

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2085/Chny/2014**

निर्धारण वर्ष / Assessment Year: 2008-09

M/s. Dharma Promoters (P) Ltd., ACIT
Times Partner, No. 58, Permabur v. Company Circle -I(4),
Barracks Road, Chennai.
Chennai - 600 007.

[PAN:AACCD-8247-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **2513/Chny/2017**

निर्धारण वर्ष / Assessment Year: 2008-09

M/s. Zeya Developers Pvt Ltd., ACIT
341/36A, II Floor, Mangal Sain v. Corporate Circle -3(2),
Building, Chennai -34.
Bagh Kare Khan, Kishan Ganj,
Delhi - 110 007.

[PAN:AAACZ-3444-Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **1835/Chny/2018**

निर्धारण वर्ष / Assessment Year: 2008-09

M/s. Genda Buildcons Pvt Ltd., ITO
Times Partner, No. 58, Permabur v. Corporate Ward -2(2),
Barracks Road, Vepey, Chennai -34.
Chennai - 600 007.

[PAN:AADCG-0885-B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **2514/Chny/2017**

निर्धारण वर्ष / Assessment Year: 2010-11

M/s. Dharma Promoters (P) Ltd., ITO
341/36A, II Floor, Mangal Sain v. Corporate Ward -1(4),
Building, Chennai -34.
Bagh Kare Khan, Kishan Ganj,
Delhi – 110 007.

[PAN:AACCD-8274-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **348/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2008-09

M/s. Kugel Developers P Ltd., DCIT
Times Partner, No. 58, Permabur v. Company Circle II(4),
Barracks Road, Vepery, Chennai – 34.
Chennai – 600 007.

[PAN:AADCK-3129-N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.: **2033/Chny/2018**

निर्धारण वर्ष / Assessment Year: 2008-09

ITO M/s. Genda Builders Pvt. Ltd.,
Corporate Ward -2(2), v. Times Partner, No. 58, Permabur
Chennai -34. Barracks Road, Vepery,
Chennai – 600 007.

[PAN:AADCG-0885-B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Rajiv Saxena, Advocate &
Shri. Shyam Sundar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 29.08.2022

घोषणा की तारीख/Date of Pronouncement : 28.10.2022

आदेश / O R D E R**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This bunch of five appeals filed by different assessee's and one appeal filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals) dated 30.03.2014, 04.07.2017, 20.04.2018, 24.08.2017 & 13.12.2018, and relevant to assessment years 2008-09 & 2010-11. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. At the outset, learned AR for the assessee submitted that the appeals filed by the assessee's in ITA No. 2085/Chny/2014 and ITA No. 2513/Chny/2017 are time barred by 54 days and 45 days, respectively, for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that the in ITA No. 2085/Chny/2014, the assessee could not file appeal within the time allowed under the Act, due to the fact that the business

of the company is in lull and it has not got any contract for subsequent years i.e from AY 2009-10 to 2014-15. In ITA No. 2513/Chny/2017, the assessee could not file appeal within the time allowed under the Act, due to the fact that the appellate order was received by staff persons at Chennai office who were not having any knowledge about the litigation and when the management came to know, the due date for filing an appeal already passed. The delay in filing both the appeals is neither intentional nor willful but for the unavoidable reasons, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee's submitted that the reasons given by the assessee's does not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeals filed by the assessee's may be dismissed as not maintainable.

4. Having heard both sides and considered the petitions filed by the assessee's for condonation of delay, we are of the

considered view that reasons given by the assessee's for not filing the appeals within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeals is condoned and appeals filed by the assessee's are admitted for adjudication.

ITA No: 2085/Chny/2014:

5. The assessee has raised the following grounds of appeal:

1. *"That on the fact and circumstances of the case, the impugned order is not only bad in law and nature but it also whimsical hence it is liable to be deleted.*
2. *That on the fact and circumstances of the case*
 - (i) *The Ld.CIT(A)(C)-11 has grossly erred in confirming the additions of Rs.36, 16,000/- made by the Ld. A.O. being 8% of the gross receipts of total work done of Rs.4,52,00,000/- ; .*
 - (ii) *the Ld.CIT(A)(C)-11 has erred in upholding the 8% of the income of total work done of Rs. 4,52,00,000/- in view of the facts that the Ld. ACIT has not rejected the books of accounts and has not controverted the submissions made by the assessee company without a cogent reasons or facts being brought on records;*
 - (iii) *The Ld. CIT(A)(C)-11 has erred in ignoring the evidences placed by the assessee in form of list of workers to whom wages were paid; and*
3. *The Ld. CIT(A)(C)-11 has grossly erred by enhancing and thereby treating the work done as income of the assessee in view of the following facts:-*
 - a). *On physical verification at different sites of work done by the assessee, the report of officer visited the fields and local enquires conducted by them and in most of the cases the report inscribes the work may have been done that has been totally ignored by*

the Ld. CIT(A)(C)-11 inspite of the submissions made by the AR of the appellant in confronting the remand report. A physical verification was conducted by the investigation wing of the Department;

- b) the Ld. CIT(A)(C)-11 has also erred in ignoring the vital facts reported by the investigation wing which clearly indicated that the work has been done by the assessee.*
- c). the Ld.CIT(A)(C)-II has failed to justify the addition in view of the fact that accounts were audited and how the whole of the work done by the assessee has become the taxable income of the assessee.*
- 4. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal."*

6. The brief facts of the case are that, the assessee company is engaged in the business of civil construction work, filed its return of income for the assessment year 2008-09 on 26.09.2008, declaring total income of Rs. 3,141/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has only one item of income from operations under the head 'land development work execution' and the same has been received from M/s. PACL India Ltd., a Delhi based company. The AO, further noticed that the assessee has debited total expenditure of Rs. 4,51,96,859/- and shown net profit at Rs. 3,141/-. The assessee was called upon to explain nature of works carried out to generate income from operations and also details of expenditure debited into profit and loss account. In

response, the assessee has filed work order issued by M/s. PACL India Ltd., for carrying out land leveling work and total contract was valued at Rs. 4,52,00,000/-. The assessee had also filed copies of invoices raised for different dates starting from 23.12.2007 to 31.03.2008. The assessee has furnished a ledger copy of land development expenses and claimed that, it has incurred development expenditure from 15.12.2007 to 31.03.2008, and argued that the company has undertaken contract work for M/s. PACL India Ltd and as per said work order, scope of work includes land leveling work for 646 acres @ 70,000/- per acre. The assessee had also filed bank statements and explained that M/s. PACL India Ltd., has paid after deducting applicable TDS, and the assessee has engaged labourers locally and carried out the work.

7. The AO, however, was not convinced with explanation furnished by the assessee and according to the AO, there is serious doubt about nature and scope of work carried out by the assessee for M/s. PACL India Ltd., and also various expenditure incurred for development work. The AO, further noted that the

assessee claims to have received a sum of Rs. 4.52 crores within a short period of about 60 days and also claims to have spent the entire amount within a short period by a daily average rate of Rs. 4.2 lakhs, that too entire amount in cash only. The AO had discussed the issue at length, in light of work order issued by PACL India Ltd., place of work and place of business of the assessee and came to a conclusion that the so called contract awarded by M/s. PACL India Ltd., and expenditure incurred for said contract is not genuine and the assessee could not establish genuineness of the transactions between M/s. PACL India Ltd. Therefore, rejected arguments of the assessee and estimated 8% profit on total income received from M/s. PACL India Ltd., and made addition of Rs. 36,16,000/-. The relevant findings of the AO are as under:

"10. Now, if we have a look at the overall background of this case, the details filed in the return, the details filed during the scrutiny proceedings etc., the following facts emerge.

- a) The assessee has received an amount of Rs.4,52,00,000/within a short period of about 60 days in 25 installments of around Rs.18,00,000/- from a single company said to be for the purpose of carrying out land development work.
- b) The assessee has withdrawn this entire amount from the bank on different dates which in almost every case is on the same day or within one or two days, by way of possibly bearer cheques, since on many dates the narration in the bank

statement says 'paid to Ashok Kumar' whereas, the ledger copy of the assessee indicates different names on different dates. The Authorised Representative also could not conclusively clarify the identity of the person Shri Ashok Kumar and Authorised Representative simply informed that he may be supervisor who withdrew money to pay labourers. The ultimate destination of the money withdrawn is a big question mark.

- c) The ledger copy of land development expenses furnished by the assessee indicates that from the period 15-12-2007 to 31-03-2008, on every **day**, the assessee has spent about Rs.4.20 lakhs on labour payments in cash whereas the muster roll furnished by the assessee for the month of march shows that on any single day he could not have spent more than 2.5 lakhs in the month of march as only a maximum 1668 labourers at the rate of Rs.150 per day were said to be employed. So the total expenditure for the day could only be a maximum of 2.5 lakhs (1668X150).
- d) The labour payment details furnished by the assessee by way of a muster roll only for the month of March, 2008 shows a 11st of 1668 persons employed every day @ Rs.150 per person per day. A simple arithmetical calculation shows that as per this muster roll, the assessee could have disbursed only an amount of Rs.77,56,200/- (1668 x 150 x 31), In the month of March, 2008, even assuming that all the labourers have worked on all the 31 days without any leave. That is, @ Rs.150 per person for 31 days the total amount per labourer comes to Rs.4,650/-. This multiplied by the number of labourers namely 1668 comes to a total amount of Rs.77,56,200/-. But, the muster roll furnished by the assessee shows that all of them have worked only for days ranging from 25 to 28. The maximum amount supposed to have been disbursed to a labourer In the month of March is only Rs.4,200/-. (28 x 150), Now, Instead of Rs.4;650/· if we adopt Rs.4,200/- per labourer for the month of March, then the maximum disbursement could only be Rs. 70,05,600/-. However, as per the ledger of land development expenses furnished by the assessee for the month of March starting from **1** of March to **31** March, the assessee has shown a labour payment of about Rs.1.30 crores which is really strange and the balance of about Rs.60,00,000/- is totally not explained. When the assessee was specifically asked to produce the muster roll ___ if any, for the earlier month, the assessee has expressed Its

Inability to furnish the same. Thus, the entire labour payment supposed to have been incurred raised lot of questions which are unanswered by the assessee regarding Its genuineness, probability etc.

- e) Till the very end of the assessment proceedings, in spite of repeated opportunities the assessee could not say anything about the place where the work was carried out and only in its reply on 27-12-2010 as reproduced above, the assessee has given a list of about 15 villages In Madhya Pradesh where the work was supposed to have been done. Mere names of some districts without any supporting documents do not mean anything.
- f) All the bills raised by the assessee which are all identical says that It is for "charges towards agricultural land leveling / land filling / digging / fencing and soil cost work done at your site". Nowhere in the bills raised by the assessee it Is said that the expenses are exclusively towards labour charges / supply of labour though these works mentioned by the assessee may involve labour. All along, the assessee was not taking a stand that the entire payment was only towards labour charges. Only after a specific questionnaire was issued as elaborated above on 20-12-2010 asking for bills for various Items, materials like sand, rubbish, bills for hiring machineries etc. the assessee /as turned around and in Its reply dated 22-12-2010 has said that only supply of labour is undertaken by the company and also enclosed the labour register / muster roll for the month of March, 2008 along with his reply. The deficiencies in the labour bills and the improbabilities of the labour payments have already been elaborated In Point No.d.above. Thus, the stand taken DY the assessee which shifts from time to time based on the questions raised, leaves gaping holes when It comes to the genuineness of the transactions:

11. To summarise, looking at the overall dubious circumstances in which the assessee has received an amount of about Rs.4.5 crores within a short period of about 60 days and also claims to have spent the entire money within such short 'period at a dally average rate of about Rs.4.2 lakhs, that too the entire amount in cash only, none of them said to be liable for TDS u/s. 194C as contract payments, and supposed to be for the purpose of daily wage payment to about 1600labourers, all assembled at a particular place without any clarity On their mode of transportation, accommodation etc., without any

synchronisation between the amount shown In the muster roll furnished and the actual amount said to have been Incurred in a month, without utilizing a single machinery, without availing the services of qualified professionals like, supervisors etc. at least whose salaries should attract TDS, without using a single material even basic things like sand, rubbish etc., it is improbable to even think that the assessee could have envisaged to carry out the sort of work for which he has raised so many bills running Into Rs.18 lakhs minimum In. each bill and totaling to about Rs.4.5 crores, leave alone actually carrying out those work. Therefore, it leaves me In no doubt that the entire transactions are not genuine and that the assessee could not have carried out any work as claimed and the only reason or the motive that could be attributed for this entire gamut of concocted transactions would be to facilitate another assessee to evade lawful dues to the Department by resorting to siphoning of funds In the garb of Incurring expenditure towards construction work and In this connection to lend an iota of genuineness to these bogus transactions / arrangement, TDS has been done by the other company M/s. PACL India Ltd. which in any case has been claimed as refund almost In entirety by our assessee company.

12. It is also a very important factor that there are two other similar companies functioning from the same address of this assessee with same two directors, in respect of which scrutiny assessment Is done by the undersigned for the AY 08-09, wherein the facts are absolutely identical, one vital common factor being the similar gross receipts from the company PACL. The names of those two companies are M/s Armada Builders Privee Limited and M/s Amu Builders Private Ltd. and an elaborate assessment orders u/s 143(3) are passed In those cases also along similar lines. This fact also "strengthens the conviction that the transaction are not genuine.

13. A situation now arises that if there is no business activity as claimed by the assessee then, the income of the assessee would also be nil in simpler terms. But, the Department need not be constrained by this because, what has been done by the assessee Is to accommodate another company to siphon *off* funds and in this way for its roll of accommodator, a certain percentage of contract value certainly? would have been granted and agreed upon. Taking into account the general market rate in this line of activity, the income out *of* this arrangement to the assessee is estimated at 8% out of the

total bogus bills raised by the assessee towards contract which comes to Rs.36,16,000/- (8% of Rs.4,52,00,000).

14. Accordingly, the assessment is completed

(a) Holding that the assessee has not done any activity said to have been done to incur an expenditure of Rs.4.51 crores and that It Is only an accommodation to facilitate another company to book expenditure and

(b) Estimating the assessee's income at Rs. 36,16,000/- out of the activity of illegal arrangement or accommodation."

8. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its arguments taken before the AO and submitted that except suspicion and surmise, the AO has not brought on record any cogent evidence to disprove claim of the assessee, that it has carried out civil construction work for M/s. PACL India Ltd., and also has received income from operations. The AO had also disbelieved expenditure incurred for carrying out civil construction work only on the ground that the entire expenditure was incurred in cash, ignoring fact that the scope of work is only filling of land to make it level and thus, the assessee needs to incur expenditure towards labour charges in cash on daily basis. During the course of appellate proceedings, the Ld. CIT(A) had issued commission to ADIT, Investigation Unit,

Hyderabad, who conducted enquiries to find out whether the land development work was actually carried out by M/s. Dharma Promoter (P) Ltd during the financial year 2007-08 relevant to assessment year 2008-09. The ADIT, Investigation Unit, Hyderabad vide its letter dated 18.03.2013 submitted that there is no evidence of any kind of work carried out in the impugned land for leveling, and further, villagers are not aware of the land by survey numbers, but they could identify land belonging to M/s. PACL India Ltd. The Ld. CIT(A) on the basis of facts brought on record by the AO and also investigation report of ADIT, Investigation Unit, Hyderabad, issued an enhanced notice to the assessee to make additions towards total income received from M/s. PACL India Ltd., on the ground that there is no dispute with regard to receipt of money by the appellant from M/s. PACL India Ltd., however, the expenditure claimed out of said receipt is not proved by the appellant and thus, the same is not allowable as deduction.

9. The assessee has contested enhancement notice issued by the CIT(A), and submitted that it has furnished all evidence to

prove carrying out of civil work for M/s. PACL India Ltd., for their land at Nizambad District, as per which, the assessee has carried out land filling works for 646 acres @ 70,000/- per acre. The assessee had also furnished work order issued by the principal, expenditure incurred for carrying out work at site and also muster roll for payment of wages to laborers for carrying out work. The assessee had also disputed report of ADIT, Investigation Unit, and argued that whether any civil work is carried out in the land cannot be ascertained after a period of 6 years, because the ADIT, Inv. Unit carried out inspection in the year 2013, whereas, the assessee has carried out civil work in the year 2007-08.

10. The Ld. CIT(A) after considering relevant submissions of the assessee and also taken note of various facts, and further by following certain judicial precedents held that the assessee could not substantiate incurring of various expenditure for carrying out civil works with necessary evidence. The CIT(A) further observed that the AO for reasons discussed in the assessment order has rightly not believed or accepted claim of the assessee with regard

to its work having actually carried out in land development work on the land belonging to M/s. PACL India Ltd. Further, the assessee had also not able to furnish necessary evidence for incurring huge expenditure for carrying out said work. Therefore, the Ld.CIT(A) opined that the AO has erred in bringing addition of only 8% of the total receipts and thus, enhanced the assessment, and directed the AO to make addition towards total amount received from M/s. PACL India Ltd., amounting to Rs. 4,52,00,000/-. The relevant findings of the CIT(A) are as under:

5.4 I have carefully considered the submissions of the appellant vis-a vis the facts finding report as per the enquiries were conducted through the investigation wing as also the facts recorded in the assessment order, as discussed above. The appellant has mainly been harping about the time lag between the development work claimed to have been carried out and the enquiries having been conducted now. Apart from this, the appellant is taking support from the language used in the aforesaid report to state that as per the report of the investigation wing itself some work had been done though no major work had been carried out. Apart from making these arguments the appellant has not brought any material or evidence on record to show that the said development work had actually been carried out by the appellant on the aforesaid land belonging to M/s PACL. The aforesaid development work claimed to have been carried on by the appellant, undisputedly, as per the assessment order, has been completed in a period of about three months on which an expenditure of Rs.4,51,96,859/- is claimed to have been incurred at the same is claimed to be on account of manual labour. The appellant, obviously, would not have carried the labour but must have engaged the labour locally. When such a huge number of

manual labour is required for a work in villages, everyone in the village would certainly know about the same. The appellant being an outsider in those villages would have engaged the labour through the village heads or smalltime contractors etc. The appellant, therefore, could have proved its claim of having actually carried out the so-called land development work. The discrepancies with regard to the receipts of money in installments by the appellant from M/ s PACL visa-vis the expenditure and the difference of expenditure worked out by the AO as admitted total number of Labour employed at admitted wage rate for March month, and recorded by the AO in the assessment order and as discussed above have not been controverted or explained by the appellant during the course of appellate proceedings. Similarly the other discrepancies as required by the AO in the assessment order, as discussed above, have also not been explained by the appellant during the course of appeal proceedings.

The AO, in the assessment order has categorically discussed that all the invoices the nature of work carried out is mentioned as "charges towards agricultural land leveling, land filling, digging, fencing and soil cost work done at your site", however, the appellant in the above discussed submissions has mentioned that it had not claimed that any fencing work was carried on by.

During the course of appeal proceedings, the AR of the appellant was specially asked as to whether the appellant could prove its claim of having actually carried out the said development work at the places by taking physical visits to those places. To this the AR submitted that the work had been done 6-7 years back and the persons who were in charge of carrying out the work and/or to supervise the work have also left the job once the contract was over. Therefore the opportunity provided during the course of appeal to prove the claim of having actually carried out the land development work was also not availed by the appellant. With regard to the enhancement of income, the AR of the appellant relied on the written submissions, as discussed above.

It is a settled law that in order to claim any expenditure under section 37 of the Act, the onus to prove that such expenditure has been incurred wholly and exclusively for the purposes of the business lies on the assessee. In this context, it is considered pertinent to reproduce the relevant extract of the decision of Hon'able High Court of Bombay in the case of Ramanand Sagar v. Deputy Commissioner of Income-tax [2002] 122 TAXMAN 152 (BOM.):

" ...10. It would be convenient before we consider the issue to refer to the relevant provisions of the Act and to analyze the same. Section 37 of the Act deals with the question relating to the allowability of the expenditure incurred for the purposes of business. The onus of proof is upon the assessee to prove each of the following ingredients before the expenditure can be allowed as deduction :

(a) The item of expenditure not being of the nature described under sections 30 to 36 of the Act;

(b) The item of expenditure must not be in the nature of capital or personal expenses of the assessee;

(c) the expenditure must be laid out wholly and exclusively for the purposes of business or profession.

If the assessee fails to satisfy any of these tests, the expenditure claimed is not allowable. The Assessing Officer is duty bound to consider reasonableness of the expenditure including the bona fide nature of any item of expenditure and/or its quantum to the extent it may throw light on the bona fide nature.

11. *The mere fact that the accounts of the assessee contain debit and that the debit has been duly authorised on behalf of the assessee will not make the expenses deductible from the taxable profits. The Assessing Officer is entitled to find out that the sums so paid are not wholly and exclusively laid out for the business of the assessee. In fact, it is his duty to apply his mind to this question. He is entitled to disallow any sum which may be held not for the purposes of business, e.g., payment in utter disregard of the value of the corresponding goods or services and- 1 / satisfactory explanation for such disregard. To put it in another way, the mere fact that the*

payment has been made under a contract is not conclusive of the expenditure being laid out wholly and exclusively for the purposes of the business ... "

*In the present case of the appellant no complete supporting document or evidence has been adduced either before the AO or before me even to show that the expenditure had actually been incurred for the purposes of appellant's business. In view of the above stated facts of the case the ratio of the decision of the Hon'ble High Court of Bombay in the case of Ramanand Sagar (supra) is squarely applicable. The AO, for the detailed reasons discussed in the assessment order, as discussed above, has rightly not believed or accepted the claim of the appellant with regard to its having actually carried out any land development work on the land belonging to M/s PACL and with regard to its having incurred huge expenditure of Rs. 4.51 crores on the said alleged land development. However the AO has brought to tax only 8% of the total receipts of the appellant whereas in my considered view in the absence of any material or evidence produced by the appellant to discharge its onus that it had actually carried out the land development work and had actually incurred the aforesaid claimed expenditure of Rs. 4.51 crores, the whole of receipts of the appellant amounting to Rs. 4.52 crores from M/ s PACL represent appellant's income liable to income tax irrespective of the fact whether or not the appellant had defrauded M/s PACL. Therefore as against the income of Rs. 36,16,000/- assessed by the AO, the appellant's income that is liable to taxation is held to be Rs. 4.52 crores. This results in **enhancement** of income of the appellant by **Rs. 4,15,84,000/-** (4,52,00,000-36,16,000). The AO, with consequential interests, under the provisions of the Act, as applicable.*

*After considering the submission on all grounds of appeal, the appeal is **dismissed** and the income of the appellant is **enhanced**, as discussed above."*

11. The Ld. AR for the assessee submitted that, the Ld. CIT(A) grossly erred in enhancing the assessment and making addition towards amount received from M/s. PACL India Ltd., as income of the assessee without appreciating the fact that the assessee has filed various details including work order issued by M/s. PACL India Ltd., bills submitted by the assessee, payment details and necessary TDS certificate issued by M/s. PACL India Ltd., for deducting applicable TDS on payment made to the assessee. The Ld. Counsel for the assessee submitted that except doubts, the AO had not brought any evidence on record to disprove claim of the assessee that it has carried out land filling works for land held by M/s. PACL India Ltd., in Nizambad District. The AO never disputed fact that the assessee has furnished all possible evidences, however, disbelieved evidence filed by the assessee only on the ground that expenditure has been incurred in cash and money has been drawn by person of M/s. PACL India Ltd. The learned AR further, submitted that if you consider nature of work carried out by the assessee and place of work, the assessee has carried out land filling work for land held by the principal in Nizambad District in a remote place, where the assessee has

engaged local laborers on daily wage basis and thus, the assessee has incurred expenditure in cash for payment of wages to the laborers. Since, nature and scope of work is filling of land, the assessee has to incur majority of expenses for labour charges, vehicle hire charges and other related expenses. The Assessing Officer, after considering relevant facts has rightly estimated 8% profit on total income received by the assessee. However, the CIT(A) on the basis of investigation report of ADIT, Inv. Unit, Hyderabad, opined that no work has been carried out in the impugned land held by M/s. PACL India Ltd., and further, the assessee could not substantiate expenditure debited into the profit and loss account. Therefore, the entire amount received from M/s. PACL India Ltd., has been taxed as income of the assessee.

12. The Ld. Counsel for the assessee referring to various judicial precedents, including decision of the ITAT., Delhi Benches in the case of M/s. Inderjit Mehta Constructions vs ACIT in ITA No. 32/Asr/2017, submitted that an identical issue has been considered by the Tribunal and after considering fact that

the appellant has received contract income from M/s. PACL India Ltd., had estimated net profit of 2.31% of total contract receipts of the assessee. The AR, further referring to the decision of Hon'ble High Court in the case of CIT vs. M/s. PACL India Ltd., submitted that the department has assessed M/s. PACL India Ltd., and made additions towards entire amount of contract payments made to different companies, including assessee company. The company has challenged additions made by the Assessing Officer before the Tribunal. The Tribunal, after considering relevant facts, came to the conclusion that payment made to contractors for various civil works is genuine in nature, and the AO has not brought on record any evidence during search operations with regard to the land development expenses, claimed is bogus in nature. Since, the Hon'ble High Court has considered payments made by M/s. PACL India Ltd., for land filling works is genuine in nature, in the hands of the assessee, the same cannot be treated as income.

13. The Ld. DR on the other hand, submitted that the AO has brought various facts to disbelieve arguments of the assessee

and further, there is serious doubt about transactions between M/s. PACL India Ltd., and the assessee. Further, the assessee could not file any evidence to prove expenditure debited into the profit and loss account. Except work order, no other evidence, including supporting bills and vouchers for various expenditure debited into the profit and loss account was not filed. Further, the assessee was operating bank account in Delhi and amount has been withdrawn by one Mr. Ashok Kumar for all the companies, whereas claims to have made payments in cash in Nizambad District, Andhra Pradesh, without establishing how cash has been transported from Delhi to Nizambad. The assessee claims to have incurred roughly Rs. 4.2 Lakhs per day for various expenses, but, no evidence was filed before the AO. The assessee claims to have executed fencing work in the land. However, there is no evidence of purchase of any material for fencing work. From the above, it is clear that the claim of the assessee, that it has received contract receipts from M/s. PACL India Ltd., and further has incurred various expenditure for contract work is bogus and thus, the CIT(A) has rightly made

additions towards entire amount received from M/s. PACL India Ltd., and therefore, their order should be upheld.

14. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to impugned disputes are that M/s. PACL India Ltd., had issued work order for leveling and other civil works for total 646 acres of land @ Rs. 70,000/- per acre. As per said work order, the scope of work includes development work for agricultural land right from filling with earth, spreading, leveling, ramming, watering, fencing etc. The terms and conditions of agreement between the parties clearly specify nature of work to be carried out and process of payments for bills. The assessee has filed copy of work order issued by M/s. PACL India Ltd., and as per said work order, the assessee has undertaken civil construction work for land leveling and other works for 646 acres of land in Nizambad District, Andhra Pradesh. The assessee had also furnished bills issued to M/s. PACL India Ltd., and other relevant evidences, including bank statement, evidence of payments made by M/s. PACL India Ltd.,

through proper banking channel. The assessee had also furnished bank statement to prove money withdrawn periodically from bank account and incurred for various expenditure, including labour charges in cash. The AO never disputed these facts. In fact, the AO accepted that the assessee has furnished copy of work order, bills submitted to M/s. PACL India Ltd., bank statements, TDS certificate, bills and vouchers for various expenditure and muster roll for payment of wages to laborers. However, disbelieved all evidences filed by the assessee only for the reason that entire amount has been incurred in cash and also, the assessee was using bank account at Delhi, whereas claims to have incurred expenditure in the state of Andhra Pradesh. Except this, no other cogent reason was given by the AO to disregard various evidences filed by the assessee. Further, the Ld. CIT(A) had gone one step ahead and enhanced the assessment to total contract receipts, only on the basis of investigation report of ADIT, Inv. Unit, Hyderabad which has been dated in the year 2013 and as per said report, the Ld. CIT(A) has directed the ADIT, Inv. Unit, Hyderabad, to carry out necessary enquiries to ascertain whether any work was carried in

the land. The ADIT, Inv. Unit, Hyderabad, submitted their report vide letter dated 18.03.2013 and observed that there is no fencing work carried out in those land, and no traces of material required for fencing i.e., barbed wire etc. Therefore, he concluded that no fencing work was done on the said land. He further, reported that no major work of spreading, leveling and ramming is carried out in the agricultural land. Further, villagers are not aware of the land by survey numbers but they could identify the land belonging to M/s. PACL India Ltd. Therefore, from the above observations, the CIT(A) came to the conclusion that the assessee could not establish with necessary evidence incurring various expenditure for said work and thus, rejected the arguments of the assessee and made additions towards total contract receipts received from M/s. PACL India Ltd.

15. We have given our thoughtful consideration to the reasons given by the AO as well as the CIT(A), in light of various arguments advanced by the Id. Counsel for the assessee. We find that the sole basis for the AO and CIT(A) to draw a adverse inference against the assessee, is certain doubts about the

nature of work carried out by the assessee and manner in which said work has been carried out. The assessee is a Chennai based company and has undertaken civil works for M/s. PACL India Ltd., which is a Delhi based company. The work has been carried out in Nizambad District, in the state of Andhra Pradesh. If you see the nature of work carried out by the assessee and place of work, the assessee has undertaken civil construction work of leveling of land and other works like filling of earth, spreading, fencing etc. The assessee has incurred various expenditure including procurement of material, hire charges of vehicle and other equipment and predominantly labour charges for carrying out said work. The assessee has furnished muster roll for payment of wages for each dates and obtained signatures of laborers for disbursement of wages. The AO had doubt about the muster roll furnished by the assessee on the basis of certain names appeared in the muster roll, and argued that if you see the names of the laborers, it appears that they are from North India, whereas, the assessee claims to have engaged laborers from locals in the area of Nizambad District. We do not find any substance in the observations of the AO for simple reason that

there is no bar under any law for a person to go to different place and work in a different place. Further, it was not a case of AO that he has enquired with particular labour and ascertained his place of residence and place of work. Therefore, merely because of names appeared to be a North Indian name, it cannot be said that the assessee has not engaged any laborers for carrying out work. Further, on the basis of one or two names, it cannot be said that the assessee has not engaged any laborers and carried out necessary work. In this case, the assessee has furnished list of workers employed for carrying out a work and obtained the signatures which goes to prove the fact beyond doubt that there is an evidence to prove payment of wages in cash.

16. Coming back to other observations of the AO and CIT(A), on bank operations of the assessee. No doubt, the assessee must have opened bank account in Delhi and withdrawn cash from said bank account. There is no mandate under any law to open bank account in a place where the assessee carries out its work, and further, it is for the assessee to decide its affairs which conveniently suits its operations. Therefore, on the basis of

suspicion and surmises no adverse inference can be drawn against assessee. Coming back to the observations of the CIT(A) on the basis of report of ADIT, Inv. Unit, Hyderabad. First of all, the ADIT, Inv. Unit, Hyderabad carried out inspection in the year 2013, which is almost six years from the date of assessee claims to have carried out civil works in the land belonging to M/s. PACL India Ltd. Further, the ADIT, Inv. Unit, Hyderabad report confirmed land held by M/s. PACL India Ltd. However, makes it clear that there is no evidence of carrying out any kind of work in the said land. Once again, the CIT(A) erred in drawing adverse inference on the basis of report of ADIT, Inv. Unit, Hyderabad, because by the time gap of six years from the date of work executed there is assessee and the report of ADIT, Inv. Unit, Hyderabad. Therefore, if you consider nature of civil works carried out by the assessee, there is every possibility of any identity of work carried out by the assessee due to various reasons including rains etc. Therefore, only on the basis of report of ADIT, Inv. Unit, Hyderabad, adverse inference cannot be drawn. Therefore, in our considered view, the CIT(A) has

completely erred in enhancement of income on the basis of report of ADIT, Inv. Unit, Hyderabad.

17. Having said so, let us come back to the evidences filed by the assessee. The assessee has filed all evidences, including work order issued by M/s. PACL India Ltd., which specifies nature and scope of work and also terms and conditions of agreement between the parties. The assessee had also furnished details of bills submitted to M/s. PACL India Ltd. M/s. PACL India Ltd., has paid amount through proper banking channel after deducting applicable TDS as per law. The assessee had also furnished bank statement, and other bills to prove incurring of expenditure. However, could not rebut the observations made by the AO with regard to lacona in various evidences filed by the assessee including cash drawn by one Mr. Ashok Kumar for all companies and also discrepancy in evidences filed by the assessee. Therefore, from the above it is very clear that the assessee could not satisfactorily explain and justify expenditure debited in the profit and loss account with necessary evidence. Under these facts and circumstances, the only option left with us, is to resolve

controversy by estimating profit from contract receipts, because the AO has not disputed income of the assessee which has come from M/s. PACL India Ltd. The AO has also not disbelieved the claim of the assessee with regard to various expenditure, however, rejected the arguments of the assessee on the basis of suspicion and surmise. Therefore, considering facts and circumstances of the case, and also taking various facts including the fact that the Hon'ble Delhi High Court in the case of CIT vs M/s. PACL India Ltd., has taken a view that expenditure incurred by M/s. PACL India Ltd., towards land development work is genuine in nature, we are of the considered view that a reasonable profit needs to be estimated on total contract receipts of the assessee and this view is supported by the decision of ITAT Delhi in the case of M/s. Inderjit Mehta Constructions vs ACIT in ITA No. 32/Asr/2017, supra, where the Tribunal after considering the work order issued by M/s. PACL India Ltd., for similar kind of work like land leveling and filling with earth work etc, estimated profit from contract receipts.

18. In this case, the Assessing Officer, after considering relevant facts has estimated 8% profit on total contract receipts for the impugned assessment year. The CIT(A) has enhanced assessment and made additions towards 100% contract receipts received from M/s. PACL India Ltd. As per settled principles of law, by the decisions of various courts, it is clear that in case of unproved purchase only profit element embedded therein needs to be taxed, but not total purchase as income. The Hon'ble Gujarat High Court in the case of CIT vs Smith 356 ITR 451, held that while estimating profit, the nature of business of the assessee needs to be considered. In this case, the assessee is into the business of civil construction work and in this kind of business, the industry average profit ranges from 5% to 10%. In fact, the statute by way of statutory provisions u/s. 44AD of the Act, has prescribed the net profit of 8%, in case assessee engaged in the business of civil construction work, although, said provisions applicable to a similar business. Therefore, considering the nature of business of the assessee and also fact that both the parties could not substantiate their case with necessary reasons, we are of the considered view that 8% profit

on total contract receipts from M/s. PACL India Ltd., would meet ends of the justice. Hence, we reverse order passed by the Ld. CIT(A) and direct the AO to estimate 8% profit on total contract receipts received by the assessee from M/s. PACL India Ltd.

19. In the result, the appeal in ITA No. 2085/Chny/2014 filed by the assessee is partly allowed.

ITA NOs: 2513/Chny/2017, 1835/Chny/2018,

348/Chny/2019 & 2033/Chny/2018:

20. The facts and issues involved in these appeals are identical to facts and issues which we have considered in ITA NO. 2085/Chny/2014 for assessment year 2008-09 in the case of M/s. Dharma Promoters (P) Ltd. In these cases, the assessee's claims to have received contract receipts from M/s. PACL India Ltd., and has incurred various expenditure for said works. The AO disallowed total expenditure debited under the head land development expenses, on the ground that the assessee could not substantiate the expenditure debited into the profit and loss account with necessary evidences. We find, that an identical

issue had been considered by us in the case of M/s. Dharma Promoters (P) Ltd in ITA NO. 2085/Chny/2014, where under similar set of facts and also an identical agreement between the assessee with M/s. PACL India Ltd., we held that neither the assessee's substantiated expenditure debited into profit and loss account with necessary evidences nor the AO has concluded that expenditure incurred by the assessee is bogus in nature, except expressing certain doubts on suspicion and surmise manner and thus, we estimated 8% profit on total contract receipts received by the assessee from M/s. PACL India Ltd. Since, facts in these cases are identical to the facts, which we had considered in the case of M/s. Dharma Promoters (P) Ltd in ITA NO. 2085/Chny/2014, the reasons given by us in preceding paragraph no. 14 to 18, in the case of M/s. Dharma Promoters (P) Ltd in ITA NO. 2085/Chny/2014, is equally applicable to these appeals, as well. Therefore, for similar reasons, we reverse findings of the CIT(A) and direct the AO to estimate 8% net profit on total contract receipts received by the assessee from M/s. PACL India Ltd.

21. In the result, appeals filed by the assessee are partly allowed and the appeal filed by the revenue in ITA No. 2033/Chny/2018 is partly allowed.

ITA NO: 2514/CHNY/2017:

22. The assessee has raised the following grounds of appeals:

1. *"For that the order of the Commissioner of Income-tax (Appeals) 5, Chennai is contrary to law, facts and circumstances of the case and is opposed to the principles of natural justice.*
2. *For that the Appellant had submits that it had not earned any income exempt from the tax and the Ld AO made additions of Rs. 3,713/- u/s 14A read with Rule 8D of the Act illegally and without considering the facts the Hon'ble CIT(A)-5 has confirmed the action of AO, which is illegal and contrary to the principal of natural justice and is bad in law, therefore liable to be deleted.*
3. *For that the Ld. AO has grossly erred in making additions u/s 68 of the Act, to the tune of Rs. 63,88,000/-, on account of deposits made by the Appellant to its bank and Hon'ble CIT(A)-5 illegally confirmed the action of the AO, without considering the facts that the same was not unexplained cash credit, proper evidences were submitted on record and replies u/s 133(6) of the Act have been received by the Ld. AO during the assessment, therefore the Hon'ble CIT(A)-5 has not done justice to the appellant in confirming the action of AO, which is illegal and contrary to the principal of natural justice and is bad in law, therefore liable to be deleted.*
4. *For that the CIT (Appeals) 5, Chennai having powers co-terminus that of Ld AO had not considered the submissions of the Appellant and relied on the AO' s observations for sustaining the additions is contrary to the facts of the Appellant's case.*
5. *For these grounds and such other ground that maybe adduced before or during the hearing of the appeal with the leave of this respectful authority, may be pleased to*

- (a) *Delete the additions of Rs. 63,88,000/- being the explained deposits in the bank account and also delete the additions of Rs. 3,713/- made under section 14A under the provisions of the Income-tax Act, 1961; OR*
- (b) *Pass such other orders as this respectful authority may deem fit."*

23. The first issue that came up for our consideration from ground no. 2 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules, 1962). The assessee has not earned exempt income during the financial year relevant to assessment year 2010-11. The AO has disallowed expenditure u/s. 14A r.w.r. 8D @ 0.5% of investments which yielding any exempt income which works to Rs. 3,713/-.

24. Having heard both the sides, and considered relevant material on record, we find, in absence of exempt income, no disallowance can be made u/s. 14A r.w.r. 8D of the Rules, 1962 and this legal principle is supported by the decision of Hon'ble Madras High Court in the case of M/s. Redington (India) Ltd vs ACIT, [2017] 77 Taxmann.com 257 (Mad), where it has been clearly held that if no exempt income in the impugned

assessment year, then no disallowance can be made u/s. 14A r.w.r. 8D of the Rules, 1962. The Hon'ble Supreme Court in the case of CIT vs Chettinad Logistics Pvt. Ltd., [2018] 95 Taxmann.com 250 (SC), also clearly held that, in absence of exempt income, no disallowance can be made u/s. 14A r.w.r. 8D of the Rules, 1962. In this case, there is no dispute with regard to the fact that the assessee has not earned any exempt income and thus, in absence of any exempt income, the question of disallowance of expenditure relatable to exempt income does not arise. Therefore, we direct the AO to delete the addition made towards disallowance u/s. 14A r.w.r. 8D of the Rules, 1962.

25. The next issue that came up for our consideration is addition towards cash deposits into the bank account u/s. 68 of the Act amounting to Rs. 63,88,000/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received a total sum of Rs. 63,88,000/- by way of cash on various dates from various persons. The assessee was called upon to explain the nature and source of cash deposits, and in response, neither the assessee offered any explanation

nor sought any extension of time to produce details. Therefore, the AO has made addition towards cash deposits u/s. 68 of the Act. The assessee carried the matter in appeal before the first appellate authority, and before the CIT(A), the assessee did not explain the source for cash deposits and thus, the CIT(A) sustained the addition made by the AO. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

26. The Ld. AR for the assessee referring to chart depicting availability of cash after withdrawal from bank submitted that the assessee had cash withdrawals from same bank account in earlier occasions and also received certain loans from various parties. The assessee could not explain the source of cash deposits before the AO because of insufficient evidence. Therefore, an opportunity may be given to the assessee to go back to the AO to explain nature and source of cash deposits into the bank account.

27. Therefore, Ld. DR on the other hand, supporting the order of the CIT(A) submitted that the assessee could not able to file

any evidence before the AO or before the CIT(A). Further, before the Tribunal, except filing a chart explaining cash flow position, no evidence was filed to prove the nature and source of cash deposits. Therefore, the order of the AO should be upheld.

28. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee could not file any evidence before the AO to explain nature and source of credits in bank account and said lapse continued even before the CIT(A). Before us, the assessee had filed a chart explaining cash flow position and argued that the assessee has sufficient cash balance to explain nature and source of credit found in the bank account. We find that the assessee has filed a chart explaining cash flow position for the first time before the Tribunal and said cash flow statement was not available with the AO or CIT(A). Therefore, we are of the considered view that, the issue needs to go back to the file of the AO to verify the claim of the assessee with regard to the availability of source of cash deposits found in the bank account. Hence, we set aside the issue to the file of the AO and

direct the AO to re-examine the claim of the assessee, after giving reasonable opportunity of hearing to the assessee.

29. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

30. In the result, the appeals filed by different assessee's in ITA Nos. 2085/Chny/2014, 2513/Chny/2017, 1835/Chny/2018 and 348/Chny/2019 and appeal filed by revenue in ITA No. 2033/Chny/2018 are partly allowed and appeal filed by assessee in ITA No. 2514/Chny/2017 is partly allowed for statistical purposes.

Order pronounced in the court on 28th October, 2022 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 28th October, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy 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 |