

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI B.R. BASKARAN (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No.2852/Mum/2018 - AY 2007-08
ITA No.2853/Mum/2018 - AY 2008-09
ITA No.2854/Mum/2018 - AY 2009-10

M/s Bermaco Energy System Ltd D-73/1, TTC Industrial Area, MIDC Road, Turbhe, Navi Mumbai-400 705 PAN : AAACB2727N	vs	Deputy Commissioner of Income- tax, Central Circle 8(4), Mumbai 6 th Floor, Room No.658, Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

ITA No.3749/Mum/2018 - AY 2009-10
ITA No.3750 /Mum/2018- AY 2010-11
ITA No.3751/Mum/2018 - AY 2007-08
ITA No.3752/Mum/2018 - AY 2008-09

Deputy Commissioner of Income-tax, Central Circle 8(4), Mumbai 6 th Floor, Room No.658, Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	M/s Bermaco Energy System Ltd D-73/1, TTC Industrial Area, MIDC Road, Turbhe, Navi Mumbai-400 705 PAN : AAACB2727N
APPELLANT		RESPONDENT

Assessee represented by	Shri JP Bairagra, CA
Department represented by	Dr Mahesh Akhade, CIT DR

Date of hearing	12/07/2022
Date of pronouncement	30/09/2022

ORDER

Per Kavitha Rajagopal (JM):

Captioned appeals have been filed by the assessee and the revenue as against the consolidated order the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai dated 26/03/2018 for the relevant assessment years passed under section 250 of the Income-tax Act, 1961.

2. Briefly stated, the assessee company is engaged in the business of turnkey project management consultants (power projects). Pursuant to a search & seizure action under section 132 of the I.T. Act in the case of the assessee company at the residence and business premises of M/s Flemingo / Bermaco group on 31/10/2009 by the DDIT (Inv) Unit-II(3), Mumbai, incriminating materials seized revealed undisclosed income to the tune of Rs.38.90 crores. The impugned undisclosed income were in the nature of bogus purchases, unaccounted cash found, etc. emanating from the discrepancies in the books of account of the assessee company. Statement of Shri Viren Ahuja, one of the directors of the assessee company corroborated the said transaction, which statement was subsequently retracted by an affidavit dated 24/11/2009. The Assessing Officer issued notice under section 153A of the Act dated 12/04/2010 for assessment years 2007-08 to 2010-11. The assessee had filed the regular returns of income and returns in response to notice under section 153A of the Act for assessment years 2007-08 to 2010-11, the details of which are given below:-

A.Y.	Date of filing of original return	Returned income, as per Regular return	Dat of filing of return u/s 153A of the Act	Returned income as per 153A return
2007-08	30/10/2007	68,32,301/-	17/09/2010	67,32,300/-

2008-09	01/09/2008	81,18,230/-	17/09/2010	81,18,230/-
2009-10	N.A.	N.A.	17/09/2010	NIL
2010-11	15/10/2010	9,58,50,020/-	N.A.	N.A.

3. The Assessing Officer passed assessment order dated 30/12/2011 under section 143(3) r.w.s. 153A determining total income for impugned assessment years by making additions / disallowance under sections 68 & 14A which are tabulated below:-

S.No	A.Y.	Assessed Income	Amount of estimating 10% of total amt. Of depreciation and expenses on car towards personal use	Amount of addition on account of bogus purchases	Amount of Addition on account of unexplained share application money	Amount of addition u/s 14A
1	2007-08	Rs.31,86,24,370	Rs.1,98,418	Rs.279,93,647	Rs.28,35,00,000	-
2	2008-09	Rs.16,02,18,590	Rs.1,13,365	Rs.484,44,830	Rs.10,18,50,000	Rs.16,92,168
3	2009-10	55,65,94,160	Rs.89,903	Rs.608,05,507	Rs.54,00,00,000	Rs.30,35,452
4	2010-11	Rs.26,87,65,000	Rs.96,964	Rs.323,21,000	Rs.13,37,50,000	Rs.44,68,353

4. The assessee was in appeal before the Ld.CIT(A) as against the said additions / disallowances. The Ld.CIT(A) partly deleted the additions / disallowances restricting the addition to 8% on total bogus purchases by relying on the decision of Shri Rattan Singh Rathod vs JCIT 25(2), Mumbai in ITA No.37/Mum/2010 dated 13/07/2012, as per provisions of section 44AD of the Act. Both the Revenue as well as the assessee are in appeal before us as against the order of Ld.CIT(A).

5. Having heard the rival submissions, and perusal of the materials on record, we proceed to decide the appeals as below:-

ITAs 3749, 3750, 3751 & 3752/Mum/2018

6. Starting with the appeals filed by the Revenue, as the facts are identical, we take ITA No.3750/Mum/2018 pertaining to assessment year 2010-11 as the lead case.

7. Ground 1 & 1b. in all these appeals pertain to the deletion of addition on account of bogus purchase and by restricting the addition on account of bogus purchases to 8% of the total bogus purchases by applying the provisions of section 44AD without appreciating the fact that the assessee is neither an eligible assessee nor carrying out eligible business in terms of section 44AD of the Act. The Revenue has also challenged the ground of deletion of bogus purchases by relying on the decision of the co-ordinate bench in the case of Shri Rattan Singh Rathod vs JCIT 25(2), Mumbai in ITA No.37/Mum/2010 dated 13/07/2012 on which the Revenue has preferred an appeal before the Hon'ble jurisdictional Bombay High Court.

8. The Ld.DR contended that the assessee has failed to prove that there was business activity carried out by the assessee company and that the assessee has only furnished copies of the agreement and not produced the parties before the Assessing Officer. The Ld.DR relied on the statement of the director, who has admitted that the transactions are bogus. The Ld.DR further stated that the Ld.CIT(A) has erred in relying on the decision of ITAT in Shri Rattan Singh Rathod vs JCIT 25(2), Mumbai (supra). The Ld.DR contended that section 44AD would not be applicable to assessee's case as there was no business activity at all carried out by the assessee company. The Ld.DR relied on the decision of the Ld. Assessing Officer.

9. The Ld.AR for the assessee, on the other hand, contended that the assessee has subsequently furnished all details of the parties alongwith

confirmation letters before the Ld.CIT(A), who remanded the same to the Assessing Officer for verification. The Ld.AR stated that the assessee has discharged its primary onus as to the identity, creditworthiness of parties and genuineness of the transactions. The Ld.AR further stated that the assessee had also furnished the labour job bills, bank account details and also other documentary evidence pertaining to the impugned transaction. The Ld.AR further stated that the assessee has also furnished the proof of repayment of the impugned loan amount which was also verified by the Assessing Officer. The Ld.AR relied on the decision of the Ld.CIT(A).

10. It is observed that the Assessing Officer, during the assessment proceedings had asked the assessee company to furnish details as to the expenses claimed by the assessee company in respect of invoices pertaining to various expenses, especially payments made to seven parties aggregating to Rs.17,60,39,565/-, the details of which are tabulated as under:-

Sr No.	Name of the Party	AY 2006-07	AY 2007-08	AY 2008-09	AY 2009-10	AY 2010-11	TOTAL
1	Motion Traders Pvt Ltd	NIL	NIL	NIL	1,03,62,500	3,23,21,000	4,26,83,500
2	Meeti Trade Impex	NIL	41,99,936	NIL	NIL	NIL	41,99,936
3	Maulik Enterprises	NIL	43,00,160	NIL	NIL	NIL	43,00,160
4	Jigna Enterprise	NIL	1,01,66,057	NIL	NIL	NIL	1,01,66,037
5	Sthapanna Trade Impex Private Ltd	NIL	93,27,494	NIL	1,43,15,975	NIL	2,36,43,469
6	Saileela Trading Private Ltd	NIL	NIL	4,84,44,830	3,61,27,032	NIL	8,45,71,862
7	Manav Impex	64,74,581	NIL	NIL	NIL	NIL	64,74,581
	Total	64,74,581	2,79,93,647	4,84,44,830	6,08,05,507	3,23,21,000	17,60,39,563

Shri Viren Ahuja, director of the assessee company, in his statement recorded under section 132(4), has stated that there was no documents available to substantiate the above mentioned payments and that the statement of the person has declared the same as undisclosed income to the tune of Rs.17.60 crores for the impugned years. The Assessing Officer has stated that the said statement recorded during the search proceedings was retracted by way of an affidavit dated 24/11/2009 in which, it was stated that the statement was given in a disturbed mental and physical state and that the same was baseless and without support of any factual evidence. It was also observed that during the assessment proceedings, disclosure of additional income of Rs.38.80 crores on account of unproved purchases was also identified by the Assessing Officer. The assessee had contended that the said purchases were made on account of construction materials and electrical items with respect to the development of a property located at New Mumbai. It was also stated by the assessee that purchases in Bermaco Energy Systems Ltd were made on account of sub contract charges with respect to various project services rendered by the assessee company for its clients. The Assessing Officer alleged that there was no business activity carried out in the factory premises of the assessee company as per the findings of the Investigation Wing and held that the said expenses incurred by the assessee are in the nature of bogus expenses. The assessee replied for the said allegation of the Assessing Officer that the assessee was into the business of providing consultancy and other services in relation to setting up of power projects at various sites to various major players in the field of power industry. After getting the contract, the company, in turn, sub contracts the works to various sub contractors. The activity for

which the expenses are claimed are carried out on respective site where the power project has been undertaken as these are huge purchases and no activity is carried out at factory premises of the company. The assessee undertakes the work such as excavation, embankment cutting, levelling, compacting, grading, etc, all of these activities are undertaken at the respective site of the project and hence contention of the Assessing Officer that these expenses are bogus since no activities are carried out at the factory premises of the assessee company are negated.

11. It is evident that the assessee, in rebuttal to the Assessing Officer's allegation has also furnished year-wise details of income received from these projects, contracts and sub contract expenses incurred by the assessee. The assessee has also furnished details of payment made to the parties towards sub contract charges on account of work carried out for the Koyna Dam project which was undertaken by the company for one of its clients, M/s Soma Enterprise. The assessee company has also given details of the revenue earned in the said project which was also offered to tax for the impugned year. The Assessing Officer has made the impugned addition on the premise that there was no activities carried out at the factory premises of the assessee and held that the said expenses are bogus. The Ld.CIT(A), on appeal by the assessee had rejected the retraction statement of Shri Viren Ahuja recorded under section 132(4) on the basis that statement under section 132(4) was recorded without any force, coercion or undue pressure. The Ld.CIT(A) has also stated that the Investigation Wing, while carrying out enquiries pertaining to the concerned parties could not trace out some of the parties at the address and concluded that the specified entities were not traceable at the given addresses. It was

also observed that the assessee company was unable to produce the parties for examination to prove the genuineness of the impugned purchases. The Investigation Wing has also specified that the addresses of the impugned parties are residential places and no business activities were being carried on there. The Ld.CIT(A) further observed that the assessee company had made an advance payment of Rs.3,23,21,000/- to M/s Motion Traders Pvt Ltd, who was one of the parties in the Koyna Dam project for A.Y. 2009-10. The assessee has substantiated this contention that the payment made for A.Y. 2010-11 to the said party was only an advance payment and that no work was undertaken in respect of Koyna Dam project in A.Y. 2010-11 and the same is evidenced from the P&L Account of the assessee company for the year ended 31/03/2010. It is further stated that no contract receipts from Koyna Dam project was obtained and that no expenses on account of the said project was claimed in A.Y. 2010-11, the impugned amount of Rs.3,23,21,000/- was not shown in the P&L Account for A.Y. 2010-11 and that on this ground, the disallowance made by the Assessing Officer for A.Y. 2010-11 for the impugned amount was deleted by the Ld.CIT(A).

12. The Ld.CIT(A) has also observed that the impugned bogus purchase was pertaining to the Koyna Dam project and that the assessee company has earned substantial revenue from the said project in the earlier years, the details of which are given below:-

S.No.	Assessment year	Revenue from Koyna Dam Project offered for taxation
1	AY 2006-07	INR 7.50 crores
2	AY 2007-08	INR 6.31 crores
3	AY 2008-09	INR 8.14 crores
4	AY 2009-10	INR 8.56 crores

5	AY 2010-11	Nil
	TOTAL	INR 30.52 crores

The Ld.CIT(A) has also specified that the Assessing Officer has not denied the work that was done by the assessee and that the income of the assessee from all these contracts was reconciled in the net profit @37.85% which amounts to 7.43% declared by the assessee company for A.Y. 2007-08. The Ld.CIT(A) has also taken into consideration the assessee's submission that there cannot be any sales without any corresponding purchases.

13. The Ld.CIT(A), while deleting the impugned addition has relied on the decision of Hon'ble jurisdictional Bombay High Court in the case of NikunjExim Enterprises (P) Ltd (2015) 372 ITR 619 (Bom) wherein it was held that the inability of the assessee to produce the suppliers is not the only criteria to show that the purchases were bogus. The Ld.CIT(A) has also relied on the decision of Shri Rattan SinghRathod (supra) wherein it was held that in the case of contract, if the details furnished by the assessee are not reliable, then estimation of net profit @8% is justified. Following the principle laid down in the said decision, the Ld.CIT(A) has estimated the net profit at 8% as prescribed in section 44AD of the I.T. Act to be reasonable in the case of civil contractors. The justification given by the Ld.CIT(A) in deleting the said addition made on account of bogus purchase and also on the estimation of net profit @8% as per the provisions of section 44AD, is satisfactory.

14. From the above observation and respectfully following the above decision, we are of the considered view that there is no infirmity in the order of the Ld.CIT(A) and that ground of appeal No.1 & 1b raised by the Revenue are dismissed.

15. The Ld.CIT(A) was right in deleting the said addition pertaining to AYs 2007-08 & 2008-09 and that in A.Y. 2010-11 since the said amount was received as an advance for the project and that the same was not shown in the P&L Account, which warrants no disallowance. We uphold the order of the Ld.CIT(A) in deleting the addition for A.Y. 2010-11.

16. Grounds 2 & 2b pertain to the deletion of addition made under section 68 of the I.T. Act and on account of unexplained cash credit (loan) by relying on the decision of Hon'ble Bombay High Court in the case of CIT vs Continental Warehousing Corporation 374 ITR 645 (Bom) on the ground that the department has filed SLP before the Apex Court and also on the ground that the Assessing Officer has questioned the genuineness of the transaction in his remand report.

17. The addition made under section 68 of the I.T. Act for A.Ys. 2007-08 to 2010-11 is on the share warrant money, advance receipt, ICD, share application money, refundable interest free security deposit, etc. taken by the assessee company in all the impugned years. The details of the addition under section 68 of the Act for the impugned years are tabulated as below:-

Assessment year	Amount in INR	Remarks
2007-08	218,35,00,000	<ul style="list-style-type: none"> Share warrant Money received from Sonata Investment Ltd
2008-09	10,18,50,000	<ul style="list-style-type: none"> Share Warrant Money received from Sonata Investment Ltd – Rs.10,12,50,000 Advance money from M/s SRM Energy Ltd – Rs.6,00,000
2009-10	54,00,00,000 (Ld.AO erroneously	<ul style="list-style-type: none"> ICD from Utility Energy Tech and Engineers Pvt Ltd – Rs.48,00,00,000 Advance money from M/s SRM

	considered the addition at Rs.54 crores instead of Rs.51 crores	Energy Ltd – Rs.3,00,00,000
2010-11	23,37,50,000	<ul style="list-style-type: none"> • Share Application money from Utility Energy Tech and Engineers Pvt Ltd – Rs. 3,87,50,000 • Refundable interest free security deposit from ILFS Transportation Network Ltd – Rs.9,50,00,000 • Vide order passed u/s 154 dated 2.1.2013 Ld.AO made further addition of Rs.10,00,00,000/-, as while passing the order u/s 143(3) he made addition in respect of share application money from Utility Energy Tech and Engineers Pvt Ltd – Rs.3,87,50,000 insted of Rs.13,87,50,000.

18. The assessee company has furnished details of party-wise amount received on account of the said transactions. It is observed that the Assessing Officer has made the said addition under section 68 of the Act on the ground that the assessee has not furnished any details pertaining to the repayments of the impugned amounts. Further to this, the Ld.CIT(A) has observed that the assessee has filed additional evidence under rule 46A of I.T. Rules, details pertaining to the repayment of loans / advance / investments on which the Assessing Officer has made addition. It is further stated that the assessee has furnished that the details of bank accounts from which the amounts were repaid to the parties. The Ld.CIT(A) has remanded this issue to the Assessing Officer for the purpose of verification of additional evidences whereby the Assessing Officer has verified the repayment details and has also issued notices

under section 133(6) of the Act to the creditors and other parties from whom the assessee has received funds for the purpose of repayment. The Ld.CIT(A) has further stated that there was no incriminating material found during search pertaining to share application money or loan amount received by the assessee company and also the fact that the statement of Shri Viren Ahuja was only on bogus purchases and was not on cash credits. It is observed that the assessee has also relied on the decision of Hon'ble jurisdictional High Court in the case of CIT vs Continental Warehousing Corporation (supra) wherein it was held that without any incriminating material obtained during search operation and which are contrary to the facts in the assessment or re-assessment, no addition could be made under section 153A of the Act. Further to this, it is observed that the assessee has furnished the documents to establish the identity and creditworthiness of the parties and genuineness of the transaction by way of copies of ledger confirmation from all the companies which had funded the assessee company, from which the share application money was paid. Copy of bank passbook of lenders through which loan / ICD money was paid was also filed. Copies of the lender companies, copies of I.T. returns in some cases, Board Resolutions, agreements in relation to the money advanced, were also filed. Upon receiving the notices under section 133(6) of the Act, the Assessing Officer had also received responses from those parties and the submitted details substantiating the impugned transactions. The Assessing Officer has also mentioned the same in his order. The Ld.CIT(A) has also relied on the decision of Hon'ble Gujarat High Court in the case of Murlidhar Lahorimal vs CIT 280 ITR 512 (Guj) which held that when the

assessee has discharged the primary onus, the source of the source cannot be questioned. The Ld.CIT(A) has also relied on the following judgements:-

1. Labh Chand Bohra vs ITO 219 CTR 57 (Raj)
2. CIT vs Dwakadish Investment Pvt Ltd – 330 ITR 298 (Del)
3. Sarogi Credit Corporation vs CIT – 103 ITR 344 (Pat)
4. DCIT vs Rohini Builders – 256 ITR 360 (Guj)
5. Aravali Trading Co vs ITO – 220 CTR 622 (Raj)
6. Nemi Chad Kothari vs CIT (2004) 264 ITR 254 (Gauh)

19. The Ld.CIT(A) has also relied on the decision of CIT(A) in the case of Bermaco Industries Ltd for A.Y. 2008-09 order dated 10/06/2015 since the repayment was made by the assessee in that case, the addition was deleted.

20. From the above observation, it is evident that the assessee has furnished required details to substantiate its claim pertaining to the addition made under section 68 of the I.T. Act. The Ld.CIT(A) has also dealt with this issue extensively. On this note, we do not find any infirmity in the order of the Ld.CIT(A) in deleting the said addition made under section 68 of the I.T. Act. In the result, these grounds of appeal filed by the Revenue are dismissed.

21. Ground 3 pertains to the deletion of addition made under section 14A r.w.r.8D of the Act by relying on the decision of the co-ordinate bench in the case of M/s Future Corporate Resources Ltd vs DCIT (OSD)-8(4), Mumbai reported in 167 ITD 33 (Mum) for the reason that the appeal is pending before the Hon'ble jurisdictional High Court. For the impugned assessment years 2007-08, 2008-09 and 2009-10, the Assessing Officer has made addition under section 14A on the ground that the expenses are not attributable to earning of

the dividend income. The Assessing Officer has made the following addition under section 14A:-

Assessment year	Amount of disallowance u/s 14A
2008-09	Rs.16,92,168
2009-10	Rs.30,35,452
2010-11	44,68,353

22. The Ld.DR contended that the Ld.CIT(A) has erred in deleting the addition made under section 14A r.w.r 8D(2) of the Act by relying on the decision of Hon'ble ITAT in the case of M/s Future Corporate Resources Ltd vs DCIT (supra). The Ld.DR submitted that as the said decision has not attained finality and is a subject matter of appeal before the Hon'ble jurisdictional High Court, the Ld.CIT(A) ought not to have relied on the said decision for the impugned addition made under section 14A r.w.r.8D. The Ld. DR relied on the decision of the co-ordinate bench in the case of ACIT vs Williamson Financial Services Ltd in ITA No. 154 – 156/Gau/2019 dated 06/07/2022. The Ld.DR further stated that the expenses are not attributable to the earning of dividend income and thereby relied on the decision of the Ld.Assessing Officer.

23. The Ld.AR, on the other hand, relied on the decision in the case of M/s Future Corporate Resources Ltd vs DCIT (supra) and stated that the disallowance under section 14A r.w.r. 8D cannot exceed the exempt income declared by the assessee company and relied on various judicial precedents to that extent.

24. Having heard both the rival submissions and perused the materials on record it is observed that the assessee company has furnished the details

pertaining to the exempt income for assessment year 2008-09, 2009-10 & 2010-11, which are tabulated below:-

AY 2-008-09	Rs. 80,160	Dividend
AY 2009-10	Rs.11,55,121	Dividend
AY 2010-11	Rs.11,36,000	Dividend of Rs.5,36,000 and long term capital gain of Rs.6,00,000

25. It is pertinent to point out that the assessee has stated that it had not made any disallowance under section 14A in the return of income for the reason that no expenses are incurred for earning the exempt income. The assessee has relied on the decision of Hon'ble Delhi High Court in the case of Joint Investment Pvt Ltd vs CIT (2015) 372 ITR 694 (Del) which has held that the disallowance under section 14A is restricted only to the disallowance of expenses incurred by the assessee in relation to exempt income. The assessee has also relied on various other decisions, which are as follows:-

- (1) M/s John Distilleries Ltd vs ITO ITA No.1429/Bang/2014 order dt 24 February, 2016
- (2) M/s Global Capital Ltd vs ACIT ITA No.6586/Del/2013
- (3) Future Corporate Resources Ltd vs DCIT (2017) 85 taxmann.com 190 (Mumbai Trib)
- (4) Nimbus Communications Ltd vs ACIT-11(1), Mumbai 47 ITR(T) 496
- (5) Original Innovative Logistics India (P) Ltd vs JCIT 153 TTJ 753 (Chennai Trib)

26. The Ld.CIT(A) in appeal by the assessee has observed that there is no interest expenses and financial charges debited in the P&L Account of the assessee company and hence, the Assessing Officer has not made any disallowance under section 14A r.w.r. 8D(2) of the I.T. Act, but has made disallowance of 0.5% of the average investment under rule 8D(2)(iii) of the I.T.

Rules, 1962. The Ld.CIT(A) has held that even if the Assessing Officer has made disallowance under section 14A r.w.r. 8D, still, substantial amount of disallowance under section 14A of the Act remains and thus, the Ld.CIT(A) has restricted the disallowance to the extent of dividend income earned by the assessee company. The Ld.CIT(A) has also placed its reliance on the coordinate bench in the case of Future Corporate Resources Ltd vs DCIT (supra) which has reiterated the principle that disallowance under section 14A is to be restricted to the extent of exempt income earned by the assessee. The Ld.CIT(A) has also relied on the decision of Nimbus Communications Ltd vs ACIT (supra) and also in the case of Joint Investments P Ltd vs CIT (2015) 372 itr 694 (Del). The Ld.CIT(A) has computed the disallowance under section 14A for the impugned assessment years tabulated below:-

Assessment Year	Disallowance u/s 14A
A.Y. 2008-09	Rs.80,160
A.Y. 2009-10	Rs.11,55,121
A.Y. 2010-11	Rs.11,36,000

27. From the above observation, it is evident that the Assessing Officer has made disallowance under section 14A r.w.r 8D(2) on the ground that the funds invested in the exempt income earning assets could not be segregated from the funds invested in the business of the assessee. Further to this, the Assessing Officer has also observed that the assessee has incurred interest cost on investments to the tune of Rs.36,69,242/-. The Ld.Assessing Officer proceeded to disallow the same under section 14A read with rule 8D(2). The Ld.CIT(A), on appeal, has restricted the same to the extent of exempt income

28. Upon perusal of the assessee's submission and the decisions cited by the

Ld.AR, we are of the considered view that there is no fallacy in the decision of the Ld.CIT(A) in restricting the disallowance only to the extent of exempt income earned by the assessee. In this context, this ground of appeal filed by the Revenue is dismissed.

ITAs No.2852/Mum/2018, 2853/Mum/2018 & 2854/Mum/2018 (Assessee's appeal)

29. These appeals filed by the assessee pertain to solitary issue of confirming the addition by estimating 8% of alleged unsupported project expenses by treating the same as bogus expenditure. As the issues in all these appeals are the same except for the quantum of addition, we pass a consolidated order on this issue in all the appeals filed by the assessee.

30. We would like to place our reliance on the decision rendered by us in the Revenue's appeals in grounds 1 & 1b wherein the Ld.CIT(A) has restricted the estimated addition @8% on alleged unsupported project expenses to be of bogus expenditure. As we have already given a detailed order in the above mentioned appeals of the Revenue on this ground by confirming the said addition on the basis of 8% estimation relying on the decision of Rattan SinghRathod (supra) wherein the assessee's nature of business was also contracts and sub contracts, we are inclined to follow the decision and thereby the estimation of net profit rate @8%, in our view, is justifiable. The relevant observation of the co-ordinate bench is as below:-

"5.14 We have given careful thought to various aspects of the matter. In our view, the arguments of the assessee that the books of account could not be rejected cannot be accepted. The assessee had shown total purchases of Rs. 2,87,57,790/- from three parties. The income tax P.A. Number given by the assessee of the two parties was found to be wrong. The proprietor of the third party was found to be a different person than the person who had signed the confirmation. Further the said party had shown turnover of only Rs.

37,91,849/- whereas the purchases claimed to be made by the assessee from the party was Rs. 1,00,02,704/-. Further, the assessee had shown the outstanding amount of Rs. 74,43,585/- payable to the party whereas the said party had shown debit of only Rs. 3,27,938/-. Under these circumstances the purchases shown by the assessee cannot be said to be supported by proper evidence. As regards the sub-contract payment to related parties, AO has placed material on record to show that the said parties had been created only on 1.1.2007 but subcontract agreements were dated 1.9.2006. They had meager capital of Rs. 50,000/- each. The assessee had not made any payment to them during the year and entire payment made by cheque in the subsequent year immediately withdrawn in cash. It has not been explained as to how those parties had done work worth Rs. 30.00 lacs in each case with meager capital of Rs. 50,000/- when the work was labour intensive. Similar was the position of other sub-contract parties. Almost the entire amount remained outstanding at the end of the year and it was not explained as to how the parties did work worth Rs. 20- 30 lacs for the assessee during the year with almost no capital. The agreement with them was dated 1.4.2006 whereas the stamp paper was dated 30.6.2006. Obviously the sub-contract charges under these circumstances cannot be said to be properly substantiated. Only making payment by cheque is not enough as the amount paid by cheque can be taken back in cash. In our view considering the facts and circumstances of the case, the accounts of the assessee in relation to contract charges and purchases can not be taken as reliable and these had been rightly rejected by the authorities below. However, it is also an established fact that the assessee had done the contract work and had shown total contract receipts of Rs. 21,14,72,874/-. The business cannot be done without purchases and other expenses, and therefore, the entire claim cannot be disallowed. We agree with CIT(A) that after rejecting the accounts, net profit has to be determined on estimate. The assessee had declared net profit rate of 6.5% . The net profit rate after considering the "disallowances of expenses and sub-contract charges by AO comes to 4.43% which is highly abnormal cannot be considered as reasonable. The assessee had given comparative cases of net profit varying from 2.93% to 9.96% as per details in para 5.8 earlier. The Id. AR for the assessee has argued that 6.65% net profit rate declared by the assessee is reasonable and net profit rate of 8% adopted by the AO is not correct as rate of 8% is to be taken under section 44AD which is applicable only in case of assessee's having turnover of less than 40.00 lacs. We are unable to accept the arguments advanced on behalf of the assessee. Section 44AD deems the net profit rate at 8% in cases where accounts are not maintained and turnover is up to Rs. 40.00 lacs. This however, does not mean that profit will lower when the turnover is more than Rs. 40.00 lacs. In fact with rise in volume, working becomes more economical and profitability may normally be higher. Each case has to be decided on its own facts and circumstances. Even in the comparable cases cited, the net profit rate had varied from 2.93% to 9.96%. These are big concerns who maintain proper accounts and also maintain quality standards. In case of the assessee as

held earlier, accounts are not reliable and therefore, in our view on the facts of the case, estimation of net profit rate of 8% by CIT(A) is justified. The order of CIT(A) is accordingly upheld."

31. From the above observation and by respectfully following the above said decision, we are inclined to dismiss this ground of appeal.

32. In the result, appeals filed by the Revenue are dismissed and the appeals filed by the assessee are dismissed.

Order pronounced in the open Court on 30th day of September, 2022.

Sd/-

sd/-

(B.R.BASKARAN)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 30/09/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai