

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "A" BENCH : PUNE

[THROUGH VIRTUAL HEARING]

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.1390, 1391, 1392 & 1393 /PUN./2023  
**Assessment Years 2011-2012, 2012-2013, 2014-2015 & 2015-2016**

M/s. Bhate & Raje Construction Co. Pvt. Ltd., 58-B, CDSA Campus, Pune-Paud Road, Bavdhan, PUNE PIN – 411 021. Maharashtra PAN AABCB7417Q	vs.	The DCIT, Circle-1(1), PMT Bldg., Shankarshet Road, Swargate, PUNE-411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Nikhil S Pathak
For Revenue :	Shri Keyur Patel, CIT-DR And Shri Ramnath P. Murkude

Date of Hearing :	22.04.2024
Date of Pronouncement :	26.04.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

These assessee's four appeals I.T.A.Nos.1390, 1391, 1392 & 1393 /PUN./2023, arise against the CIT(A), Pune-11, Pune's common Din/Order Nos.ITBA/APL/S/250/2023-24/1057253781(1), 1057254983(1), 1057254672(1), 1057254433(1), dated 20.10.2023, involving proceedings u/s. 143(3) r.w.s.147 [A.Y.2011-2012]; sec.144 [A.Y.2012-2013]; sec.144 [A.Y.2014-2015] and 143(3) [A.Y.2015-2016] of the Income Tax Act, 1961 (in short "the Act"), assessment year-wise, respectively.

Heard both the parties at length. Case files perused.

2. It emerges at the outset with the able assistance coming from both the parties that the assessee's first and foremost substantive ground; rather the sole ground in assessment years 2011-12 and 2012-13 and its former grievance in latter twin appeals; is that the learned lower authorities have erred in law and on facts in disallowing the corresponding sub-contractual expenditure payments of Rs.11,19,50,550/-; Rs.12,15,39,950/-; Rs.7,67,94,800/- and Rs.4,85,52,293/-, assessment year-wise, respectively. It is in this factual backdrop that we proceed to decide the instant first and foremost substantive issue herein together for the sake of convenience and brevity.

A few relevant facts may be noticed as under.

2.1. This assessee is admittedly a company engaged in civil construction business. There is hardly any dispute that it had claimed to have incurred sub-contractual payments aggregating to Rs.45,92,26,593/- involving varying sums in all these assessment years. There is further no quarrel that all these payments had been made by the assessee to its 28 payees/alleged sub-contractors by way of banking channel only.

2.2. We proceed further and note that the departmental authorities had carried-out sec.133A survey exercise in assessee's case on 22.03.2018. It came across various alleged

incriminating material *inter alia*, indicating that the bank account(s) of the foregoing 28 payees/sub-contractors had witnessed immediate cash withdrawals upon receipt of the impugned payments. This; along with other incriminating material, made the learned departmental authorities to receive survey statement(s) of the assessee's director Shri Jaideep Prasannakumar Raje as well as other authorised persons viz., S/Shri Pravin Divekar and Shishikant Naik etc. All of them failed to rebut the clinching facts emerging from the foregoing incriminating material indicating the assessee to have indulged in availing bogus entries of sub-contract expenditure in its regular business activity of civil construction. Faced with the situation, the assessee through its authorised person(s) agreed to surrender additional income(s) representing bogus expenditure of Rs.1 crore, Rs.2 crore, Rs.4 crore and Rs.3 crore, totaling to Rs.10 crores; assessment year-wise, respectively.

2.3. There is again no issue between the parties that the assessee thereafter filed its returns as per the foregoing declaration of Rs.10 crores in all these four assessment years. The Assessing Officer took up scrutiny. He concluded in light of the above survey developments in assessee's case as well as the facts emerging from the incriminating material found in course thereof and in light of survey statements that the

remaining sub-contractual expenditure in all these 28 payees' cases deserve to be disallowed in toto i.e., Rs.45,92,26,593/- reduced by Rs.10 crore declaration = Rs.35,88,37,593/- coming to Rs.11,19,50,550/-; Rs.12,15,39,950/-; Rs.7,67,94,800/- and Rs.4,85,52,293/- assessment year-wise, respectively.

3. The assessee preferred its separate as many appeals. The CIT(A)'s common impugned order has upheld the Assessing Officer's impugned action as follows :

#### Findings

18. I have considered the facts of the case, submissions made by the appellant and the remand report of the Assessing Officer. The first contention of the appellant is that the cash was withdrawn from the bank accounts of the sub-contractors for making payments to migrated labourers because in past there were issues of payments by the sub-contractors and the appellant was facing cases under labour laws. However, the appellant has not filed any documentary evidence substantiating that the sub-contractors were not making due payments to the labourers and the appellant was facing Court cases under labour laws. Further, no documentary evidence has been filed of making payments directly to labourers in the form of labour register/wage register, etc. In the absence of any supporting documents, general submission made by the appellant cannot be accepted.

19.1 The next contention of the appellant is that the cash withdrawn was used for site expenses and this was explained to the survey team. The said contention of the appellant is without any supporting document. During the assessment proceedings, the Assessing Officer asked to file supporting evidences for same but the appellant has not filed any supporting document either during the assessment proceedings or during the appellate proceedings.

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The amount spent in cash as per appellant contention is Rs. 14.15 Crore and such a substantial amount cannot be allowed as deduction without any supporting document.

19.2 Further, the appellant has also not filed copy of any documents impounded during survey operation which could indicate that cash expenses to the extent of Rs. 14,15,39,950/- were incurred by the appellant. Neither, the appellant has filed the quantification of such cash expenses. Nor there is any finding nor quantification of such cash expenses, in the assessment order as well. It is a well-established legal principle that no deduction for any expense can be allowed in the absence of any supporting document. Accordingly, the said general claim of the appellant that he incurred certain cash expenses, is rejected.

20. Further contention of the appellant is that during the assessment proceedings for A.Y. 2011-12, it had filed the details of expenses incurred by sub-contractors. This statement of the appellant clearly suggests that no such details were filed for A.Y. 2012-13. Furthermore, this claim of the appellant is contradictory to its claim that the cash withdrawn from the bank accounts were used by the appellant for expenses incurred on various sites. Since, as per appellant's claim, the payments made to sub-contractors was received in form of cash and was utilized by the appellant in cash expenses, it is impossible for sub-contractors to utilize the said money because the money was never received by the sub-contractors. It is also important to mention that the Assessing Officer has given a specific finding in the assessment order that all the sub-contractors filed their returns u/s 44AD of the Act by showing the receipts between Rs. 51 Lakhs to Rs. 61 Lakhs. This finding clearly suggests that no books of accounts were maintained by the sub-contractors. Accordingly, the said contention of the appellant is rejected.

21. The appellant has further claimed that all payments made to sub-contractors are after deducting TDS and through banking channels, therefore, these expenses are genuine. This claim is contradictory to appellant's own admission wherein he has contended that the cash withdrawn from the sub-contractors account was utilized by him for cash expenses. Furthermore, no expenditure can be considered as genuine solely because the same was made through banking channels and due TDS was deducted specially when there are clinching evidences indicating that such expenses are bogus. It may

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not be out of place to mention that in the statement recorded during the survey, director as well as two employees of the assessee company admitted that these sub-contractor expenses are not genuine. These statements have not been retracted till date. Further, till date not even a single invoice or bill raised by these 28 sub-contractors has been filed by the appellant. Considering these facts, the contention of the appellant that the expenses are genuine because TDS was made, is rejected.

22. I have also considered the remand report of the Assessing Officer wherein for reasons given in detail, the Assessing Officer has countered each and every argument of the appellant and I agree with the Assessing Officer that in the absence of crucial evidences such as bills, vouchers, work orders, etc., the claim of the appellant that the expenses are genuine cannot be accepted. The appellant has filed merely copies of ITRs of sub-contractors and ledger accounts in its books of accounts which are not sufficient to substantiate the claim of expenses amounting to Rs. 14,15,39,950/-. It is also important to mention that bogus nature of these expenses has been admitted by the director of the appellant company in the statement recorded during the survey and the said statement has not been retracted till date. Moreover, the appellant has declared an undisclosed income of Rs. 2,00,00,000/- in the return filed u/s 148 of the Act. These facts clearly suggest that the expense of Rs. 14,15,39,950/- are not genuine.

23. The last contention of the appellant is that the actual amount debited in the books of accounts is Rs. 13,67,69,950/- as an amount of Rs. 47,70,000/- was reversed by crediting the same in the sub-contractor's account. On this claim, the assessing officer in the remand report for AY 2012-13 has not commented anything. However, in the remand report for AY 2015-16, the assessing officer, has submitted as under:-

6.0 *Another argument of the assessee that out of total such expenses booked, expenses to the extent of Rs.47,70,000 have been reversed. In this context, the said argument was made during the assessment proceedings but the assessee could not furnish any documentary evidence for reversal of expenditure. The said issue has been elaborately discussed in para 12.8 of the assessment order. Before the Ld. CIT (A), the assessee has merely made a claim but the documentary evidences have not been filed. Thus, on merits as well, this ground pertaining to the reversal of expenditure is requested to be dismissed.*

24.1 I have considered the above request of the appellant and the remand

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report. The appellant has submitted the following details of party-wise reversal:-

Sr. No	Contractor Name	Pan No	Gross Amount	Amount reversed by debit to A/c	Net Amount	TDS	Nature of Work
1	Santosh Dhavan	ANAPD7209H	5884000	450000	54,25,000	54,250	Reinforcement
2	Manohar Gaikwad	ATFPG1970M	5910000	485000	54,25,000	54,250	Reinforcement
3	Kailas Jori	AKVPJ69S8M	6074000	350000	57,24,000	57,240	Shuttering
4	Rajendra Katkar	AQSPK3791L	5775000	350000	54,25,000	54250	Reinforcement
5	Devidas Kikile	AQSPK3793J	5849000	350000	54,99,000	54990	Shuttering
6	Bharat Manale	AXXPM5661R	6174000	450000	57,24,000	57240	Reinforcement
7	HARIBHAJAN NARAYAN MANE	AMUPM1374M	5849000	350000	54,99,000	54990	Masonry work
8	Govind Mohite	BBXPM7507K	5775000	350000	54,25,000	54250	Reinforcement
9	Nilesh Sondkar	CBLPS1797N	5742000	585000	51,57,000	51570	Reinforcement
10	Appalal Sutar	COGPSS601R	5775000	350000	54,25,000	54250	Reinforcement
11	Om Prakash - Contractor	AJXPT0599N	5633000	350000	52,83,000	52830	Unskilled

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12	Ravikant	AQWPT6043J	5629000	350000	52,79,000	52790	Shuttering
	Total			47,70,000/-			

**24.2** It is a well settled legal position that no disallowance can be made more than the expenses debited in the P/L Account. The assessee might not have filed the copies of ledger accounts during the assessment proceedings, but the said ledger accounts are now available on the records of the assessing officer. The Assessing Officer is directed to verify the ledger accounts of above sub-contractors and compute the disallowance only to the extent of expenses debited in the P/L Account.

**25.1** It may also be stated that there are certain decisions of High Courts [ *PCIT-25 vs Ram Builders (ITA No. 398 of 2018) (Bombay HC)* and *PCIT vs Vishwashakti Construction (ITA No. 1016 & 1026 of 2018)*] holding that only a portion of bogus expenses should be disallowed in the case of a contractor. However, in all these judgements, assesseees were Government Contractors and the Hon'ble Court observed that in view of the facts that payments by Government/Semi-government departments are released only after multi-level verifications of the actual work done by the Contractors and therefore, the execution of contact work cannot be doubted. However, in the present case, the appellant is doing civil contract work for private persons only. Thus, it is not possible to verify as to whether the work was actually completed or not. Neither, the appellant has submitted the work-completion certificates for various contracts executed by it. Thus, the contention that work was actually completed by it, cannot be accepted.

**25.2** There is one more reason for not accepting the appellant's contention that it could not have completed the work without these sub-contract expenses, is that during the survey operation, a chart of year-wise expenses paid to these 28 sub-contractors was prepared which was made part of the statement of Shri Jaideep Prasanna Kumar Raje as Annexure-2. This chart has been scanned by the Assessing Officer in the assessment order. It can be seen from this chart that the said bogus expenses were incurred only during F.Ys. 2010-11, 2011-12, 2013-14 and 2014-15 and no such expenses were debited in the books of accounts for F.Ys 2012-13, 2015-16 and 2016-17. This chart clearly suggests that in three financial years, the appellant could execute

the work without debiting any expense in the names of these 28 sub-contractors. Thus, the argument that the appellant could not have executed the work without these sub-contract expenses, cannot be accepted.

**25.3** It may also be stated that it is not an argument of the appellant that by disallowing 100% of bogus labour sub-contract expenses, the net-profit rate as per assessed income, is unreasonably high. In such a situation, the appellant's contention that since work is completed, whole of the bogus labour sub-contract expenses should not be disallowed, cannot be accepted.

**26.** To sum up, the action of the Assessing Officer in holding that the expenses debited in the names of 28 sub-contractors as per the list in para 7.2 of the assessment order are bogus expenses, is upheld. However, the Assessing Officer is directed to verify the ledger accounts of these sub-contractors and re-compute the disallowance to be limited to the extent of expenses debited in the P/L Account during the year. The ground no. 1 raised by the appellant is disposed accordingly.

This leaves assessee aggrieved to the extent indicated hereinabove in all these four assessment years.

4. We have given our thoughtful consideration to the vehement rival submissions against and in support of the learned lower authorities action disallowing the assessee's sub-contractual payments. Ld. CIT-DR Shri Patel vehemently argued that both the lower authorities have rightly made the impugned sub-contract payments disallowance(s) going by the contents of the seized material carrying presumption of correctness u/sec.292C of the Act. He reiterated that the assessee had been duly found to have prepared bogus sub-contract expenditure vouchers as per the said material. He further sought to highlight the fact that it is the bounden duty of the assessee only to plead and prove the impugned

expenditure by filing the necessary explanation supported by cogent evidence which has been given a complete amiss at it's behest. He thus prayed for upholding of identical disallowance(s) in all these assessment years in entirety.

5. Learned counsel representing the assessee on the other hand is fair enough in not disputing the foregoing facts emerging from the incriminating material as well as the survey statements regarding the impugned sub-contract expenses amounts deposited in the payee's accounts followed by the cash withdrawals; which has been utilized in regular business activities. He further drew our attention to the relevant impugned material in pages 388 onwards in the paper book to this effect.

6. Next comes the equally important question of quantification of the impugned disallowance(s) in all these four assessment years. A perusal of the assessee's comparative chart of it's admitted corresponding book results at page-386 of the paper book for assessment years 2011-2012 and 2019-2020 *inter alia*, indicates that it's net profit rates stood at less than 10% i.e., 6%; 4.63%; 5.9%; 6.59%; 4.98%; 3.15%; 5.87%; 4.43%; and 4.75%; respectively as increased to 6.96%; 6.78%; 9.01% and 7.31% in these four assessment years after the survey declarations of Rs.10 crores (*supra*). The same have admittedly rose to 17.69%; 19.86%; 13.65% and 11.08%;

respectively in these four assessment years *post facto* the impugned additions.

7. We wish to make it clear at this stage that there is no dispute between the parties about the assessee having carried-out the very nature of civil construction activity in all these assessment years. And also that the learned departmental authorities have admitted it's net profit rate in assessment year 2013-2014; forming part of the CIT(A)'s common detailed adjudication herein. This is indeed coupled with the fact that the assessee's detailed paper book running into 520 pages; and more particularly, from pages 388 to 503 [containing the incriminating material] further indicates that it had incurred some actual expenditure as well along with under various personal heads; as the case may be; which carry presumption of correctness u/sec.292C of the Act. It is thus an instance wherein the assessee's book results deserve to be rejected once they have not been properly maintained. The fact also remains that once the assessee's "Net Profit" ["NP"] margins have uniformly remained in the same ratio [approx.], the only inference which could be drawn is that there is indeed a possibility of the taxpayer having utilized cash withdrawals to meet day-to-day business requirements.

8. Mr. Patel at this stage vehemently submitted that we ought not to dismiss the learned lower authorities' findings

either in light of sec.44AD or as per the incriminating material proving only part of expenditure.

9. We have considered the Revenue's foregoing vehement objections regarding quantification of the impugned sub-contract expenditure disallowance(s). We find that case law settles the issue that sec.44AD could indeed form a broader guiding factor to apply the foregoing presumptive scheme in peculiar facts of a case even if it involves more than the eligible turnover therein.

1. CIT vs. Subodh Gupta [2015] 54 taxmann.com 343 (Del.)
2. Pr.CIT vs. Vishwashakti Construction, Mumbai – Judgment of Hon'ble Bombay High Court in ITA.No.1016 of 2018 dated 04<sup>th</sup> May, 2023.
3. Pr. CIT vs. Ram Builders, Mumbai - Judgment of Hon'ble Bombay High Court in ITA.No.398 of 2018 dated 18<sup>th</sup> May, 2023.
4. CIT vs. Kailash Kacchawaha [2007] 293 ITR 449 (RAJ.)
5. V M Matere Infrastructures (India) Private Limited, Pune vs. ACIT – Order of ITAT, Pune Bench, Pune dated 29.05.2023.
6. Hari Chainrai Kataria, Pune vs. ACIT – order of ITAT Pune Bench, Pune dated 28.02.2013.
7. Nishikant T. Patne vs. ACIT [2013] 36 taxmann.com 540 [Pune-Tribu.].
8. G. Raja Gopala Rao vs. DCIT [2017] 78 taxmann.com 61 [Visakhapatnam-Tribu.].

9.1. Faced with this factual position, we are of the considered opinion that in light of the foregoing judicial precedents that the estimation of profit @ 8% of the assessee's corresponding revenue operation or that declared in the assessee's book results whichever is higher will meet the ends of justice. We order accordingly and direct the Assessing Officer to re-compute the profit in the above terms. This is indeed subject to the rider that our impugned estimation shall not be treated as a precedent.

The assessee's instant first and foremost identical sole substantive ground(s) in all these cases is partly accepted in above terms.

10. Learned Counsel next take us to the twin latter assessment years 2014-2015 and 2015-2016 allegedly involving some "reversal" entries regarding the assessee's sub-contracting parties. We are of the considered opinion that once the learned Assessing Officer has been directed to restrict the impugned disallowance(s) in foregoing terms after rejecting the assessee's book results; such a course of action of dealing with the impugned reversal entries hardly deserves an independent adjudication anymore going by *Indwell Construction vs. CIT* [1998] 232 ITR 76 (A.P.). Rejected accordingly.

No other ground or argument has been pressed before us.

11. To sum-up, these assessee's four appeals I.T.A.Nos. 1390, 1391, 1392 & 1393/PUN./2023 are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 26.04.2024.

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 26<sup>th</sup> April, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune-11, Pune.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.