT(A) accordingly dismissed the appeals for all the assessment years in question and confirmed the entire additions made by the Assessing Officer.

3.4 Further aggrieved, the assessee preferred appeal before the Tribunal.

4. When the matter was called for hearing, the learned Counsel for the assessee submitted at the outset that both the lower authorities have misunderstood the factual aspect of the case and wrongly applied the law having regard to the facts of the case. It was submitted that the additions have been made and confirmed solely on the basis that the assessee has voluntarily surrendered the amount of on-money at the time of giving statements under Section 132(4) of the Act and consequently the whole of the amount surrendered is assessable as income of the assessee and the assessee is not entitled to retraction of amount surrendered by way of lesser quantum of declaration in the return of income. In this regard, the learned Counsel for the assessee vociferously pointed out that, on reading the statement as a whole, it can be seen that in response to the query from the authorized officer at the time of search, the deponent of the statement replied that the whole unaccounted income has been used in the business of the assessee only. Further more, the actual cash found in the course of search is about Rs.5 lakhs only as against the surrender of receipt. Similarly, no unaccounted or unexplained or excess investments were found during the search either in the hands of the assessee or in the case of its Directors. These circumstantial evidences read with statement

of the assessee would unequivocally suggest that the staggering declaration made at the time of search are only in the nature of gross receipts from real estate business and not the unaccounted taxable profit *per se*. It was contended that the averments made in the statement under Section 132(4) are 'rebuttable' in nature and, therefore, the assessee is entitled to explain the real state of affairs by direct or circumstantial evidence at any stage. The learned Counsel relied upon the decisions in the case of Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala (1973) 91 ITR 18 (SC) and many other judicial precedents for the proposition that the addition cannot be made solely on the basis of averments made in the statements which are not final or conclusive. The statement so made can be deviated from by showing grounds for doing so. It was contended that if the whole gross receipts is taken as unaccounted income, the revised net profit ratio would be totally rendered un-comparable with the industry standards or with the net profits declared by the assessee and duly assessed prior to search under Section 143(3) of the Act. It was next submitted that the whole ground for conclusion drawn against the assessee is the absence of any formal retraction of the statement made at the time of search. In this regard, it was contended that the assessee has actually honoured the declaration made under Section 132(4) of the Act and offered the net profit element on the gross receipt recorded in the seized documents and surrendered. By doing so and offering profit elements on such gross receipts, the assessee has only applied commercial principles and correct position of law. The learned Counsel further argued that gross receipt cannot be brought to tax as such and only profit embedded therein is taxable as held in long line of judicial precedents placed in the paper book. It was thus submitted that in the line of plethora of judicial precedents on the issue, the additions made by the Assessing Officer seeking to tax

the whole of gross receipts is totally unjustified and uncalled for. Learned Counsel accordingly urged for the reversal of the additions made by the Assessing Officer and restoration of income returned by the assessee in various assessment years.

5. Per contra, the learned CIT-DR for the Revenue strongly relied upon the assessment order as well as the first appellate order. It was contended that it is not in dispute that entries in the seized documents were found showing unrecorded receipts to the extent of Rs.12,70,00,900/- and it is equally undisputed that during the search the assessee has consciously surrendered entire amount recorded in the seized documents as its undisclosed income by way of the statement under Section 132(4) of the Act. The learned CIT-DR submitted that, despite the unequivocal surrender, the assessee has offered only profit elements while filing the return of income which is clearly not justified. The learned CIT-DR submitted that statement made under Section 132(4) carries evidentiary value and it is by itself an evidence against the assessee though rebuttable. In the absence of any retraction made by the assessee post search, the assessee could not depart from the surrender and was legally bound to pay the tax on the surrender so made. It was further contended that the plea of the assessee towards absence of any excess cash or excess asset or excess investment detected, is not justified. It was submitted that such non-detection is irrelevant in the wake of unambiguous surrender made by the assessee. The learned CIT-DR accordingly submitted that the CIT(A) has correctly appreciated the law in the factual position and no disturbance of such order is called for.

6. We have carefully considered the rival submissions and perused the assessment order as well as the first appellate order.

We have also gone through the statement recorded in the course of search and other material referred to and relied upon in the course of hearing in terms of Rule 18(6) of the IT(AT) Rules, 1963. At the outset, we take note of the undisputed fact that certain seized materials were found in the course of search showing unrecorded receipts of Rs.12,17,00,900/- and consequently, a disclosure of this amount was made in aggregate in various assessment years by way of statement recorded under Section 132(4) of the Act at the time of search. The assessee, however, has offered the net profit elements whereas the Revenue has attempted to tax the gross amount in tune with deposition made in the statement on behalf of the assessee-company at the time of search. The only dispute thus is whether the whole amount of on-money received can be subjected to taxation or only the income embedded therein can be brought to tax in the facts of the case.

6.1 We notice a few vital facts to begin with. In the course of search, certain loose-papers were found showing unaccounted receipts. The assessee readily surrendered the aforesaid receipts as undisclosed income of the assessee. Apart from the loose-papers of incriminating nature, the search team could not lay on hands on any excess cash of serious amount, nor could unearth any unaccounted assets or investment to corroborate the unaccounted gross receipts in question. Besides, the deposition made in statement under Section 132(4) suggests that the amount generated by way of gross receipts have been ploughed back in the business of the assessee. Question No.13 of the statement under Section 132(4) clearly vouches this significant aspect. In this factual backdrop, the case made out on behalf of the assessee that only the profit element embedded in the gross receipt is susceptible to tax cannot be brushed aside.

6.2 The Hon'ble Gujarat High Court in the case of DCIT Vs. Panna Corporation, (2012) 82 CCH 266 (Guj) took note of several judicial precedents and held that as per the legal position, the entire receipt cannot be taxed as additional income of the assessee, but the profit elements embedded in such receipts can only be brought to tax. Similar view has been expressed by the Co-Ordinate Benches of the Tribunal in a large number of cases, including Abhishek Corporation Vs. DCIT, 17 CCH 206 (Ahd) wherein the co-ordinate bench took note of Third Member decision rendered in the case of ITO Vs. Gurbachansingh Juneja (1996) 54 TTJ(Ahd) 1(TM). Similarly, it has been held that net profit can be applied on unaccounted sales/receipts for the purposes of making additions in several other decisions viz; CIT vs. S.C. Kothari (1971) 82 ITR 794 (SC); CIT vs. G.S. Juneja (2008) 302 ITR 63 (Guj); CIT vs. Babulal K. Daga (2016) 387 ITR 114 (Guj); CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 (MP); Anil Kumar Bajaj vs. DCIT in ITA No.4392/Del/2014; Hariram Brambhani Vs. ACIT in ITA No.5067/Mum/2010; Man Mohan Sadani Vs. CIT (2008) 304 ITR 52 etc.... In these decisions, it has been held that only profit can be taxed and not the entire receipts.

6.3 Having considered the facts of the case and the consistent position of law echoed by the Hon'ble High Courts and Co-ordinate Benches, we find merit in the plea of the assessee that the Assessing Officer was not justified in bringing to tax the whole amount of unrecorded receipts. In the light of judicial precedents cited above and many more, entire gross receipts cannot be brought to tax. The action of the assessee to restrict the inclusion of unaccounted income in ROI to the extent of profit embedded in such unaccounted receipts cannot be faulted in the facts and circumstances of the case.

6.4 The order of the CIT(A) for respective assessment year is thus set aside and the additions made by the Assessing Officer stand deleted in all the captioned appeals on this issue.

7. In the result, all the captioned appeals of the assessee are allowed.

Order pronounced on **26/10/2021** by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER  
Dated 26/10/2021

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER:

*BT*

*True Copy*

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Assistant Registrar /Sr. Private Secretary  
Income Tax Appellate Tribunal  
Raipur Bench, Raipur