

**| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**  
**&**  
**SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. Nos. 2866, 2863 & 2862/Mum/2023**  
**Assessment Year: 2016-17, 2017-18 & 2019-20**

<b>Assistant Commissioner of Income Tax, Central Circle-1(4)/ Yashpal Singh, Pratishta Bhavan, Churchgate Mumbai</b>	<b>Vs</b>	<b>GHV India Pvt. Ltd. Andheri East 1<sup>st</sup> Floor, AML Centre Mahakali Caves Road Andheri East Mumbai - 400093 [PAN: AADCG5702F]</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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**I.T.A. Nos. 2811/Mum/2023**  
**Assessment Year: 2018-19**

<b>GHV India Pvt. Ltd. Andheri East 1<sup>st</sup> Floor, AML Centre Mahakali Caves Road Andheri East Mumbai - 400093 [PAN: AADCG5702F]</b>	<b>Vs</b>	<b>Deputy Commissioner of Income Tax, Central Circle-1(4), Mumbai</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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**I.T.A. Nos. 2860/Mum/2023**  
**Assessment Year: 2018-19**

<b>Assistant Commissioner of Income Tax, Central Circle-1(4)/ Yashpal Singh, Pratishta Bhavan, Churchgate Mumbai</b>	<b>Vs</b>	<b>GHV India Pvt. Ltd. Andheri East 1<sup>st</sup> Floor, AML Centre Mahakali Caves Road Andheri East Mumbai - 400093 [PAN: AADCG5702F]</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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**I.T.A. Nos. 3103/Mum/2023**  
**Assessment Year: 2018-19**

<b>Assistant Commissioner of Income Tax, Central Circle-1(4)/ Yashpal Singh, Pratishtha Bhavan, Churchgate Mumbai</b>	Vs	<b>GHV India Pvt. Ltd. Andheri East 1<sup>st</sup> Floor, AML Centre Mahakali Caves Road Andheri East Mumbai - 400093 [PAN: AADCG5702F]</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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**I.T.A. Nos. 3111/Mum/2023**  
**Assessment Year: 2018-19**

<b>GHV India Pvt. Ltd. Andheri East 1<sup>st</sup> Floor, AML Centre Mahakali Caves Road Andheri East Mumbai - 400093 [PAN: AADCG5702F]</b>	Vs	<b>Assistant Commissioner of Income Tax Central Circle-1(4)/ Yashpal Singh, Pratishtha Bhavan, Churchgate Mumbai</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri K.C. Thaker, Advocate
Revenue by :	Shri Dr. Kishor Dhule, CIT D/R

सुनवाई की तारीख/Date of Hearing : 22/08/2024

घोषणा की तारीख/Date of Pronouncement: 30/08/2024

**आदेश/ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

I.T.A. Nos. 2866, 2863 & 2862/Mum/2023, are appeals filed by the revenue against the common order of the learned Commissioner of Income Tax (Appeals)-47, Mumbai [in short 'the ld. CIT(A)'], dated 28/06/2023,

pertaining to AY **2016-17, 2017-18** arising out of the assessment orders framed by ACIT, Central Circle-1(4), Mumbai, u/s 153C of the Income Tax Act, 1961, (in short 'the Act'), dated 26/03/2022 and the assessment order framed by the JCIT, Central Circle-1(4), Mumbai, u/s. 143(3) r.w.s.153C of the Act, dated 25/03/2022 pertaining to AY **2019-20**.

**I.T.A. Nos. 2811/Mum/2023 & I.T.A. Nos. 2860/Mum/2023**, are cross-appeals preferred against the order of the Id. CIT(A) dated 28/06/2023, arising out of the assessment order framed by the ACIT, Central Circle-1(4), Mumbai, u/s 153C of the Income Tax Act, 1961, dated 26/02/2022 for AY 2018-19.

**I.T.A. Nos. 3193/Mum/2023 & I.T.A. Nos. 3111/Mum/2023**, are cross-appeals preferred against the order of the Id. CIT(A) dated 07/07/2023, arising out of the assessment order framed by the ACIT, Central Circle-1(4), Mumbai, u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 30/03/2021 for AY 2018-19.

2. As the issues arising in all these appeals are common and pertaining to the same assessee, they were heard together and are disposed off by way of this common order for the sake of convenience and brevity.

3. We first take up **I.T.A. Nos. 2866, 2863 & 2862/Mum/2023** for AY **2016-17, 2017-18 & 2019-20**, for adjudication. Appeal in ITA No. 2866/Mum/2023 for AY 2016-17, is taken as the lead case and the decision rendered therein shall apply *mutatis mutandis* for AYs 2017-18 & 2019-20.

4. Briefly stated, facts of the case are that assessee filed its original return of income on 23/03/2017 reporting total income at Rs.

35,04,80,210/- . A survey action u/s. 133A of the Act was conducted in the case of the assessee on 26/02/2021. Consequently, case of the assessee was centralized to the charge of Central Circle 1(4), Mumbai. A Search & Seizure action u/s. 132 of the Act was conducted in the case of Shri Manoj Vasudev Pardasany, one of the search entities in DNC group on 01/11/2019. During the course of search, incriminating computer files containing information related to the assessee were found from the laptop of Shri Vinay Nanglia. Subsequently, communication in the case of the assessee was received by the Id. Assessing Officer from DCIT-Central Circle-31, Delhi recommending for proceedings u/s. 153C in the case of the assessee for different years. Consequently, notice under section 153C of the Act dated 15/12/2021 was issued to the assessee after recording common satisfaction note for A.Y. 2016-17 to 2019-20. In response to the notice issued u/s 153C of the Act, assessee e-filed its return of income for A.Y. 2016-17 on 07/01/2022 reporting total income at Rs. 35,04,80,210/-. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee for which assessee filed written submissions and were duly considered by the A.O. He framed the assessment u/s 153C of the Act on 26/03/2022 determining total income at Rs. 37,71,49,070/- by making an addition of Rs. 2,66,68,864/- on account of disallowances of purchases made from M/s. ABN Tradelink Pvt. Ltd.

4.1. Aggrieved, assessee carried the matter in appeal before the Id. CIT(A) who gave part relief.

5. Aggrieved, revenue is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee reiterated the submissions made before the ld. First Appellate Authority that, the assessment order passed u/s 153C of the Act for the impugned assessment year is bad in law as the additions made in the assessment order are not based on or connected with any incriminating documents found or seized during the search proceedings. That, as on the date of search action u/s 132 of the Act, there were no pending assessment proceedings for the impugned AY, which got abated.

6.1. During the course of first appellate proceedings, ld. CIT(A) called for the satisfaction notes of the A.O. for initiating proceedings u/s 153C of the Act. Reply of the A.O. was received on 09/06/2023. Relevant portion of the reply/satisfaction note, reads as under:-

"Satisfaction Note recorded by the Assessing officer of the other assessee M/s. GHV(India) Pvt. Ltd. (PAN: AADCG5702F) i.e. Assessee Company on the basis of material seized during the course of search and seizure action under section 132 of the Income Tax Act 1961 hereinafter referred to as "the Act" in the case of Shri Mano Vasudev Pardasany one of the search entities in DNC Group for issuing Notice u/s 153C of the Act in the case of M/S. GHV(India) Pvt. Ltd...."

7. Ld. CIT(A) observed that the combined satisfaction note clearly mentions about the incriminating excel sheets found from the laptop of Shri Vinay Nangalia at the time of search proceedings. As mentioned by the A.O. in the satisfaction note, the assessee company has paid Rs. 17,04,15,316/- to "Unison" during March and April, 2018. Also, basic amount after TDS is shown at Rs. 15,21,56,531/-. Here, "Unison" is abbreviation for M/s. Great Unison Contractors Ind. Pvt. Ltd. which is

a sub-contracting company worked during F.Y. 2017-18 relevant to A.Y. 2018-19.

7.1. For the relevant A.Y. 2016-17, no disallowance has been made with respect to M/s Great Unison Contractors Ind. Pvt. Ltd. but disallowance has been made with respect to payment made against purchases from M/s ABN Tradelink Pvt. Ltd. On further verification, it is found that entire disallowance of sub contract expense related to M/s Great Unison Contractors Ind. Pvt. Ltd. of Rs. 15,21,56,532/- as discussed in the satisfaction note has been made in A.Y. 2018-19 only for which both assessee and revenue are in appeal before the Tribunal which we will deal with subsequently in this order itself. Ld. A.O. has remained silent on the issue of any incriminating material found and/or seized during the search action for the relevant year A.Y. 2016-17 based on which the impugned addition of Rs. 2,66,58,864/- is made. Assessee has contested that the impugned addition during A.Y, 2016-17 is not based on any material found/seized during the course of any search action based on which the satisfaction note has been drawn.

7.2. Perusing the impugned assessment order and satisfaction note, it is evident that Id. AO has not referred to any seized material found during the course of search to make the impugned addition of Rs. 2,66,68,864/- as unexplained purchases from M/s ABN Tradelink Pvt. Ltd. by treating it as non-genuine expenses. Original return of income, in this case was filed on 23.03.2017. Due date for issuing notice u/s 143(2) was 30.09.2017, which had already expired when the satisfaction

note was recorded. Keeping in view the submissions of the assessee as well as the fact that since, the proceedings for A.Y. 2016-17 had not abated, the contention of the assessee that the AO was empowered to make additions based on the incriminating material found and seized during the course of search operation found force and relying on several judicial decisions including the decision of jurisdictional High Court, ld. CIT(A) concluded that as the AO failed to bring on record either through the assessment order or through remand report, any incriminating document/material found or seized during the search and seizure action u/s 132 of the Act as recorded in the satisfaction note, which can be connected with the impugned addition, deleted the addition for the impugned AYs.

7.3. Aggrieved, Revenue is in appeal before the Tribunal.

8. The ld. D/R, though not leaving his grounds, could not factually controvert the findings of the ld. CIT(A). He placed reliance on the SLP dismissal order of Hon'ble Supreme Court in the case of B. Kishore Kumar vs. DCIT [2015] 62 taxmann.com 215 (SC) to submit that statement recorded during the course of search can alone be the basis for making the addition. The ld. Counsel prayed that the findings of the ld. CIT(A) be upheld.

9. The undisputed glaring facts of the present case are that, AO has failed to bring on record any incriminating document/material found

or seized during the search and seizure action u/s 132 of the Act, let alone having a nexus with the impugned additions. Perusal of scanned copies of excel sheets in the satisfaction note reveals that there is no mention of the party ABN Tradelink Pvt. Ltd. in the same. The facts in totality go on to show that the AO has made the addition without any basis, making them bad in law. In respect of reliance by Id. CIT D/R on the SLP dismissal order in the case of B. Kishore Kumar (supra), on the query by the Bench as to the observation and finding of the Hon'ble High Court of Madras, he fairly submitted that Hon'ble High Court had concluded that incriminating material along with the statement recorded are together necessary for the purpose of making the addition. His reliance thus bears no fruit.

10. Be that as it may, the issue is no longer *res integra* by the decision of the Hon'ble Supreme Court in the case of *Pr. C.I.T. V/s. Abhisar Buildwell (P) Ltd.* (2023) 454 ITR 212 (S.C.) held as under:-

*Section 153A, read with sections 132 and 143, of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Conditions precedent) - Whether object of section 153A is to bring under tax undisclosed income which is found during course of search or pursuant to search or requisition; therefore, only in a case where undisclosed income is found on basis of incriminating material, Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block assessment period even in case of completed/unabated assessment- Held, yes - Whether in case of search under section 132 or requisition under section 132A, Assessing Officer assumes jurisdiction for block assessment under section 153A and that all pending assessments/reassessments shall stand abated - Held, yes - Whether in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A - Held, yes - Whether, however, completed/unabated assessments can be reopened by Assessing Officer in exercise of powers under section 147/148*

*subject to fulfilment of conditions as envisaged/mentioned under section 147/148 and those powers are saved - Held, yes [Paras 8, 12 to 14] [In favour of assessee]*

11. Keeping in view the totality of facts and circumstances of the case in light of the judgment of the Hon'ble Supreme Court (*supra*) as well as the well founded and reasoned order of the Id. CIT(A) which is also in line with the judgment of the Hon'ble Supreme Court, we find no reason to interfere with the findings of the Id. CIT(A) and uphold the same and dismiss the effective grounds raised by the revenue.

12. As we have dismissed the revenue's appeal for AY 2016-17, as mentioned by us hereinabove, the said decision rendered applies *mutatis mutandis* for AY 2017-18 & 2019-20. Accordingly, appeals of the revenue for AY 2016-17, 2017-18 & 2019-20 are dismissed.

13. Now, we take up the cross-appeals in I.T.A. Nos. 2811/Mum/2023 & I.T.A. Nos. 2860/Mum/2023 for adjudication relevant to AY 2018-19.

14. The solitary issue agitated in these cross-appeals is in respect of the following additions made in the assessment passed u/s 153C of the Act on 26/03/2022:-

Sr. No.	Particulars	Amount (in Rs.)
1.	Disallowance of sub-contract expenses of M/s. High Ground Enterprises Limited	20,37,05,060/-
2.	Disallowances of sub-contract expenses of M/s. Oxford Infracon Private Limited	31,01,28,676/-
3.	Disallowances of sub-contract expenses of M/s. Great Unison Contractors India Private Limited	15,21,56,532/-

15. Ld. Counsel for the assessee submitted that the additions in respect of Sr. Nos. 1 & 2 for sub-contractor expenses of High Ground Enterprises Limited and Oxford Infracon Private Limited, do not find their mention in the satisfaction note recorded for the purpose of initiating the proceedings u/s 153C of the Act.

16. These two additions are akin to what has already been dealt in the three appeals for AY 2016-17, 2017-18 & 2019-20, hereinabove. Ld. Sr. D/R on confrontation of these facts could not bring anything to controvert the facts.

17. Since the issue has already been dealt by us in the said three appeals in details, the observation and findings of all these three appeals apply *mutatis mutandis* in respect of the disallowance made for High Ground Enterprises Limited and Oxford Infracon Private Limited. Accordingly, the same are deleted.

18. On the issue raised by the ld. Counsel in respect of proceedings undertaken u/s 153C of the Act, contending that there was absence of documents with the AO while drawing satisfaction, thereby challenging the entire proceedings, we take note of the submission made by the assessee before the ld. CIT(A). In these submissions, it was contended that there had not been any formal communication of either the satisfaction note or the incriminating documents. In this respect, reference was made to the office note recorded by the ld. AO in the order sheet on 15/12/2021.

On the strength of this office note, it was contended that the ld. AO was in possession of only the statement of Shri Vinay Nangalia and that no incriminating documents have been transmitted to the AO of the assessee from the AO of the searched person at the time of issue of notice u/s 153C. Accordingly, since there is no transfer of incriminating material, prior to the issue of notice u/s 153C of the Act, it was strongly contended that provisions of Section 153C of the Act had not been followed. The office note recorded by the ld. AO in the order sheet dated 15/12/2021 as appearing in the order of ld. CIT(A) is extracted below:-

***“ABSENCE OF DOCUMENTS WITH AO WHILE DRAWING HIS SATISFACTION***

*3.5 It is submitted that there has not been any formal communication of either satisfaction note or even the incriminating documents by the AO to the appellant. However, the appellant, during the course of assessment proceedings had access to the order sheets. The office note recorded by the AO on the order sheet on 15.12.2021 i.e., the day of issue of notice u/s 153C of the Act is reproduced below:*

***Office Note:***

*The case of GHV (India) Pvt. Ltd. PAN AADCG5702F was centralised in the charge of Central Circle - 1(4) in consequence to survey action u/s. 133A dated 26.02.2021. The PAN was migrated on 22.04.2021. At the time of migration of PAN, the assessment proceedings for AYs 2016-17 and 2017-18 u/s. 147 and AY 2020-21 u/s. 143(3) through CASS was pending on the system. Subsequently survey material was forwarded to this office on 06.09.2021. On perusal of survey report, it was seen that assessment proceedings of subsequent years were also required to be reopened.*

*However, the guidelines and mechanism for reopening on ITBA system as per Income Tax Act 2021 was not available till 10.12.2021.*

*In the meantime, a satisfaction note in the case of M/s. GHV (India) Pvt. Ltd. was received from DCIT - Centrai Circle 31, Delhi recommending for proceedings under section 153C in this case. Thereafter, request was made from this office to provide other relevant material in the case. Later, statement of Shri Vijay Nangalia was provided by DCIT - Central Circle 31, Delhi.*

***Proceedings under section 153C are being initiated on system after recording satisfaction in this case.*** Assessment proceedings for AY 2020-21 i.e. the search year

is going on under CASS. Same is not being allowed to be abated by the system as requirement of assessment of search year i.e. AY 2020-21 under section 143(3) has merged with ongoing assessment proceedings under section 143(3). Further, it is noted that notice u/s. 143(2) for AY 2020-21 could be sent only up to 30.6.2021.

Also, in light of the above facts, material available in survey report and CASS reasons for AY 2020-21 shall be considered along with reasons for reopening in abated cases for AY 2016-17 and AY 2017-18 while completing assessment of respective years u/s. 153C r.w.s. 143(3) for 6 preceding years and under section 143(3) for AY 2020-21."

19. From the above submissions of the assessee before the ld. CIT(A) in respect of the satisfaction note, a remand report was called from the ld.

AO. A letter was issued by the ld. CIT(A), which is extracted below:-

*"Sub: Request for providing Satisfaction Note (order passed u/s 153C of the Act) in the case of M/s. GHV (India) Pvt. Ltd. (PAN: AADCG5702F) for A. Yrs. 2016-17, 2017-18, 2018-19 & 2019-20 - reg-*

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*Please refer to the above.*

*2. Substantial additions have been made in the case of M/s. GHV (India) Pvt. Ltd. for the assessment years 2016-17, 2017-18, 2018-19 & 2019-20.*

*3. During the appellate proceedings, the A.R. of the appellant has stated that though the assessment order has been passed u/s 153C of the Act, satisfaction notes recorded for these years were not provided.*

*6. You are therefore, requested to send copies of satisfaction note for the above mentioned year(s) which were drawn before initiation of proceedings u/s 153C of the Act on or before 15<sup>th</sup> June 2023, without fail."*

20. Ld. AO submitted his reply. From the perusal of the said reply, it is noted that he has acknowledged due receipt of files containing information related to the assessee which were forwarded through e-mail on 14/10/2021 by the AO of the searched person after recording his satisfaction for taking action u/s 153C of the Act. It is also noted that statement of Shri Vinay Nanglia was also forwarded to the AO through

subsequent e-mails. After perusing the same, ld. AO of the assessee recorded the satisfaction for issuing notice u/s 153C of the Act. In his reply to the ld. CIT(A), ld. AO has extracted the satisfaction note recorded by him wherein scanned copies of excel sheets (incriminating material found and seized from laptop of Shri Vinay Nanglia) which are transmitted by the AO to the searched person are included. He has also produced the statement of Shri Vinay Nanglia, fact of which is noted in the satisfaction note itself. Thus, after going through the excel sheets and the statement supplied by the AO of the searched person, the AO of the assessee recorded the satisfaction note to draw his satisfaction that information contained in the material seized relates to the assessee and has a bearing on the determination of its total income. The said reply by the AO to the ld. CIT(A) and satisfaction note therein, is reproduced below for ease of reference:-

*“Satisfaction Note recorded by the Assessing officer of the other assessee M/s. GHV(India) Pvt. Ltd. (PAN:- AADCG5702F) i.e. Assessee Company on the basis of material seized during the course of search and seizure action under section 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act" in the case of Shri Manoj Vasudev Pardasany, one of the search entity in DINC Group for issuing Notice u/s 153C of the Act in the case of M/s. GHV(India) Pvt.Ltd.:*

*A search and seizure action u/s 132 of the Act was conducted on 01-11-2019 in the case of Shri Manoj Vasudev Pardasany, one of the search entity in DNC Group at 114, Satnam Apartments, 93 Cuffe Parade, Kolawa, Mumbai. During the course of search & seizure operation at 114, Satnam Apartments, 93 Cuffe Parade, Kolawa, Mumbai, incriminating computer files containing information related to M/s GHV(India) Pvt. Ltd. (Hereinafter referred to as the Assessee Company) was found from the laptop of Shri Vinay Nanglia (related to Shri Manoj Vasudev Pardasany). Several incriminating files were found in the said laptop and among those files, few files contained information related to Assessee Company. Files containing information related to Assessee Company were forwarded to the undersigned through email on 14.10.2021 by AO of searched person after recording his satisfaction for taking action under section 153C of the Act.*

*Subsequently clarification was given by AO of searched person that relevant portion of information related to assessee company has already been forwarded to undersigned. Also*

statement of Shri Vinay Nangalia was forwarded to undersigned vide subsequent email. On perusal of the same, the reason is recorded as under for issuing notice u/s 153C of the Act in the case of M/s GHV(India) Pvt. Ltd. (PAN: AADCG5702F):

2. From cloned data of laptop of Vinay Nangalia, certain excel sheets were found titled "Copy of GHV Payment Sheet" and "unison GHV" which gives details of the payments made by the company M/s GHV(India) Pvt. Ltd. to the company named "Unison" and the subsequent payments made by Unison to various vendors. The excel sheet "Copy of GHV Payment Sheet" contains details of the amount transferred date-wise from GHV to Unison and the amounts paid back by Unison to

Received From	Date	Amount	
GHV India Pvt Ltd	16-03-2018	1,10,00,000	
GHV India Pvt Ltd	20-03-2018	55,00,000	
GHV India Pvt Ltd	22-03-2018	4,95,00,000	
GHV India Pvt Ltd	09-04-2018	4,63,72,185	
GHV India Pvt Ltd	27-04-2018	5,50,00,000	
	Total received	16,73,72,185	
	Add : TDS		30,43,131
	Total received		17,04,15,316
	Total Paid	15,22,00,000	
Basic Amount			15,21,56,531.82
	Balance with Unison	1,51,72,185	
Less	GST Money Hold	15,97,64,358.41	76,07,827
Less	Unison Corporate Fee 1%		15,97,644
Less	TDS on payment 1%		15,22,000
	Unison can release subject to submission of hard copy of original invoices		44,44,715

As can be seen from the above excel sheet that M/s GHV(India) Pvt. Ltd. has paid a total sum of Rs. 17,04,15,316/- (including TDS of Rs. 30,43,131) to Unison during March and April 2018. Unison has in turn paid back a cash of Rs. 15,22,00,000/- to GHV and was to further release Rs. 44,44,715/- after completion of the requisite paper-work. Unison has also charged a corporate fee of Rs. 1% for facilitating this transaction which comes to a sum of Rs. 15,97,644/-.

This amount received by Unison from GHV was further sub-contracted by Unison to several entities such as Rudra Industries, Vasudev Engineering etc. The relevant screenshot of the other worksheet "vender" of the excel sheet "Copy of GHV Payment sheet" is being reproduced below. It is noted that amount paid to sub contractors in this sheet exactly matches with the amount mentioned in above excel sheet which has been paid back in cash to Assessee Company:

So.N	Payment date	Name Vendor	Amount	Ch.No	GST Rate	Payable To			
						Mutual	Net		
1	17-03-2018	Vasudev Engineering	66,00,000	000135	5%	57,14,285.71	2,85,714.29	2.50%	1,42,857.14
2	17-03-2018	Rudra Industries	50,00,000	000152	5%	47,61,904.76	2,38,095.24	2.50%	1,19,047.62
3	23-03-2018	Rudra Industries	50,00,000	000152	5%	47,61,904.76	2,38,095.24	2.50%	1,19,047.62
4	26-03-2018	Rudra Industries	75,00,000	000158	5%	71,42,857.14	3,57,142.86	2.50%	1,78,571.43
5	26-03-2018	Vasudev Engineering	75,00,000	000159	5%	71,42,857.14	3,57,142.86	2.50%	1,78,571.43
6	27-03-2018	Rudra Industries	1,00,00,000	000160	5%	95,23,809.52	4,76,190.48	2.50%	2,38,095.24
7	27-03-2018	Vasudev Engineering	1,00,00,000	000161	5%	95,23,809.52	4,76,190.48	2.50%	2,38,095.24
8	28-03-2018	Rudra Industries	62,50,000	000258	5%	59,52,380.95	2,97,619.05	2.50%	1,48,809.52
9	28-03-2018	Vasudev Engineering	62,50,000	000259	5%	59,52,380.95	2,97,619.05	2.50%	1,48,809.52
10	11-04-2018	SHAH Enterprises	1,00,00,000	000162	18%	84,74,576.27	15,25,423.73	7.00%	5,93,220.34
11	11-04-2018	Pari Engineering	98,00,000	000165	18%	85,05,064.75	14,94,935.25	7.00%	5,83,355.93
12	12-04-2018	RidhiEXIM	75,00,000	000164	18%	63,55,932.20	11,44,067.80	7.00%	4,44,915.25
13	12-04-2018	Ganesh CORPORATION	75,00,000	000165	18%	63,55,932.20	11,44,067.80	7.00%	4,44,915.25
14	13-04-2018	Ganesh CORPORATION	47,00,000	000165	18%	39,85,050.85	7,16,949.15	7.00%	2,78,813.56
15	13-04-2018	RidhiEXIM	47,00,000	000167	18%	39,85,050.85	7,16,949.15	7.00%	2,78,813.56
16	03-05-2018	RidhiEXIM	1,00,00,000	000169	18%	84,74,576.27	15,25,423.73	7.00%	5,93,220.34
17	03-05-2018	Ganesh CORPORATION	1,00,00,000	000170	18%	84,74,576.27	15,25,423.73	7.00%	5,93,220.34
18	03-05-2018	Blue Enterprises	50,00,000	000171	28%	39,06,250.00	10,93,750.00	10.50%	4,10,156.25
19	05-05-2018	Rajvi Trading	50,00,000	000172	18%	42,57,288.14	7,62,711.86	7.00%	2,96,610.17
20	08-05-2018	Ganesh CORPORATION	40,00,000	000174	18%	33,89,830.51	6,10,169.49	7.00%	2,37,288.14
21	08-05-2018	Rajvi Trading	40,00,000	000175	18%	33,89,830.51	6,10,169.49	7.00%	2,37,288.14
22	08-05-2018	Blue Enterprises	40,00,000	000176	28%	31,25,000.00	8,75,000.00	10.50%	3,28,125.00
23	08-05-2018	RidhiEXIM	25,00,000	000177	18%	21,18,644.07	3,81,355.93	7.00%	1,48,305.08
		Total	15,22,00,000						69,78,152.12
									9,47,000.00

Also Statements of Shri Vinay Nangalia has been perused. He has explained similar transactions in detail which were found from the same laptop. He has stated that cash has been returned back to various parties against payment made by these parties in garb of bogus contract. Also it is seen that these bogus transactions have been facilitated by Shri Manoj Pardasany and Shri Vinay Nangalia. Further, during the course of assessment proceedings by AO of searched entities, it has been observed that cash has been generated against payments made under the garb of bogus contracts

3. The provision of section 153C of the Act is reproduced for ready reference:

"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, –

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person / land that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A]:"

4. In view of above, it is crystal clear that the information contained in material seized from the premise of Shri Manoj Vasudev Pardasany relates to M/s GHV(India) Pvt. Ltd and has bearing on determination of total income of Assessee Company.

5. In view of above, I am satisfied that the case of the assessee company M/s. GHV(India) Pvt. Ltd. (PAN:- AADCG5702F) is covered within the provisions of section 153C of the

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*Act. Therefore, I am satisfied that the assessee's case is fit to initiate proceedings under section 153C of the Act and hence notice u/s 153C is issued in case of M/s. GHV(India) Pvt. Ltd. (PAN:- AADCG5702F) for A.Y.2014-15 to A. Y. 2019-20."*

21. Considering the above facts on record, we do not ascribe to the legal issue raised by the assessee in respect of challenging the validity of proceedings initiated u/s 153C of the Act and assessment order passed thereafter.

22. Accordingly, the legal grounds raised by the assessee on this issue are dismissed.

23. On the merits of the case, the party at Sr. No. 3, in the above table i.e., Great Unison Contractors India Private Limited, finds its mention in the satisfaction note in respect of which excel sheets were found during the course of search pertaining to the assessee. The moot point raised by the ld. AO in respect of the transaction of the assessee with Great Unison Contractors India Private Limited, was that no work has been done by the said party. In this respect, the ld. CIT(A), had agreed that the assessee of the AO has never challenged to the fact of contract work having been carried out by the assessee which included the work assigned to its sub-contractor. Further, the ld. CIT(A) has noted that progress report prepared by an independent engineer appointed by the Ministry of Road Transport and Highway was furnished by the assessee before the AO which had not been rejected or commented upon by him. He has not noted any deficiency in the said report. This led to the

conclusion drawn by the Id. CIT(A) that contract work cannot be considered to be not done since it had been monitored by NHAI on continuous basis. Ld. CIT(A) has extensively dealt with the contention of the Id. AO meritoriously and came to the finding that only the gross profit earned by the assessee in respect of contract work given on subcontract basis to Great Unison Contractors India Private Limited, can be added in the hands of the assessee. Accordingly, the GP Rate of 14.24%, which the assessee had reported in AY 2018-19, was taken on the contract value with Great Unison Contractors India Private Limited. However, Id. CIT(A) as adopted this GP Rate on the contract value of all the three subcontractors tabulated above and partly allowed the appeal.

24. Before us, since we have deleted the addition in respect of the two subcontractors, the same will not be subjected to the GP Rate addition. It will apply only in the case of Great Unison Contractors India Private Limited, for the subcontract work amounting to Rs.15,21,56,532/- . Thus, the addition to the extent of 14.24% of this amount is sustained and the balances is deleted.

25. Accordingly, appeal of the assessee is partly allowed and appeal of the revenue has the grounds of appeal on the same issues i.e, as to whether the Id. CIT(A) erred in granting part relief to the assessee, which comes to rest by our decision rendered in the assessee's appeal. Thus, appeal of the revenue stands dismissed.

26. Now, we take up the cross appeals in I.T.A. Nos. 3193/Mum/2023 & I.T.A. Nos. 3111/Mum/2023. These two appeals are emanating from the assessment orders passed u/s 143(3) of the Act i.e., prior to conduct of survey in assessee's case and proceedings initiated u/s 153C of the Act.

27. Assessee is contesting on the part sustenance of Rs.5,48,79,693/- in respect of debtors and other balances written off by the assessee which was done as part of exercise of cleaning the balance sheet. The second issue raised by the assessee is in respect of disallowance of Rs.1,86,10,691/- towards the transactions of alleged bogus purchases between the assessee and certain accommodation entry operators.

28. On the first issue relating to addition towards amount written off by the assessee, it was contended that with an aim to introduce transparency in its accounting procedures, assessee appointed a professional firm for handling its audit work during the year under consideration. The said firm advised it to initiate a comprehensive examination of accounts, (whether debits or credits) to examine whether such debts had turned bad and whether the credits required to be squared up or not. While the firm itself wrote letters to all such creditors and debtors, assessee also conducted necessary study and after careful analysis, it was found that debts/receivables/trade advances totalling to Rs 16,00,68,609/-could not be recovered while trade credits totaling to Rs 10,51,88,916/- did not required to be paid.

Assessee pointed that all these outstanding amounts were business debts and business credits which were appearing in books of accounts over the years. These also included advances given to subcontractors for work awarded to them where the contractors failed to deliver the work after collecting the advance portion of the contract. Similarly, the credit amounts included performance guarantee amounts deducted from contractors which was no longer payable to them as assessee had not been able to collect the guarantee amount deducted by the Government from it. Accordingly, during the year, assessee proceeded to write off Rs 16,00,68,609/- being business debts and wrote back as income Rs 10,51,88,916/- being business credits no longer required to be paid in its P&L account.

29. In this respect, the ld. CIT(A) observed that these amounts were trade receivables, recoverable business advances and trade credits which were shown on the advice of their auditor. He took note of both the credit and debit write back and write off to arrive at the net claim of Rs.5,48,79,693/- and sustained this net claim as addition. On a specific query by the bench on this issue to the ld. Counsel for the assessee, that whether the assessee in a position to explain each of the entries both as credits and debits appearing in the profit and loss account to understand their effect on the total income offered to tax in the respective preceding assessment years, nothing affirmative was submitted except that this was the result of a cleanup exercise undertaken by the assessee on the basis of professional advice. Ld.

Counsel fairly accepted that assessee is not in a position to corroborate the claim as asked for by the Bench, the addition so made is sustained. Accordingly ground taken by the assessee in this respect is dismissed.

30. On the second issue relating to addition made on account of alleged bogus purchase made by the assessee from certain accommodation entry providers, ld. CIT(A) has elaborately dealt with the merits of the case to note that assessee had purchased steel from Flyjoy Distributors Pvt. Ltd. and that ld. AO has not contradicted or found any defect with respect to the evidence submitted before him. He further took note of the fact that work had been completed by the assessee which was monitored by the Ministry of Road Transport and Highway and an independent engineer had been deputed who had also certified the work completion. Ld. CIT(A) by taking into account all these facts and documentary evidences on record, adopted the same conclusion of taking GP Rate of 14.24% on the alleged bogus billing of Rs.1,86,10,691/- as was done while adjudicating the appeal against the assessment order passed u/s 153C of the Act, for the same year.

31. The observation and findings of the ld. CIT(A) in this respect reads as under:-

*“8.1 From the above, it is found that that the appellant has undertaken purchases of Rs.1,86,10,691/- from M/s.Flyjoy Distributors Pvt. Ltd. and others which is controlled by Shri Deepak Upadhyay. According to the AO the said company is involved in bogus billing. Thus, the expenditure to the extent of Rs.1,86,10,691/- is disallowed in the form of utilizing bogus bills from this concern. It will not be out of place to mention here that during the pendency of the present assessment proceedings by NFAC, search action u/s.132 of the I.T.Act took place at the D&C group on 01.11.2019. During the course of search, incriminating documents relating to the appellant was found and accordingly proceedings u/s.153C was initiated for the*

*impugned A.Y.2018-19 too. The assessment u/s.153C of the Act was completed on 26.03.2022 where sub-contract expenses with respect to 3 vendors were disallowed at 100% treating it as bogus expenditure. The Ld. AR has stated that during the assessment proceedings u/s.153C too, the issue of availing bogus bills from M/s.Flyjoy Distributors Pvt. Ltd. were raised in order to establish the genuineness of the purchases from this party. Various documentary evidence such as ledger account, relevant bank statement showing transaction, invoices with lorry receipts, copy of Form GSTR 2A were submitted to the AO. I find that no addition has been made by the AO in the search assessment proceedings completed u/s.153C with respect to purchases from M/s.Flyjoy Distributors Pvt. Ltd. since the said addition was already made in the impugned assessment order passed u/s.143(3).*

*8.2 During the appellate proceedings, the Ld. AR has stated that the appellant purchased steel from M/s.Flyjoy Distributors Pvt. Ltd. and the AO has not contradicted or found any defect with respect to evidences submitted before it either during the assessment proceedings by NFAC/search assessment proceedings u/s.153C. Moreover the work completed by the appellant has been monitored by the Ministry of Road Transport and Highways and independent engineer was deputed who also certified the work completion which included the impugned purchases too. The completion of work and utilization of products claimed to be purchased from M/s.Flyjoy Distributors have not been doubted by the AO.*

*8.3 In my considered view, the issue of availing bogus bills of M/s.Flyjoy Distributors Pvt. Ltd. where 100% disallowance has been made is similar to disallowance of sub-contract expenses of 3 vendors in the assessment proceedings u/s.153C as 100% disallowance was resorted to for A.Y.2018-19. Against the assessment order passed u/s.153C dated 26.03.2022, the appellant had preferred appeal which has already been decided by this office vide order dated 28.06.2023 and the disallowance of bogus purchases has been restricted to 14.24% of the contract work, which is the GP shown from the contract work for A.Y.2018-19.*

*Applying the same logic for disallowance to be restricted to the GP shown against the purchases, the impugned disallowance is restricted to 14.24% of Rs.1,86,10,691/- which works out to Rs.26,50,162/- which is **confirmed**. Thus, the appellant gets relief of the balance amount of Rs.1,59,60,529/- The AO is directed accordingly. Ground of appeal No.3 is partly allowed.*

**9. Decision on Ground No. 6** - *During the course of the appellate proceedings, the appellant has not added, altered or amended any of the ground of appeal. Thus, there is no specific issue in this ground of appeal, which requires adjudication. Accordingly, this ground of the present appeal is **dismissed**.*

*10. In effect, the appeal of appellant for A.Y. 2018-19 [U/s. 143(3) of the Act] is **partly allowed**."*

32. We do not find any reason to interfere with the meritorious finding arrived at by the Id. CIT(A) in this respect of restricting the disallowance to the extent of 14.24% of Rs.1,86,10,691/-. Accordingly, the said disallowance is confirmed, dismissing the ground taken in this respect.

33. Accordingly, assessee's appeal is dismissed and appeal of the revenue is allowed.

34. In the result, appeals by the assessee in ITA No. 2811/Mum/2023 is partly allowed and in ITA No. 3111/Mum/2023 is dismissed. Appeals by revenue in ITA Nos. 2866, 2863, 2862 and 2860/Mum/2023 are dismissed and in ITA No. 3103/Mum/2023 is allowed.

**Order pronounced in the Court on 30 August, 2024 at Mumbai.**

Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Mumbai, Dated 30/08/2024

*SC SpP*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai