

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.388/Naq./2019**  
**(Assessment Year : 2015-16)**

Asstt. Commissioner of Income Tax  
Akola Circle, Akola

..... Appellant

v/s

Shri Ramkisan Natha Darade  
At Post Zontinga, Taluka Sinckhed Raja  
Dist. Buldhana 443 202 PAN-AHQPD7463H

..... Respondent

Assessee by : Shri Abhay Agrawal  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 20/08/2024

Date of Order – 02/09/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 25/10/2017, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [*"learned CIT(A)"*], for the assessment year 2015-16.

2. In its appeal, the Revenue has raised following grounds:-

*"1. On facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has erred in deleting the addition of ₹ 2,12,95,900/- made by the Assessing Officer as unaccounted receipts, wrongly treated as advance received by the assessee, to the returned income.*

*2. The decision of the Ld. CIT(Appeals) deleting the addition of ₹ 2,12,95,900/- is perverse on the facts in as much as the same has been reached on perverse appreciation of the evidences on record.*

3. *The decision of the Ld. CIT (Appeals) deleting the addition of ₹ 2,12,95,900/- is perverse on facts in as much as the same has been reached on an incorrect conclusion that the assessment had to be completed based on documentary evidences on record ignoring the clear statements given by the contractees during assessment proceedings before the assessing officer.*

4. *The decision of the Ld. CIT (Appeals) deleting the addition of ₹ 2,12,95,900, is bad in law in as much as it is evident from various sub-paras of para 6.6 of the appellate order that the learnt CIT (Appeals) chose to delete the addition, despite being not satisfied with the enquiries conducted by the Assessing Officer during remand proceedings, ignoring the trite law that being a fact finding authority the Ld. CIT (Appeals) ought to have got the required enquiries made to her full satisfaction.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has erred in deleting the addition of ₹ 2,12,95,900 for the reason that the Assessing Officer did not reject the books of accounts under s. 145(3) of the I.T. Act, 1961.*

6. *The Ld. CIT(Appeals) has grossly erred in holding that the postponement of accounting of receipts to subsequent year(s) was not material fact merely because the exercise could be revenue neutral, as it is trite that the levy of taxes cannot be postponed to the subsequent year merely because the assessee so chooses or merely because the amount of tax would be identical.*

7. *Any other grounds to be raised with due permission of the Hon'ble ITAT."*

2. Facts in Brief:- The assessee is an individual and is engaged in the business of a Civil Contractor who undertakes works contract from various Government and Semi Government Agencies. For the year under consideration, the assessee filed his return of income on 07/10/2015, declaring total income at ₹ 32,99,120. The Assessing Officer, during the assessment proceedings, observed that there was an increase in the sundry creditors. The Assessing Officer asked the assessee to explain the reason for rise in sundry creditors in response to which the assessee submitted that it had undertaken projects/ works contract of Gram Arogya Poshan Pani Purvatha and Swachata Samiti (Samiti) at Waghora, Mohadi, Tadegaon and Vizora. The Assessing Officer further observed that during the year under

consideration, the assessee received an aggregate amount of ₹ 2,12,95,900, from the Samiti from time to time (i.e., Samiti Waghora ₹ 28,58,000, Samiti Mohadi ₹ 80,53,000, Samiti Tadegaon ₹ 22,20,000, Samiti Vizora ₹ 81,64,900) towards advances for stage-wise work to be done. Hence, it was the contention of the assessee that the advances received from the Samiti were shown as creditors, as the corresponding work was not yet completed as on the date of Balance Sheet.

3. The Assessing Officer, while considering the elaborated submissions made by the assessee, held that the submissions made by the assessee are not acceptable at all and made addition of ₹ 2,12,95,900, which was added to the total income of the assessee. The Assessing Officer, while doing so, observed as under vide Para-3 to 3.3 of his order:-

*"3. 3. There was significant increase in the Sundry Creditors during the year. The assessee was asked to explain the reasons for this rise. The assessee stated that it has undertaken the works of Gram Arogya PoshanPaniPuravatha and Swachhata Samiti (hereinafter referred to as 'Samiti') at Waghora, Mohadi, Tadegaon and Vizora. The amounts paid by these Samiti total amounting to Rs. 2,12,95,900/- (Samiti Waghora Rs.28,58,000/-, Samiti Mohadi Rs.80,53,000/-, Samiti Tadegaon Rs.22,20,000/- and Samiti Wizora Rs.81,64,900/-)were shown as creditors as the work is not yet complete. In this regard statements of the Secretaries/President of these Samiti were recorded u/s 131 of the Income Tax Act, 1961. The assessee himself and his counsel were present during the recording of these statements. All the Secretaries/President, without any exception, said that the money was released only after completion of the work and payments for the works which were not yet completed have been withheld. They stated categorically that the assessee was NOT given any advance against the work orders issued to him. The assessee or his counsel who were present has not raised any objection to these contentions recorded in the statement. The assessee was asked, vide order sheet entry dated 14-11-2017, as to why the contract amount received from these Samiti and shown as advances or Sundry Creditors should not be added to your total income. The case was fixed for hearing on 21-11-2017. On 21-11-2017 neither anybody attended nor filed any written reply. The assessee was again requested vide show cause notice dated 05.12.2017, as to why the contract amount received from these Samiti and shown as advances or Sundry Creditors total amounting to Rs. 2,12,95,900/- (Samiti Waghora Rs.*

28,58,000/-, Samiti Mohadi Rs.80,53,000/-, Samiti Tadegaon Rs.22,20,000/- and Samiti Wizora Rs.81,64,900/- total Rs.2,12,95,000/-) should not be added to your total income.

3.2 The assessee vide written submission dated 15.12.2017 stated that these amounts have been shown as advances in the Balance sheet as the bills of works contract were not finalized before 31.03.2015. These receipts are taken into consideration in F.Y. 2015-16 after settlement of works contract bills. The assessee furnished account copies of these creditors. The assessee requested that no addition be made on this issue.

3.3 Contention of the assessee is nothing but reiteration of his submissions made before recording of the statements of the Secretaries of the Samiti. The assessee during the course of recording of statement or even in response to show cause notice has not objected to the categorical statement that payments were released only after completion of work and not before that. Secondly it is contention of the assessee that as the bills were not settled before 31.03.2015 the same were shown as advance clearly means that the assessee has accounted for all the expenses related to these contracts in the Profit & Loss account for the period under consideration and only receipts have not been accounted for. As the assessee is following mercantile system of accounting he was duty bound to account for the receipts during the Financial Year 2014-15. Even if the contention of the assessee is accepted for a moment, the work in progress was reported at Rs.69,31,666/- this does not commensurate with the receipts involved in this matter. Thus the contention of the assessee is not acceptable at all and addition of Rs.2,12,95,900/- is made to the total income of the assessee. As the assessee has filed inaccurate particulars of his income, by way of postponing the tax liability, penal proceedings u/s.271(1)(c) of the Income Tax Act, 1961 are initiated separately."

The assessee being dissatisfied with the order passed by the Assessing Officer filed appeal before the first appellate authority.

4. The learned CIT(A) allowed the claim of the assessee while directing the Assessing Officer to delete the addition of ₹ 2,12,95,900. The observations made by the learned CIT(A), vide Para-6.6 to 6.8 of its order, which are relevant to note, are quoted herein below:-

"6.6 I have carefully considered the facts of the case and submissions made by the appellant. I find considerable force in submissions of the appellant. The AO has made the addition merely on the basis of the statement recorded of Secretaries/President of the Samiti. The AO did not corroborate the statement with the facts emanating from documentary evidences placed on record by the appellant. The AO has believed the statement of Samiti members as gospel of

truth and rejected all the documentary evidences including the audited financial statements without giving any cogent reasoning. The appellant has submitted that, the statements of samiti members were self-contradictory & also contrary to the evidences on record and hence were not reliable. The appellant has provided a tabular chart highlighting the various contradictions in the statement's vis-s-vis undisputed facts & documentary evidences available on record. The chart is enclosed as Annexure-A to this order. For the sake of brevity, the key assertions of appellant are reproduced below:

6.6.1 The Samiti members (Vizora, Mohadi) have stated that no payments were made in subsequent years in respect of same projects which is in contradiction with the copy of ledger accounts & bank statements of subsequent years, placed on record:

6.6.2 The statement of Samiti members (Vizora, Mohadi, Waghoa) that no advances was given is clearly in contradiction with the fact that, there were instances when the payments were given before the date of issue of work orders;

6.6.3 The Samiti members (all) have stated that, they did not know whether the appellant had raised R.A bills or not. Under such circumstances, it is highly questionable as to how they could have stated for sure whether the payment was made towards completed work or as an advance?

6.6.4 Further, in the statement recorded, all the samiti members have stated that work was not completed during FY 2014-15 and that remaining work was completed in subsequent years; Thus, the AO erred in presuming that entire work was completed during FY 2014-15 and that entire advance shown was to be considered as income/turnover of current year.

6.6.5 On perusal of the statements and various basic documentary evidences, it is evident that statements of Samiti members are self-contradictory and also contrary to the facts & documentary evidences on record. Therefore, reliance cannot be solely placed on the statements of Samiti members de hors any contrary evidence and assessment had to be completed based on documentary evidences on record.

6.6.6 The AO has mentioned in the remand report that, summons was issued to four members of Samiti which were not complied by the members of Samiti. Therefore, an Inspector was deputed to field enquiry and report back the correctness of the documents signed by them. I find merit in appellant's submission that the enquiry was carried out behind appellant's back, without following proper procedure and only with the motive to negate the documentary evidences filed the appellant, in this regard, on perusal of the Inspectors report following ambiguities are evident;

6.6.7 It is not mentioned in the Inspectors report as to what additional evidence letters were shown to the various Samiti members. In fact, the Inspector has very vaguely mentioned that "the letter" was shown to the various mentbers without mentioning as to which letter he was referring to.

6.6.8 The Inspector did not take any acknowledgement of refusal of the parties over the alleged documents shown to them. Further, the party Shri. Baliram Sampatrac Darade and Shri. Karbhari Zagre did not refuse or deny

*the contents of alleged additional evidence which is evident from the report. The said parties have informat the AO that, they will furnish the details in due course.*

*6.6.9 The Inspector has not recorded statement of the parties and has merely mentioned that they refused to certify the correctness of the unspecified letter. Further the entire exercise was carried out at the back of the assessee and without providing the assessee an opportunity of cross examination of the aforesaid parties in response to summons issued during remand proceedings.*

*6.7 I find merit in appellant's submission that, he was following mercantile system of accounting, revenue was recognized only when particular stage of contract work was completed and the corresponding contract receipt has been received by the appellant. That this was a consistent accounting practice regularly followed by the appellant disclosed in the financials. The appellant had been following similar accounting practice in earlier and subsequent years consistently. The Department has never taken any objection in any of the other years except the year under consideration. Thus, the consistent accounting practice followed by the appellant should be accepted following the principle of consistency as has been held by the honorable Supreme Court in the decision of Radhasoami Satsang vs. CIT (52) 193 ITR 321 (SC).*

*6.7.1 I find merit in appellant's submission that, it has shown reasonable gross profit (GP) (Approx 10-15%) and net profit (NP) for current year as well as in the past and subsequent years. The appellant has enclosed working chart showing the GP/NP rate for the various years including the year under consideration which supports his contention. If the action of the AO is accepted, then the gross profit for the year under consideration would be 41.2% which is abnormal and unrealistic. I find force in appellant's submission that, only real income can be subjected to tax and not any hypothetical income. The appellant has maintained regular books of account which are duly audited by a chartered accountant. The AO has neither found any defect nor doubted the correctness of books of accounts. The audited financials have evidentiary value under the eyes of law. Therefore, the profits as per profit and loss account cannot be simply brushed aside without rejecting the books of the appellant I find that, the AO has not rejected the books of accounts of the appellant in accordance with conditions of section 145(3) but has erred in treating the advances received as unaccounted receipts which is unjustified and bad in law.*

*6.7.2 I find merit in appellant's submission that, it had shown the advances as its turnover/income in subsequent years, when the corresponding stage-wise work was completed. Therefore, the contention of the AO that the advances have to be treated as income in the year under consideration and not subsequent years is an exercise which is tax neutral. The tax rates in the year under consideration and subsequent years remains the same and it is not the contention of the AO that the appellant has tried to gain any advantage or suppressed its income in the year under consideration. The various Hon'ble Courts including Supreme Court of India have time and again observed that the Department should not litigate on issues which are tax neutral insofar as the question is whether a particular income is to be taxed in either of the two years. In fact, the AO has acknowledged this principle in the remand report in*

respect of Ground of Appeal No. 3 having similar facts. Reliance placed by appellant on following judicial precedent support his contention

- *CIT v. Excel Industries Ltd (358 ITR 295) (SC) wherein the Hon'ble Court has observed as under:*

"32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax, There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax, We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers." (Emphasis Supplied)

- *CIT-2 v. Millennium Estates (P) Ltd (93 taxmann.com 41) (Bombay HC), wherein it has been observed as under:*

*"10, It must also be borne in mind that the aforesaid amount which is being sought to be brought to tax in the subject Assessment Year 2007-08 has been offered to tax as Income by the Respondent in the next Assessment Year. It is not the case of the Revenue that there are circumstances to indicate that by bringing the said transactions to tax in the next Assessment Year instead of this, there is likely to be a loss to the Revenue, In fact the impugned order of the Tribunal has relied upon the decision of this Court in CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 and in that context reproduced the decision of Delhi High Court in CIT v. Vishnu Industrial Gases (P) Ltd. [IT Reference No. 229 (Delhi) of 1988, dated 6-5-2008] as under:-" (Emphasis Supplied)*

6.7.3 The appellant has placed reliance on the decision of Hon'ble Gujarat HC wherein, the Hon'ble Court had deleted the similar addition made in respect of "mobilization advance" treated as revenue receipt by the Income-tax Officer:

- *CIT v. Narayansingh Gulabsinghji (63 taxmann.com 335) (Gujarat HC) wherein it has been held as under:*

"8. At the outset, it is required to be noted and it has come on record that the assessee was following the system regularly showing the mobilization account and the amount of advance were always stated in the subsequent AY against bills in that year and the revenue had not raised any objection for that treatment. Considering the aforesaid facts and circumstances, when the learned CIT (Appeals) as well as the learned Tribunal have deleted the additions made by the Assessing Officer on account of "Mobilization Advance" in the year under consideration, it cannot be said that the learned CIT (Appeals) as well as the learned Tribunal have committed any error. In paras 8.4 and 9, the revenue observed and held as under:" (Emphasis Supplied)

6.8 On carefully considering the facts and circumstances, various contentions of the appellant, I am of the opinion that, the AO erred in making addition in respect of advances received from the Samiti towards work to be done of Rs.2,12,95,900/-, as unaccounted receipts. Accordingly, the AO is directed to delete the addition of Rs.2,12,95,900/-. Therefore, Ground of Appeal No.2 is allowed."

The Revenue being aggrieved by the order so passed by the learned CIT(A), filed appeal before the Tribunal.

5. Before us, the learned Departmental Representative vehemently argued that the order passed by the learned CIT(A) be and the addition be confirmed.

6. The learned Counsel for the assessee furnished a detailed Paper Book containing the documents, which formed part of the record before the learned CIT(A) and the Assessing Officer as well and the same are listed below:—

*"i) Summary chart showing Samiti wise (i.e project wise) details of tender issued, advances received in current & subsequent years, work done stagewise shown in P&L account in current & subsequent years as per work done statement, date of completion of project as per completion certificate along with documentary evidences:*

- (a) Waghora*
- (b) Tadegaon*
- (c) Vizora*
- (d) Mohadi*

- ii) Copy of bank statements of the Samitis (sample basis);*
- iii) Copy of clarifications received from Secretaries / President of the Samitis;*
- iv) Copy of Audited Financials for F.Y. 2014–15, F.Y. 2015–16, F.Y. 2016–17;*
- v) Chart showing the GP/NP rate for the various years;*
- vi) Copy of Form 26AS (old);*
- vii) Copy of Form 25AS (updated);*
- viii) Copy of Assessee's Written Submission dated 12/02/2019 filed before the learned CIT(A);*
- ix) Copy of Written Submission filed before the learned A.O. dated 03/04/2019;*
- x) Copy of Written Submissions filed before learned A.O. dated 15/04/2019;*
- xi) Copy of remand report dated 19/07/2019, and inspectors report dated 04/07/2019;*
- xii) Copy of Written Submissions filed before learned CIT(A) filed on 20/09/2019; and*
- xiii) Copy of statement of Shri Karbhari Bhimrao Zagre."*

7. The learned Counsel for the assessee furnished before us the English translated copies of work orders, a statement of Samiti Members which are relied upon by the Assessing Officer. A detailed note of arguments furnished by the learned Counsel for the assessee are reproduced below: –

*"1.1 The Assessee is a Civil Contractor who undertakes works contract from various Government and Semi Government agencies.*

*1.2 The learned AO observed that there was an increase in the sundry creditors during the year. The Assessee had submitted that, it had undertaken projects/ works contract of Gram Arogya Poshan Pani Purvatha and Swachata Samiti (Samiti) at Waghora, Mohadi, Tadegaon and Vizora. The Assessee submitted that during FY 2014-15, it had received an amount totaling to Rs.2,12,95,900 from the Samiti from time to time (i.e Samiti Waghora Rs.28,58,000, Samiti Mohadi Rs.80,53,000, Samiti Tadegaon Rs.22,20,000, Samiti Vizora Rs.81,64,900) towards advances for stagewise work to be done. Therefore, the advances received from the Samiti were shown as creditors as the corresponding work was not yet completed as on the date of Balance Sheet.*

*1.3 The Assessee had explained before the learned AO the nature of its business operations. The Assessee had submitted bids towards tender floated by the Zilla parishad (i.e Government Department) for works contract. The works contract consisted of laying of pipelines for distribution of water from water tank to the households. After successfully bidding, the work was allotted to the Assessee. The work of laying pipelines had to be completed in specified stages (i.e 1,2,3) within the specified time which was mentioned on the work orders issued. The Assessee had received advances from the Samiti from time to time for the completion of the work. The Samiti had received the funds/advances from the Government Department and released the same to the Assessee on the same day or as soon as possible. The copy of bank statements of the Samiti is enclosed at Pages 33 to 36 of Factual Paper Book. Thus, the role of Samiti was limited to release of the funds to the Assessee as and when the same were received by the Samiti from the Government Department. After receiving the advances from the Samiti, it took considerable time to start the work of laying pipelines from water tank to the households due to various reasons such as (i) objections from the farmers over whose land the pipelines have to be laid (ii) sometimes crops are standing on the land and hence pipelines could not be laid until the crops have been harvested (iii) various permissions to be taken from the concerned local authorities, etc. Therefore, though the advance had been received the work could not be started immediately and it extended over to the subsequent financial year when the work was completed.*

*1.4 The Assessee undertakes stage wise completion of project and recognizes the revenue only after completion of particular stage of the project. The advances shown in the Balance Sheet as on 31/03/2015 have been utilized for stage wise completion of the project in subsequent years and depending upon the completion of particular stage, corresponding revenue has been*

recognized in subsequent years. The Assessee had also received further advances in respect of same project in subsequent years which substantiates the fact that the project was not completed during FY 2014-15.

2. Statements of samiti members are not reliable being contrary to documentary evidences available on record

2.1 The learned AO had mentioned in the assessment order that the Secretaries/President had given a statement that money was released to the Assessee only after completion of the work and payments were withheld for the works which were not completed. The learned AO had mentioned that the secretaries/ President stated that the Assessee was not given any advance against the work orders issued to the Assessee. The Assessee states that the statement recorded of the Secretaries/President of the Samiti are factually incorrect and contrary to the evidences on record. The learned CIT(A) has meticulously verified the documentary evidences and given fact finding on the discrepancies in the statement of samiti members, Refer Para 6.6 of Appellate Order and Annexure A to Appellate order. Therefore, the statements of samiti members are not reliable being contrary to documentary evidences of record.

2.2 Though the AO has mentioned that the Assessee was present at the time of recording of statement, however, the Assessee was not allowed to cross-examine the Secretaries/ President. The Assessee further submits that any statement recorded by the learned AO without providing an opportunity of cross examination is inadmissible evidence and cannot be used against the Assessee. Reliance is placed on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries (Civil Appeal 4228 of 2006) (Copy of the order is enclosed at Pages 191 to 197 of Legal Paper Book).

2.3 The Assessee submits that, the learned AO has made the impugned addition merely on the basis of the statement recorded of Secretaries/President of the Samiti. The learned AO did not corroborate the statement with the facts emanating from documentary evidences. The statements were recorded under pressure. The Assessee had approached the concerned Secretaries/President of the Samiti and asked them to give a clarification over their incorrect statement recorded before the learned AO.

Therefore, the Assessee submits that, the statements recorded by the learned AO is unreliable in light of aforesaid circumstances and being contrary to the facts and documents such as work order, bank statement, work completion certificate etc. Thus, the Assessee submits before your Honour that, statements are not credible and should not be relied upon while deciding the present issue.

3. Documentary evidences filed by the assessee in support of his contentions

3.1 The Assessee has filed a summary chart showing the Samiti wise (i.e project wise) details of tender issued, advances received in current & subsequent years, work done stagewise shown in P&L account in current & subsequent years as per work done statement, date of completion of project as per completion certificate alongwith documentary evidences as under:

Copies of:

- a) Initial work order
- b) Ledger accounts for FY 2014-15, FY 2015-16, FY 2016-17 (as applicable)
- c) Financials for FY 2014-15, FY 2015-16, FY 2016-17 (Schedule A – Work Done) (as applicable)
- d) Work done statement for FY 2014-15 FY 2015-16, FY 2016-17 (as applicable)
- e) Work completion certificate

(Refer Pages 1 to 32 of Factual Paper Book)

3.2 The above documentary evidences substantiate Assessee's submission that (1) Work was being completed stagewise extending to subsequent year/s (2) Advances were received from time to time during the year and also in subsequent year/s (3) When a particular stage of work was completed the corresponding work done was shown in P&L account (4) Complete work was not completed during FY 2014-15 as alleged by learned AO.

The work completion certificate issued by Government Department is conclusive evidence corroborating the fact that the projects were completed in subsequent year/s and not during FY 2014-15.

4. Consistent accounting practise followed by assessee over the years

The Assessee submits that, though he is following mercantile system of accounting, revenue is recognized only when particular stage of contract work is completed and the corresponding contract receipt has been received by the Assessee. This is a consistent accounting practice regularly followed by the Assessee disclosed in the financials kindly refer Page 52 of Factual Paper Book. The Assessee has been following similar accounting practice in earlier and subsequent years consistently. The Department has never taken any objection in any of the other years except the year under consideration. The Assessee submits that a consistent accounting practice followed by the Assessee should be accepted following the principle of consistency as has been held by the honorable Supreme Court in the decision of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC) (Copy is enclosed at Pages 182 to 190 of Legal Paper Book).

5. Reasonable gross profit (GP) and net profit (NP) for current year as well as in the past and subsequent years

The Assessee submits that it has shown reasonable gross profit (GP) and net profit (NP) for current year as well as in the past and subsequent years. The Assessee has enclosed working chart showing the GP/NP rate for the various years including the year under consideration at Page 91 of Factual Paper Book. On perusal of the details, your Honour will appreciate that the Assessee has been showing consistent profits over the years which are commensurate to the profits earned in construction line of businesses. If the action of the learned AO is accepted, then the gross profit for the year under consideration would be 41.2% which is abnormal and unrealistic to earn in the line of construction business.

6. Books of accounts not rejected by learned AO

6.1 The Assessee submits that only real income can be subjected to tax and not any hypothetical income. The Assessee maintains regular books of account. The books of account are duly audited by a chartered accountant. The learned AO has not found any defect in the books of account. The learned AO has not doubted the correctness of books of accounts. Therefore, the profits as per profit and loss account cannot be simply brushed aside without rejecting the books of the Assessee.

6.2 Without prejudice to the above, according to section 145, in case the learned AO was not satisfied about the accounting policy followed by the Assessee or about the correctness or completeness of the accounts, then the learned AO should have first rejected the books of account and proceeded to make a best judgement assessment as per section 144 of the Act. However, the learned AO has not rejected books of account but has erred in treating the advances received as unaccounted receipts which is unjustified and bad in law. There is no provision under the Act or authority under the law under which the learned AO could have treated the advances shown in the books of accounts as income of the Assessee.

## 7. Dispute/ litigation is tax neutral – No loss to Revenue

7.1 The Assessee submits that it had shown the advances as its income in subsequent years, when the corresponding stage-wise work was completed. Therefore, the dispute/ litigation is tax neutral. The tax rates in the year under consideration and subsequent years remains the same. The various Hon'ble Courts including Supreme Court of India have time and again observed that the Department should not litigate on issues which are tax neutral insofar as the question is whether a particular income is to be taxed in either of the two years. The Assessee relies on following judicial precedent in support of its contention

- CIT v. Excel Industries Ltd (358 ITR 295) (SC) wherein the Hon'ble Court has observed as under (Refer Pages 166 to 175 of Legal Paper Book):

"32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers." (Emphasis Supplied)

- CIT-2 v. Millennium Estates (P) Ltd (93 taxmann.com 41) (Bombay HC), wherein it has been observed as under (Refer Pages 176 to 181 of Legal Paper Book):

"10. It must also be borne in mind that the aforesaid amount which is being sought to be brought to tax in the subject Assessment Year 2007-08 has been offered to tax as income by the Respondent in the next Assessment Year. It is not the case of the Revenue that there are circumstances to indicate that by

bringing the said transactions to tax in the next Assessment Year instead of this, there is likely to be a loss to the Revenue. In fact the impugned order of the Tribunal has relied upon the decision of this Court in CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 and in that context reproduced the decision of Delhi High Court in CIT v. Vishnu Industrial Gases (P.) Ltd. [IT Reference No. 229 (Delhi) of 1988, dated 6-5-2008] as under:-" (Emphasis Supplied)

7.2 The Assessee places reliance on the decision of Hon'ble Gujarat HC wherein, the Hon'ble Court had deleted the similar addition made in respect of "mobilization advance" treated as revenue receipt by the Income-tax Officer:

- Copy of CIT v. Narayansingh Gulabsinghji (63 taxmann.com 335) (Gujarat HC) wherein it has been held as under (Refer Pages 160 to 165 of Legal Paper Book):

"8. At the outset, it is required to be noted and it has come on record that the assessee was following the system regularly showing the mobilization account and the amount of advance were always stated in the subsequent AY against bills in that year and the revenue had not raised any objection for that treatment. Considering the aforesaid facts and circumstances, when the learned CIT (Appeals) as well as the learned Tribunal have deleted the additions made by the Assessing Officer on account of "Mobilization Advance" in the year under consideration, it cannot be said that the learned CIT (Appeals) as well as the learned Tribunal have committed any error. In paras 8.4 and 9, the revenue observed and held as under:" (Emphasis Supplied)

*In view of above, the Assessee submits that, the learned AO erred in making addition in respect of advances received from the Samiti towards work to be done of Rs.2,12,95,900, as unaccounted receipts. The addition made by the learned AO is unwarranted, justified and bad in law."*

8. We have given a thoughtful consideration to the arguments made before us by the learned Counsel for the assessee as well as the learned Departmental Representative and perused the material available on record. We find that the issue before us for adjudication is covered by the judgment of the Hon'ble High Court of Gujarat rendered in CIT v/s Narayansingh Gulabsinghji, [2015] 63 taxmann.com 335 (Guj.), wherein, the Hon'ble Gujarat High Court, under similar facts, held as under:-

"8. At the outset, it is required to be noted and it has come on record that the assessee was following the system regularly showing the mobilization account and the amount of advance were always stated in the subsequent AY against bills in that year and the revenue had not raised any objection for that treatment. Considering the aforesaid facts and circumstances, when the learned CIT (Appeals) as well as the learned Tribunal have deleted the additions made by the Assessing Officer on account of "Mobilization Advance" in the year under consideration, it cannot be said that the

*learned CIT (Appeals) as well as the learned Tribunal have committed any error. In paras 8.4 and 9, the revenue observed and held as under:"*

9. The Assessing Officer has relied on the statement of certain Members of the Samiti who have given contradictory statements which can be seen from the various evidences filed by the assessee. The learned CIT(A) has verified the statement of Samiti Members vis-a-vis documentary evidences and highlighted the discrepancies, vide Annexure enclosed with the first appellate order. On a perusal of the statements of the Members of the Samiti, it is evident that they did not have full knowledge on the progress of work and that the Sub Divisional Engineer, Rural Water Supply, was looking after the matter. Various work completion certificates clearly denotes that the work was completed subsequently and the income was also offered for taxation in subsequent years. We find force in arguments of the learned Counsel for the assessee that;

- (a) Books of Account were not rejected by the Assessing Officer;*
- (b) Reasonable Gross Profit / Net Profit ratio have not been offered to tax for part and subsequent years; and*
- (c) Accounting Policy has been consistently followed by the assessee over a number of years and the same has not been objected by the Revenue.*

10. The learned Counsel for the assessee placed reliance on the following judicial precedents in support of his arguments:—

- i) CIT v/s Excel Industries, 358 ITR 295 (SC); and*
- ii) CIT v/s Millenium Estates Pvt. Ltd., 93 Taxmann.com 41 (Bom.).*

11. We further find that it is beyond comprehension as to how the non-commensurate amount of work-in-progress amounting to ₹ 69,31,666, convert the advances as an income. The Assessing Officer has ultimately added ₹ 2,00,95,900, as an unaccounted receipts from Samiti. The Assessing Officer has failed to note that the same has already been shown in the books of account by way of liability. Therefore, is it not the case that the receipts are not accounted at all. Consequently, there is no instance to interfere with the cogent observations of the learned CIT(A). Accordingly, the order passed by the learned CIT(A) is upheld by dismissing the grounds raised by the Revenue.

12. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 02/09/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 02/09/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur