

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &
SHRI MS PADMAVATHY S, AM,
I.T.A. No.1885/Mum/2024
(Assessment Year: 2014-15)**

ACIT-2(3(1)) 552, Aayakar Bhawan, K. K. Road, Churchgate, Mumbai-400020.	Vs.	Veer Energy and Infrastructure Ltd. 629/A, Gazdar House, 1 st Floor, Near Kalbadevi Post Office, J. Shankar Sheth Marg, Mumbai-400002. PAN : AAACJ8658G
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri Surendra Meena, Sr. DR
Respondent /Assessee by : Shri Vijay Mehta, AR
Date of Hearing : 26.08.2024
Date of Pronouncement : 02.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 25.01.2024 for Assessment Year (AY) 2014-15. The Revenue raised the following grounds of appeals:

"1 1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,32,65,703/-on account of Bogus Purchases and further estimation of average gross profit of 6% on inflated purchase cost without appreciating the fact that the assessee had failed to establish the genuineness of the transaction and creditworthiness of the party."

2 2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,32,65,703/-on account of Bogus Purchases and further estimation of average gross profit of 6% on inflated purchase cost after accepting additional evidences by the assessee without affording any opportunity to the AO as per the provisions of Rule 46A(3) of IT Rules."

3 3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.6,08,13,844/-on account of Bogus Sub Contract without appreciating the fact that the assessee had failed to establish the genuineness of the transaction and creditworthiness of the party."

4 4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.6,08,13,844/on account of Bogus Sub Contract after accepting additional evidences by the assessee without affording any opportunity to the AO as per the provisions of Rule 46A(3) of IT Rules."

2. The assessee is a company engaged in the business of development of infrastructure in power sector including setting up of Wind Turbine Generator (WTG) Farms and Associated Infrastructure. The assessee filed the return of income for AY 2014-15 on 29.09.2014 declaring a total income of Rs. 2,28,41,400/-under normal provisions of the Income Tax Act, 1961 (the Act) and a book profit of Rs. 3,01,52,299/- under section 115JB of the Act. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment by making the following addition:

- i. Addition towards bogus purchases by applying GP rate of 6% – Rs. 1,32,65,703/-.
- ii. Addition towards bogus sub-contracting charges – Rs. 6,08,13,844/-.

3. On further appeal the CIT(A) deleted the additions and the revenue is in appeal before the Tribunal against the order of the CIT(A).

Addition towards bogus purchases

4. During the course assessment in order to verify the genuineness of the purchases, the AO issued notice under section 133(6) of the Income Tax Act, 1961 (the Act) on two parties namely Kundan Industries Ltd. and Agastya Copper Pvt. Ltd. The AO held that no response was received from the above parties and that the assessee could not produce any documents to prove the genuineness of the transactions with the said parties. The AO further held that the party from whom Kundan Industries Ltd. and Agastya Copper Pvt. Ltd. purchased the raw-material and the party to whom assessee has ultimately been sold the materials are one and the same namely M/s Hari Steel Industries Ltd. Therefore, the AO held that the entire circular transaction is only on paper without any actual transfer of goods. Accordingly, the AO held that the entire transactions of purchases recorded by the assessee are sham in nature and made an addition of Rs. 1,32,65,703/- by applying a GP rate of 6% on the alleged bogus purchases. On further appeal, the CIT(A) held that

“5.7 The appellant further submitted reply dated 2nd February 2018 vide which he submitted: “for trading activities, Purchase/Sale Invoice, Challan Copies duly signed, confirmation from the parties/ VAT Audit Report Form 704 and all the payment to suppliers and from customers is through the accounts payees cheques are the sufficient proof.

All the trading is under VAT and VAT liabilities are paid in full. The profit earned is offered to income tax. This is not the transaction of loss where revenue is cheated by paying less tax. Hence arguments of AO that supplier of assessee has purchased the goods from the group concerns of customer is irrelevant and cannot become base for addition. From where the suppliers has purchased the goods or where the customer has sold the goods is immaterial so far as it does not affect the interest of any revenue authority. The Company is under the highest tax bracket, the profit on trading is taxed @33.99%. The profit earned on trading activity is Rs.15,90,941/-.

*Further, once again we would like to bring to your notice that both the companies i.e. M/s. Kundan Industries Limited & M/s Agasthya Copper Pvt Ltd are not hawala dealers as per list published by Department of Sales Tax. Their status on the portal is active - **Enclosed is the copy.***

5.8 The appellant also submitted “the assessee has provided all details, Bank Statement, PAN Number & VAT Number by the Company. Assessee had duly discharged his obligation as per the duty cast under the Law. No addition can be made by the A.O. We rely CIT v/s Chanakya Developer (2014) 43 Taxmann.com 91 (Gujarat HC) reported western India Chartered Accountants of News Letter April 2014/V0140/No 04 and P.No.16.”

5.9 The appellant had provided complete details of purchase/sale Invoice, Challan Copies duly signed, and confirmation from the parties/VAT Audit Report, Form 704 during both the assessment and appellate proceedings. Furthermore all the payment to suppliers and from customers is through the accounts payees cheques. Thus it would be wrong to assume that appellant has done any bogus purchase. In view of the reply of the appellant the first ground of appeal is allowed and addition made of Rs. 1,32,65,703/- is deleted.

(Ground 1 is allowed)”

5. The Id. AR submitted that the AO's allegation that the parties did not respond to the notice issued under section 133(6) is factually incorrect and in this regard drew our attention to the response on the parties in page 209 to 211 of Paper Book (PB). The Id. AR further submitted that the observations of the AO that in note no.5 of statements of account, the auditor's have stated that stock registered could not be maintained in assessee's case is also factually incorrect. The Id. AR in

this regard drew our attention to the financial statements and the details of stock furnished by the assessee in the return of income as well as the Tax Audit Report (page 4, 4, 12, & 27 of PB). The Id. AR also drew our attention to the ledger account of M/s.Hari Steel Industries Ltd. to whom the assessee has sold the goods purchased from the impugned parties to submit that the purchases are genuine transaction. Without prejudice to the above submissions, the Id. AR submitted that even assuming that the transactions are circular in nature, the assessee is only a conduit and therefore the percentage of addition could only be towards the commission and not the gross profit estimated on the entire transaction.

6. The Id. DR submitted that the AO has given a clear finding with regard to the party from whom Kundan Industries Ltd. and Agastya Copper Pvt. Ltd. have purchased the goods is the party to whom the assessee has sold the goods thereby establishing the fact that the entire transactions are mere paper transactions. The Id. DR further submitted that the CIT(A) has deleted the addition made by the AO by applying the GP ratio without appreciating the above findings of the AO. The Id. DR also submitted that the CIT(A) has given relief to the assessee merely based on the documents submitted such as invoice, bank statement, etc. without verifying whether there has been any actual movement of goods. Accordingly, the Id. DR submitted that the CIT(A) is not correct in deleting the addition made by the AO.

7. We heard the parties and perused the material on record. The AO during the course of assessment examined the genuineness of certain purchase transaction entered into by the assessee and noticed that there is a circular transaction involving the assessee, the party from whom the suppliers have made purchases and the party to whom the assessee has sold the said goods. Therefore, the AO held the entire transaction to be sham paper transactions without any actual movement

of goods. The AO accordingly made an addition by applying 6% of GP rate on the alleged bogus transactions. The CIT(A) deleted the entire addition by placing reliance on the various documentary evidences submitted by the assessee with respect to the alleged bogus transactions. From the perusal of records, we notice that the vendors from whom the assessee has made the purchases namely Kundan Industries Ltd. and Agastya Copper Pvt. Ltd. have in turn purchased the goods from M/s Hari Steel Industries Ltd. It is also noticed that the assessee has sold the goods purchases from the suppliers to M/s Hari Steel Industries Ltd. Therefore, we see merit in the finding of the AO that the entire transaction is circular in nature and are not genuine. Further the assessee did not bring anything on record before us to substantiate that there have been real movement of goods and therefore, we are inclined to agree with the finding of the AO that these are paper transactions without any actual movement of goods. From the facts examined, it is also clear that the purchase and the sales transactions have been routed through the books of account of the assessee i.e. the assessee has accounted both the purchases and sales pertaining to the impugned transactions. It is also noticed that the assessee has offered the income arising out of the purchase and the sale transaction already to tax and this fact is substantiated by the statement furnished by the AO pertaining to the impugned transactions reflecting the profit booked by the assessee. Therefore, we are unable to agree with the addition made by the AO by applying the GP percentage on the alleged bogus transactions. From the perusal of the facts in the given case, it is clear that the assessee has acted as a conduit for providing accommodation entries pertaining to purchase and sales. Accordingly we see merit in the alternate contention of the Id AR that the addition should be only towards the commission income that the assessee would have earned towards providing the accommodation entries. Therefore, we hold that 1% on the impugned transactions

shall be sustained as the income of the assessee and the AO is directed to delete the balance addition made in this regard. It is ordered accordingly.

Bogus sub-contracting charges

8. During the assessment proceedings, the AO noticed that the assessee has sub-contracted certain projects to one M/s VNR Infrastructures Ltd. The AO held that M/s VNR Infrastructures Ltd. has in turn sub-contracted the work to M/s Massive Infrasol Pvt. Ltd. on back to back basis and therefore issued a notice under section 133(6) to Massive Infrasol Pvt. Ltd. in order to check the genuineness of the above transactions. The AO held the entire sub-contracting to be a Sham transaction for the reason that no reply was received in response to the notice under section 133(6) and that the assessee failed to provide the details of sub-contract given to M/s Massive Infrasol Pvt. Ltd. by M/s VNR Infrastructures Ltd. Accordingly the AO made an addition of Rs. 6,08,13,844/- being the sub-contract charges awarded by M/s VNR Infrastructures Ltd. to M/s Massive Infrasol Pvt. Ltd.

9. The assessee submitted before the CIT(A) that it has received two works contract one from M/s Suzion Energy Ltd. and second from M/s Ashwini Infra Developments Pvt. Ltd. and submitted the copies of the works contract. The assessee also submitted the documentary evidence substantiating the back to back sub-contracting of the above two contracts to M/s VNR Infrastructures Ltd. The assessee further submitted before the CIT(A) that the AO is not correct in making the addition on the basis of the third party to whom M/s VNR Infrastructures Ltd. has sub-contracted the work not responded to notice under section 133(6) whereas the AO has ignored all the relevant documents submitted by the assessee with

regard to the sub-contracting to M/s VNR Infrastructures Ltd. The CIT(A) deleted the addition made by the AO by holding that

“5.15 The appellant company has furnished the details of all the works contract fully which have been duly signed by the concerned parties. It has also submitted the confirmation of the completion of the work certified by principal contractor (i.e. Suzlon Energy Limited & Ashwini Infra developments Private Limited). Furthermore all the payment have been made by the account payees cheques only. The appellant has also shown the profit earned from the above subcontract in its books of accounts. In view of the above it would be wrong to treat the sub contract as bogus hence the Ground of appeal taken by the appellant is allowed and the addition of Rs. 6,08,13,844/- is deleted.

(Ground 2 is allowed)”

10. The ld. AR took us through the work orders received from M/s Suzion Energy Ltd. and M/s Ashwini Infra Developments Pvt. Ltd. and also the back to back sub-contracts given to the M/s VNR Infrastructure Ltd. (Page 49 to 144 of PB). The ld. AR also submitted a table furnishing the details of work order receipts and sub-contracting to substantiate that the profit arising from the said transactions have already been offered to tax by the assessee. The ld. AR further submitted that tax has been deducted by the parties from whom the work contract is received by the assessee and that the assessee has also deducted the tax on the payments made to M/s VNR Infrastructure Ltd. The ld. AR drew our attention to the findings of the AO with regard to the impugned transactions as tabulated below to submit that the work sub-contracted by the assessee to M/s VNR Infrastructure Ltd. is different from the work sub-contracted by M/s VNR Infrastructure Ltd. to M/s Massive Infrasol Pvt. Ltd.

<i>Name of the work received from main contractor by VNR</i>	<i>Work order Value in Rs.</i>	<i>Subcontracted awarded by VNR to Kolkata Company</i>	<i>Work Value in Rs.</i>
<i>No. VELI/Wo/13-14/13. 18.05,11,12 and 17 the road of WBM with sub grade granular material in plan terrains for</i>	<i>6.77,81,268/-</i>	<i>Setting up of 72.M.W Wind monitoring stations and study of wind characteristics</i>	<i>6,08,13,844</i>
<i>Internal road with in wind farm as per the drawings and specifications Mumbai</i>		<i>And also to secure Necessary permissions to you.</i>	

11. Therefore, the ld. AR argued that the addition made by the AO on the sole basis that M/s VNR Infrastructure Ltd. has given a back to back contract to M/s Massive Infracol Pvt. Ltd. making the whole transaction as bogus is not correct since from the above table it is clear that they are two different transactions. With regard to the ground raised by the Revenue that additional evidences have been submitted by the assessee before the CIT(A) and that the CIT(A) has not called for any remand report from the AO, the ld. AR submitted that all the relevant documents were already submitted before the AO and only the orders of assessment of M/s VNR Infrastructure Ltd. and M/s Massive Infracol Pvt. Ltd. were submitted additionally before the CIT(A). The ld. AR argued that the CIT(A) has deleted the addition based on the documentary evidences pertaining to the sub-contract submitted by the assessee and not based on the assessment orders of the parties and therefore, there is no requirement of the CIT(A) to call for a remand report.

12. The ld. DR on the other hand argued that the assessee has not substantiated the details pertaining to the sub-contracting given to M/s VNR Infrastructure Ltd.

and the details of work completion etc. before the AO and therefore, the AO has made the addition. Accordingly, the Id. DR relied on the order of the AO.

13. We heard the parties and perused the material on record. The AO during the course of assessment in order to verify the genuineness of the work sub-contracted by the assessee to M/s VNR Infrastructure Ltd. issued a 133(6) notice to the party to whom M/s VNR Infrastructure Ltd. has sub-contracted the work. The first allegation of the AO is that M/s VNR Infrastructure Ltd. has done a back to back sub-contracting to the party namely M/s Massive Infracol Pvt. Ltd and no supporting evidences pertaining to the same is submitted by the assessee. However, from the perusal of facts pertaining to the impugned transactions as tabulated above, we notice that the assessee has sub-contracted the work of laying internal road within wind farm to M/s VNR Infrastructure Ltd. and that the alleged back to back work contract to M/s Massive Infracol Pvt. Ltd. pertain to setting up of 72.m.w wing monitoring stations and study of wind characteristic. Therefore, we see merit in the submissions of the Id. AR that the finding of the AO in this regard is factually incorrect. We notice that the AO has made the addition for the reason that M/s Massive Infracol Pvt. Ltd. has not responded to the notice issued under section 133(6) without appreciating the various documentary evidences submitted by the assessee to substantiate the work received by the assessee being sub-contracted to M/s VNR Infrastructure Ltd. The AO, we notice has not considered the work completion certificate issued by the parties from whom the assessee obtained the works contract (page 207 & 208 of PB). The Id. AR also submitted the ledger copies of M/s VNR Infrastructure Ltd. evidencing the accounting of sub-contracting charges awarded and the payments made by the assessee to the said parties. It is also relevant to notice that the AO has made the addition of Rs.

6,08,13,844/- which is the amount of sub-contracting charges awarded by M/s VNR Infrastructure Ltd. to M/s Massive Infracol Pvt. Ltd. that has got no relevance to the assessee. The assessee has claimed the sub-contracting charges paid to M/s VNR Infrastructure Ltd. as deduction and the same is well-substantiated by the documentary evidences submitted before the AO. Considering the facts of the present case, we see no infirmity in the decision of the CIT(A) in allowing the issue in favour of the assessee. Accordingly, we dismissed the grounds raised by the Revenue in this regard.

14. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 02-09-2024.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai