

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.1554/Chny/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT Corporate Circle-6(2), Chennai.	बनाम/ Vs.	SPL Infrastructure Pvt. Ltd. No.13/3, Crescent Park Ltd., T. Nagar, Chennai – 600 017.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAICS-0881-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**C.O No.102/Chny/2019**  
(निर्धारण वर्ष / Assessment Year: 2012-13)

SPL Infrastructure Pvt. Ltd. No.13/3, Crescent Park Ltd., T. Nagar, Chennai – 600 017.	बनाम/ Vs.	ACIT Corporate Circle-6(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAICS-0881-N		
(Cross-objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri Philip George (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/Revenue by	:	Shri V. Sreedhar (Addl. CIT) –Ld. Sr. DR
सुनवाई की तारीख/Date of Hearing	:	08-06-2022
घोषणा की तारीख /Date of Pronouncement	:	06-07-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)], Appeal No.55/2018-19/CIT(A)-15,

dated 28-02-2019 in the matter of assessment framed by learned Assessing Officer (AO) u/s 143(3) r.w.s. 254 of the Act on 08.11.2018.

The grounds taken by the revenue read as under: -

1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.
2. The Ld. CIT(A) erred in restricting the disallowance of subcontractor expenses to 10% of Rs. 27,37,198/- in place of Rs.2,46,43,789/- by following the decision of the Tribunal in ITA No. 2488/Mds/2014 dated 14-01-2016 for the AY 2010-11.
  - 2.1. The Ld. CIT(A) failed to appreciate that the ratio of the decision an earlier assessment year 2010-11 cannot be applied for the current assessment year as the issues are factual in nature and are relevant to the assessment year in question.
  - 2.2. The Ld. CIT(A) erred in ignoring the detailed analysis of the AO in para nos. 5, 6 and 7 in which the factual distinctions between the two AYs (i.e. AY 2010-11 & 2012-13) were discussed.

As evident from grounds of appeal, the sole subject matter of appeal is disallowance of sub-contract expenses incurred by the assessee. It is also evident that Ld. CIT(A) has followed the order of Tribunal for AY 2010-11.

The assessee has filed cross-objection which is delayed by 111 days. The condonation of the same has been sought by the assessee on the strength of condonation petition which is accompanied by the affidavit of the managing director of the assessee-company. It has been submitted that relevant papers got mixed up with other papers and delay took place. Considering the content of petition / affidavit and considering the period of delay, we condone the delay and admit the cross-objection for adjudication on merits.

2. The Ld. AR placed on record comparative statement of details of sub-contractor to show that various payees in AYs 2010-11 and in this year are substantially identical as follows: -

Name	Relationship with MD	AY 2010-11	AY 2012-13
SP Thyagarajan	Brother	3495180	799010
SP Veerappan	Brother	3570860	5238838
L. Subramanian	Brother	3534861	3945328
VR Valliammal	Brother's wife	3456337	3683190
S. Subramaniam	Father	3592453	2444164
L. Shanti	Brother's wife	3769708	1733335
T. Lakshmi	Brother's wife	3741301	450933
S. Lakshmanan	Cousin Brother		
Unrelated Parties		18947510	
<b>Total disallowed</b>		<b>44108210</b>	<b>27381984</b>
Total Sub contract Expenses		60900000	223349691
<b>Proportion of subcontract expenses of related parties</b>		<b>72.42%</b>	<b>12.3%</b>

The Ld. AR also placed on record the decision of Hon'ble High Court of Madras in TCA No.766 of 2017 dated 07.08.2020 dismissing the appeal of the revenue against order of Tribunal for AY 2010-11.

Having heard rival submissions, our adjudication to the subject matter of appeal would be as under.

### **Assessment Proceedings**

3.1 This is second round of appeal since the matter of disallowance of sub-contract expenditure, in the first round, was set aside by Tribunal to the file of Ld. AO for fresh adjudication. The assessee being resident corporate assessee is stated to be engaged in laying highways. Pursuant to the directions of the Tribunal, Ld. AO tabulated the difference in facts of AY 2010-11 and AY 2012-13 in the assessment order and arrived at a conclusion that facts in both the years were different. In the present year, the expenses were claimed in the name of the close relatives of the

Managing Director of assessee-company in comparison to AY 2010-11 wherein payments were made to third parties.

3.2 The assessee was subjected to survey u/s 133A on 08.01.2014 wherein discrepancies were found in the expense vouchers. The assessee declared net profit of 5% for AYs 2005-06 to 2007-08 but the net profit rate of this year was 3%. The assessee could not produce confirmation of sundry creditors and sub-contractors. The sub-contractor expenses were in the nature of gravel purchase, labour payment, machinery hire charges, metal purchase, metal transport, site clearance etc. It was noted that majority of the work was undertaken by family members / relatives of directors of the assessee company. During survey Shri L.Subramanian, who was one of the sub-contractor, failed to establish that he had executed sub-contract work on behalf of the assessee. Similar was the position of other sub-contractors as enumerated in the assessment order. The payment to these persons was being made on the basis of measurement book (m book) which was found to be incomplete. Therefore, the confirmation letters filed by the assessee in support of expenses were held to be not acceptable. In the above background, Ld. AO noted that out of total sub-contract expenses of Rs.2233.49 Lacs, the amount paid to related parties was Rs.273.81 Lacs which is 12.3% of total sub-contract. This amount of Rs.273.81 Lacs was held to be non-genuine and disallowed by Ld. AO. However, allowance of 10% was given while making the disallowance. Finally, the net disallowance of Rs.246.43 Lacs was added to the income of the assessee.

### **Appellate Proceedings**

4.1 The Ld. CIT(A) noted that in AY 2010-11, similar disallowance was made by Ld. AO which was restricted to 10% u/s 40A(2)(b) in the first appellate order. The department appeal against the same was dismissed by the Tribunal.

4.2 The Ld. CIT(A) further noted that in this year, the assessee complied with the directions of the Tribunal as given in the first round and proved that the sub-contract payments were genuine. The sub-contractors declared the receipts in their respective return of income. TDS compliance was made by the assessee. The assessee furnished complete account and details of work executed by the sub-contractors. The net profit declared in this year was much more than the profit declared in preceding two years. Considering the same and in view of the decision of Tribunal for AY 2010-11, Ld. AO was directed to restrict the disallowance to 10% of sub-contracts expenses of Rs.273.81 Lacs. Aggrieved, the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. Upon careful consideration of material facts and tabulation as placed by Ld. AR before us (extracted in para-2), we find that the related parties in AY 2010-11 and in this year are quite similar. The dispute is also similar i.e. genuineness of sub-contract expenses claimed by the assessee. The undisputed position that emerges is that in the set aside proceedings, the assessee has complied with the directions of the Tribunal and furnished details of sub-contract expenses paid to related parties. The sub-contractors have declared the receipts in their respective return of income. TDS compliance has been made by the assessee. The assessee furnished complete

account and details of work executed by the sub-contractors. The net profit declared in this year is much more than the profit declared in preceding two years. Considering the same, the principal of estimation, as applied by Tribunal in AY 2010-11, shall have equal application to the facts of this year also. Therefore, the adjudication of Ld. CIT(A) could not be faulted with. By confirming the same, we dismiss the appeal of the revenue. For the same very reason, the cross-objection filed by the assessee would also be dismissed since in the cross-objection, the assessee is contesting the disallowance of 10% as estimated by Ld. CIT(A).

6. In the result, the appeal as well as cross-objection stand dismissed.

Order pronounced on 06<sup>th</sup> July, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 06-07-2022.  
EDN/-

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF