

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.686/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2012-13

Deputy Commissioner of Income Tax,  
Circle – 1, Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

P.P. Gogad,  
01, Sancheti Apartment,  
Rachna High School Road,  
Nashik – 422002

PAN : AACFP9784C

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.698/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. P.P. Gogad,  
Sancheti Apartment,  
Rachna High School Road,  
Nashik – 422002

PAN : AACFP9784C

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,  
Circle – 2, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 07-09-2023

घोषणा की तारीख / Date of Pronouncement : 14-11-2023

## आदेश / ORDER

### **PER S.S. VISWANETHRA RAVI, JM :**

Both these appeals by the Revenue and assessee against the common order dated 19-07-2022 passed by the National Faceless Appeal Centre, Delhi (“NFAC”) for assessment year 2012-13.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

**3. First, we shall take up appeal of Revenue in ITA No.686/PUN/2022 for A.Y. 2012-13.**

4. The appellant-revenue raised ground Nos. i to x challenging the action of CIT(A) in deleting the addition of Rs.4,29,99,450/- as against addition of Rs.6,01,30,170/- made by the AO on account of subcontract expenses.

5. The brief facts relating to the issue are that the assessee is a partnership firm engaged in the business of civil contractors. The assessee filed return of income declaring a total of Rs.88,49,570/- and under scrutiny, the AO determined the same at Rs.6,89,79,740/- u/s. 143(3) of the Act inter alia making addition on account of subcontracting charges treated the same as bogus. The CIT(A) held subcontract charges claimed in the case of three parties are not genuine and confirmed addition to an extent of Rs.1,71,30,720/-, deleted the addition made against other nine

parties and by holding as genuine. The relevant portion of the CIT(A) is reproduced as under for ready reference :

*“4. Decision : I have carefully considered the facts on record, the-assessment order, written submissions of the appellant made and cited case law by the appellant during appellate proceedings. All the grounds are connected to sole issue of disallowance of partial sub-contract charges so all the grounds are being decided together.*

*4.1 Appellant's main contention is that the AO was not justified in disallowing sub-contract charges when all the sub-contractors have done the work for the appellant, work orders furnished, declared the receipts in their return of income, tds made, payment through bank, responded to the summons by these sub-contractors, cash withdrawal for labour payment by these sub-contractors and work carried out by the appellant is not in dispute.*

*4.2 Perusal of assessment order, it revealed that the AO denied some of the sub-contract charges on the strength of his/her finding after inquiry u/s 131 of the Act from 12 sub-contractors. The inquiry by the appellant shows that all these 12 sub-contractors do not have supporting documents in support of execution of the work for the appellant and the modus operandi has been confirmed by Mr. Vijay Khatod in his statement recorded u/s 131 of the Act. The AO observed same pattern in all these sub-contractors i.e. payment through bank of the appellant and cash withdrawal from bank of these sub-contractors immediately or within very short span of period. The AO also observed that all these sub-contractors except Mr. Vijay Khatod disclosed their income on presumptive basis u/s 44AD of the Act. The AO also examined bank account transactions in these sub-contractors and stated that these bank statements contain mainly transaction with the appellant and it appear that these bank accounts have been opened specifically for the purpose of handling the transactions with the appellant. This facts are further strengthened by the statement of Mr. Vijay Khatod. The AO also pin-pointed that nature of lumpsum cash withdrawal from bank accounts of these sub-contractors immediately after payment by the appellant doesn't support the contention of the appellant that these withdrawal were made for payment to labours. In fact, the payment to labourer is generally periodic nature i.e. daily or weekly or monthly and therefore, AO concluded that it is not a genuine transaction/payment but merely a device to give such transaction the colour of expenditure. During the assessment proceedings, the appellant sought opportunity to cross examine Mr. Vijay Khatod, which was granted and the AR of the appellant in the presence of the appellant elaborately cross examined Mr. Khatod, who confirmed that the work orders were pre-pared by one of the employees of the appellant i.e. Mr. Murtuza Gaurav and forced him to sign the work order. The AO further noted that submission/documents on behalf of other seven parties were also made by Mr. Murtuza Gaurav, an employee of the appellant resulting into similarity of all submissions, bills, attendance charts without any signature of receipts of payment, etc. From the assessment order at para 5.5, it transpires that these types of transactions were also involved in AY 2010-11 and cross-examination of Piyush Gogad, Shrinivas Muthe and Dilip Bhansali were granted in the remand report proceedings but these persons failed to substantiate their claim of work done by furnishing books of accounts, bills, invoice, etc. Accordingly, the Ld. CIT(A) confirmed the disallowance of sub-contract charges and upheld the action of the AO. However, the Hon'ble ITAT vide its order no. ITA/535/PUN/2015 dated 14.06.2017 allowed the appeal of the appellant by deleting the entire addition stating that all the four sub-contractors confirmed rendering of services/execution of work contracts, filed their returns, no complaint of any kind from the parties, etc.*

*4.3.1 After due examination and consideration of all the above facts, I observed that it is an undisputed fact that the appellant is engaged in the business of civil contract work and during the year under consideration, he had declared contract receipts from various projects. It is also a fact that the appellant didn't execute entire work of contract himself but uses the sub-contractors in the execution of*

contract work. It is an undisputed fact that the AO has accepted the contractual receipts, however, some part of sub-contract charges are disallowed.

4.3.2 Further, the similar issue was also involved in the AY 2010-11, wherein the ITAT has deleted the entire addition on this count. In the AY 2010-11, only four parties namely Piyush Gogad, Shrinivas Muthe, Dilip Bhansali and R. C. Gogad whereas in the present assessment years, there are 12 sub-contractors including three earlier parties namely Piyush Gogad, Shrinivas Muthe and Dilip Bhansali.

4.3.3 Also, the facts of the present assessment year is different because one of the sub-contractor Mr. Vijay Khatod has categorically denied having any work done by him for the appellant and stated that he had opened a bank account at the time of working with the appellant and cheque book of this bank account was signed by him but kept with the appellant. He further stated that any cash withdrawal from this bank account was kept by the appellant. He has also confirmed that cheque book record slip was not written by him and he had signed the cheques only. The relevant extract of his statement is duly mentioned at para 5.1.1 of the assessment order. Further, the AO pointed out that submission/bills/invoices/attendance sheets, etc furnished during assessment proceedings are similar in nature and there is non-appearance u/s 131 of the Act by M/s Pushkar Buildcon, Mr. Bhushan Nageshetia Suresh (HUF) and Mr. D.M. Chordiya to record their statement.

4.3.4 One of the plea of the-appellant that documents/information filed by Mr. Vijay Khatod have not been provided is not relevant because cross-examination of the Mr. Khatod has been undertaken by the AR of the appellant in the presence of appellant and the AO has not specifically relied on any of documents/details furnished after cross-examination. Also, the appellant plea that the AO has not issued summons for recording of statement of Mr. Mohd Yusuf Mohammad Ibrahim and Mr. Suresh Bothra has already been discussed in the assessment order by the AO stating that it doesn't have any relevance to the instant case and the appellant did not justify its relevance in the instant issue. During the appellate proceedings, the appellant furnished some additional evidences in support of its claim that it had executed work for M/s Vishwa Infraways Pvt Ltd and M/s Vishwa Infrastructure Pvt Ltd. Further, the appellant had filed affidavit of an engineer namely Mr Mohd Yusuf Mohammad Ibrahim, Malegaon in support of construction work undertaken of Jamia Mohammed Education Society. All these documents are considered and found that these documents support the work undertaken by the appellant during the present assessment year, which supports the contractual receipts but these documents do not support that these work were undertaken by the alleged non-genuine sub-contractor.

4.3.5 Since the issue relates to a factual matter so I am of the considered opinion that the decision of the Hon'ble ITAT in appellant's own case for AY 2010-11 has to applied on result of inquiry on party-to-party basis. The summary of party-wise inquiry result is an under :-

Name of Sub-Contractor	Statement Recorded u/s. 131	Accepted the Work Done	Involved In AY 2010-11	ITAT Order Applicable
Vijay U. Khatod	Yes	No	No	No
Pushkar Buildcon	Yes	Yes	Yes	Yes
Bhushan Suresh Nagshetia HUF	No	N.A.	No	No
Vaibhav Suresh Nagshetia	Yes	Yes	No	Yes

<i>HUF</i>				
<i>D.M. Chordia</i>	No	N.A.	No	No
<i>Shriniwas Muthe</i>	Yes	Yes	Yes	Yes
<i>Dilip P. Bhansali</i>	Yes	Yes	Yes	Yes
<i>Mangesh L. Raut</i>	Yes	Yes	No	Yes
<i>B.R. Deshpande</i>	Yes	Yes	No	Yes
<i>Uddhav N. Gurav</i>	Yes	Yes	No	Yes
<i>Dhananjay V. Pandit</i>	Yes	Yes	No	Yes
<i>Saibaba Construction Co.</i>	Yes	Yes	No	Yes

4.3.6 From the above chart, it is clear that the issue is covered by the decision/finding of the Hon'ble ITAT in appellant's own case being similarity of facts but the transactions with three parties namely Vijay U. Khatod (Rs.85,00,040), Shushan Suresh Nagshetia HUF (Rs.29,82,450) and D.M. Chordiva (Rs.56,48,230) are not covered especially in a situation where first party has categorically denied any contract work done and second & third party-due to non-attendance for statement u/s 131 of the Act and submission/details/bills/ attendance sheet, etc were prepared by one of the employee of the appellant. Further, the AO has overwhelming evidences/findings against genuineness of transactions with these three parties.

In view of the above facts & circumstances, I am of the considered view that sub-contract' charges claimed in the name of Vijay U. Khatod (Rs.85,00,040), Shushan Suresh Nagshetia HUF (Rs.29,82,450) and D.M. Chordiva (Rs.56,48,230) totaling Rs.1,71,30,720/- is not genuine in nature and hence, confirmed the action of the AO to that extent and delete the remaining addition of Rs.4,29,99,450/- (Rs.6,01,30,170 - Rs.1, 71,30,720). Thus, the issue is partly allowed."

6. Aggrieved by the above, the Revenue is before us in deleting the addition of Rs.4,29,99,450/- and the assessee is before us for remaining amount of Rs.1,71,30,720/- by respective grounds challenging the action of CIT(A).

7. Heard both the parties and perused the material available on record. The only issue in Revenue's appeal arising for our consideration is as to whether the expenditure claimed on account of payments made to sub-contractors is genuine or not. No doubt, the payments reflected in para 5 of the assessment order were made through account payee cheques which

have claimed to make towards execution of work of sub-contract basis. On an examination of the assessment order clearly shows the assessee furnished complete details of the said payments and on perusal of the same, the AO found that the sub-contractors have withdrawn cash immediately on deposit of cheque in their bank accounts. This fact had made the AO to doubt the genuineness of the expenditure. The Id. AR submits that the said sub-contractors withdrew the said money immediately to fulfill their obligation in making payment towards labour charges and argued the finding of AO is erroneous. We note that in order to find the genuineness of the said expenditure the AO issued summons u/s. 131 of the Act to all the 12 parties. The AO discussed the same in detail from paras 5.1.1 to 5.1.12, wherein, we find no evidences were filed in the assessment proceedings showing the execution of work by the said parties. Accordingly, he held that there was no genuineness in the payments made by the assessee to the sub-contractors and held that the assessee has tried to create evidences by the ways and means of bills and handmade attendance sheets to substantiate the said payments. On perusal of the impugned order, we note that the CIT(A) taking into consideration the order of this Tribunal in assessee's own case of earlier year for A.Y. 2010-11 examined the entire issue on party to party basis. The relevant chart is reproduced here-in-above and on perusal of which the CIT(A) deleted the additions in respect of Pushkar Buildcon, Shrinivas Muthe, Dilip P. Bhansali, Mangesh L. Raut, B.R. Deshpande, Uddhav N. Gurav, Dhananjay V. Pandit and Saibaba Construction Co. by holding, all are responded to summons u/s. 131 of the Act, confirmation regarding the execution of work, involvement in earlier year A.Y. 2010-11 and applicability of ITAT's order. The Id. DR did not bring on record any evidence rebutting the finding of reasons in deleting the additions made by the CIT(A) on record. In the absence of which we can safely conclude that

the CIT(A) by following the directions of ITAT's order in earlier year for A.Y. 2010-11 held the transactions in respect of payments of sub-contract charges to the said parties are genuine. Therefore, we find no infirmity in the order of CIT(A) in deleting addition of Rs.4,29,99,450/- and the order of CIT(A) is justified. Thus, grounds raised by the Revenue fails and are dismissed.

8. In the result, the appeal of Revenue is dismissed.

**9. Now, we shall take up the appeal of assessee in ITA No. 698/PUN/2022 for A.Y. 2012-13.**

10. As discussed above, the assessee is before us challenging the action of CIT(A) in confirming the addition of Rs.1,71,30,720/- by raising ground Nos. 1 and 2 in its appeal. We have taken a view in confirming the order of CIT(A) in deleting the addition of Rs.4,29,99,450/- in the above mentioned paragraphs, we find the CIT(A) confirmed the addition to an extent of Rs.1,71,30,720/- in the hands of the assessee taking into consideration the order of ITAT for earlier year 2010-11. On perusal of summary of party-wise enquiry as reflected in para 4.3.5 of the impugned order which is reproduced here-in-above, we note that one by name Vijay U. Khatod did not accept execution of work as a sub-contractor in the year under consideration and is not covered by the order of ITAT for 2010-11. Further, party by name Bhushan Suresh Nagshetia HUF did not respond to the summons u/s. 131 of the Act and is also not covered by the order of this Tribunal for the year under consideration taking into account is involvement for A.Y. 2010-11. Further, another party D.M. Chordia, we find from the said chart no response to the summons u/s. 131 of the Act and not involved for A.Y. 2010-11 as well as for the year under consideration also, clearly shows that the assessee failed to show the

execution of work by the said 3 parties by filing cogent evidences in proving the genuineness of the said expenditure in respect of execution of work as well as withdrawal of cash immediately after the deposit of cheques in their bank accounts, coupled with the fact that the ratio of expenditure to the gross receipts excluding the impugned expenditure matches the industries average. Undoubtedly, these circumstances would lead to conclusion that the expenditure was not incurred wholly and exclusively for the business purposes. Therefore, we find no infirmity in the order of CIT(A) in confirming the addition of Rs.1,71,30,720/- in the absence of any evidences in showing the genuineness of expenditure. Thus, ground Nos. 1 and 2 raised by the assessee fails and are dismissed.

11. In the result, the appeal of assessee is dismissed.

12. To sum up, both the appeals of Revenue as well as assessee are dismissed.

Order pronounced in the open court on 14<sup>th</sup> November, 2023.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14<sup>th</sup> November, 2023.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune