

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 131 to 136/Chny/2024
निर्धारण वर्ष/Assessment Years: 2016-17 to 2021-22

The ACIT, Central Circle-2, Madurai.	v.	Shri Irulandi Thevar Vetrivel, No.3/1, Ashok Nagar, 4 th Street, Palamedu Main Road, Madurai – 625 018.
		[PAN: ACOV 5310 J]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos. 235 to 240/Chny/2024
निर्धारण वर्ष/Assessment Years: 2016-17 to 2021-22

Shri Irulandi Thevar Vetrivel, No.3/1, Ashok Nagar, 4 th Street, Palamedu Main Road, Madurai – 625 018.	v.	The ACIT, Central Circle-2, Madurai.
		[PAN: ACOV 5310 J]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Shri R Clement Ramesh Kumar, CIT-DR
Assessee by	:	Shri Y Sridhar, FCA
सुनवाईकीतारीख/Date of Hearing	:	12.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	01.10.2024



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आदेश / ORDER

PER ABY T. VARKEY, JM:

All these appeals preferred by the Revenue and the assessee are against the orders of the Ld. CIT(A)-34, Chennai, [in short the 'Ld. CIT(A)'] all dated 20-11-2023 for AYs 2016-17 to 2021-22. Since the issues involved are common, all the appeals have been heard together. Both the parties also raised similar arguments on these issues. Accordingly, we dispose off all these appeals by this consolidated order for the sake of convenience.

2. Brief facts of the case as noted are that, the assessee is a contractor who is involved in the construction of roads, bridges, runways and tunnels etc. The assessee is also engaged in the business of operating petrol bunks, cinema theatres and manufacture of blue metals and ready-mix concrete. A search u/s 132 of the Act was conducted upon the assessee on 03.03.2021 pursuant to which, his books of accounts, documents and other materials were seized and sworn statements of the assessee and other key persons were recorded. Subsequent thereto, the AO issued notices u/s 153A of the Act to the assessee for AYs 2016-17 to 2019-20 on 05.08.2021. In response, the assessee filed returns of income declaring total income at amounts higher than the total income admitted in the return of income originally filed u/s 139 of the Act. The assessee also filed the returns of income for AYs 2020-21 and 2021-22 u/s 139 of



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the Act. The summary of the details of income returned by the assessee is as follows:

(in Rs.)

Asst Year	Income as per return u/s 139	Income as per return u/s 153A	Additional Income offered (Disallowance u/s 37 of Act)
2016-17	3,60,50,980	4,11,73,020	4,11,73,020
2017-18	3,69,68,290	4,16,78,090	4,16,78,090
2018-19	2,14,53,290	4,32,61,150	4,32,61,150
2019-20	4,22,89,140	7,16,52,270	7,16,52,270
2020-21	6,69,66,910	15,68,56,860	8,89,89,950
2021-22*	13,96,27,380	N.A.	N.A.

**It is noted to be the year of search and the assessee is found to have filed ROI after re-casting the profit & loss account.*

3. During the course of search, it was found that, the assessee was maintaining his books in Tally software and the data extracted, which was seized in a hard drive marked as Annexure – ANN/KKP/IV/ED/S-1, contained the data relevant to FYs 2015-16 to 2019-20. After analyzing the transactions recorded in the tally accounts, the AO found that the figures therein are in agreement with the figures reported by the assessee in his return of income filed u/s 139(1) of the Act for these AYs. The AO accordingly observed that, the data extracted from the seized tally server was complete and genuine in respect of all parameters as each of the heads debited / credited in Tally matched with the figures reported in the



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ITR. The AO also obtained requisite certificates u/s 65B of the Indian Evidence Act, 1872. The relevant scanned images of the Profit & Loss Account extracted from the seized tally software was reproduced by the AO in the impugned assessment orders.

4. Upon analysis of the above seized material i.e. the tally software, the AO was of the view that, the tally data revealed that, the assessee had understated his taxable income by creating bogus liability under the various heads and by recording bogus expenses under various heads, in the books of accounts of the concern '*I.Vetrivel, Contractor*'. The AO noted that, the assessee had booked bulk expense entries under various heads, viz., '*Coolie & Wages*', '*Power / Electricity*' & '*Site operating expenses*'. These bulk entries were noted to have been made either at the end of the financial year or on a particular date of each month. The AO further observed that, such bulk entries were without narration or payment details. It was further noted that, the corresponding credit against these debits of bulk entries was either in the cash ledger, i.e. payment was shown to have been made in cash or it was shown as a liability to be paid under the head '*Bills & expenses payable- Sundries*' Account in the Balance Sheet. The AO further observed that the liabilities reflected under '*Bills & expenses payable- Sundries*' Account continued in the subsequent financial years without debiting any payments against them. The AO accordingly summarized the bulk entries, assessment year-



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wise, which for the sake of convenience, is summarized in the table below:

Asst Year	Bulk Entries identified & disallowed by AO
2016-17	28,78,75,490
2017-18	23,85,83,513*
2018-19	26,41,09,036
2019-20	37,92,16,935
2020-21	80,06,28,317
2021-22	52,69,89,703

**Due to arithmetical error, the disallowance was calculated at Rs.25,85,83,513/- instead of correct sum of Rs.23,85,83,513/-*

5. According to AO, the above bulk entries debited in the books of accounts were bogus expenses and thus disallowed the same. For arriving at this conclusion, the AO referred to the voluminous vouchers in respect of 'Coolies & Wages' found during the search pertaining to FY 2020-21, which was ID marked ANN/KKP/IV/LS/S-2 to 10, ANN/JS/IV/LS/S-2 to 117 and ANN/JS/IV/LS/S-1 to 232. The AO noted that, these vouchers were self-made and contained both signed and unsigned vouchers, which according to him, raised clear suspicion regarding their genuineness. The AO further noted that, the employees of the assessee in their statements recorded u/s 132(4) of the Act had admitted that the assessee was generating self-made cash vouchers for claiming bogus cash expenses.



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The AO is further noted to have referred to the bank statements for AYs 2018-19 and 2019-20 and observed that, the assessee had withdrawn cash from the bank accounts in these years which did not correspond to the bulk expense entries found in the tally relating to cash payments. This according to AO, showed that, the bulk expenses booked in the accounts was not genuine. The AO further discussed several aspects found while analyzing the tally data, which in his opinion, was peculiar and suggested that these bulk entries was bogus. For instance, the AO referred to the month-wise cash payments debited under the head 'Coolie & Wages' which was of identical amount.

6. It is noted that, the above seized material, findings, and the statements were put to the assessee for his explanation. The AO noted that, the assessee only filed the retraction statements of the employees, but did not submit any proof or details to establish the genuineness of these bulk expenses. According to AO therefore, since the assessee did not furnish any material evidence in response to the show cause, he proceeded to complete the assessment by making the disallowance as proposed in the show cause. The AO further observed that, the assessee had declared higher income in the return filed u/s 153A vis-a-vis the original return filed u/s 139 of the Act for AYs 2016-17 to 2020-21, which according to him, proved that the assessee did not have any details to substantiate the genuineness of the bulk entries recorded in different



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ledgers, as tabulated above. The AO further noted that, since these transactions were conducted in cash, it was also otherwise disallowable under Section 40A(3) and Section 40(a)(ia) of the Act. With these findings, the AO made the impugned disallowances, as tabulated above, over and above the additional income offered by the assessee.

7. Aggrieved by the above assessment orders, the assessee preferred appeals before the Ld. CIT(A). The Ld. CIT(A) firstly noted that, although the assessee had filed written submissions against the proposed disallowance of bulk debit entries electronically before the AO on 25.03.2022, which was within the time allowed for responding to the show cause notice dated 22.03.2022, but the AO did not take cognizance of the same and framed the impugned assessment after making the addition as proposed in the show cause, by wrongly observing that the assessee had not offered any explanation. Having regard to the foregoing, the Ld. CIT(A) is noted to have sent the explanation offered by the assessee along with certain additional evidences filed for AYs 2020-21 & 2021-22 to the AO for his comments, who furnished his remand report on 01.09.2023. After considering the findings of the AO, comments in the remand report, submissions put forth by the assessee, and taking into account the seized material and facts available on record, the Ld. CIT(A) in his exhaustive order is noted to have analyzed all the aspects and thereafter held that the disallowance of entire bulk entries as made in the



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assessment orders was unjustified and excessive. The Ld. CIT(A) held that, the entire bulk entries did not represent bogus expenses but at the same time inflation of expenses could not be ruled out. The Ld. CIT(A) concluded that the books of accounts of the assessee were clearly not reliable and was therefore required to be rejected. The Ld. CIT(A) is noted to have estimated the assessee's income from the construction contract business at 12.5%. After taking into account the additional income already offered by the assessee in the returns of income, the Ld. CIT(A) quantified the total income assessable in the hands of the assessee. Aggrieved by this order of the Ld. CIT(A), both the assessee and the Revenue are in appeal before us.

8. Assailing the action of the Ld. CIT(A), the Ld. CIT, DR appearing for the Revenue contended that the AO had succinctly examined the books of accounts maintained in the tally software and rightly arrived at the conclusion that the assessee was understating his income from the contractual business by debiting bogus liabilities/expenses under different heads. The Ld. DR contended that, the assessee was unable to prove the genuineness of these bulk entries/expenses and did not bring on record any evidence that these expenses were actually incurred/paid. According to him, the fact that the bulk entries were being passed without any narration/details, was sufficient evidence that the assessee was booking bogus expenses. He further invited our attention to the original



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statements recorded u/s 132(4) of the Act by the assessee and other key persons and argued that their answers corroborated the AO's case that these expenses in its entirety were bogus. According to him, the AO had rightly disallowed the entire value of the bulk expenses and that the Ld. CIT(A)'s action of rejecting the books of accounts and estimating the income at 12.5% was unjustified and urged that the orders of the AO be restored. The Ld. CIT, DR further argued that, even otherwise, if these bulk expenses are held to have been actually incurred, then according to him, the assessee was in violation of Section 40(a)(ia) / Section 40A(3) of the Act and thus the impugned sum was required to be disallowed.

9. Per contra, the Ld. AR vehemently supported the order of the Ld. CIT(A) to the extent holding that the addition of the entire bulk entries by the AO was unsustainable. The Ld. AR however objected to the Ld. CIT(A)'s action of rejecting the books of accounts and estimating the income at 12.5%. According to him, the assessee had already estimated and offered additional income by pegging the net profit margin at the rate of 10% in the returns of income filed u/s 153A / 139 of the Act for AYs 2016-17 to 2021-22, which according to him was a justifiable margin in his line of business. The Ld. AR further submitted that the re-casted Profit & Loss Account drawn up by the assessee and the net profit which was reported in the range of 10%, was proper and reasonable and thus did not warrant any interference. In support thereof, the Ld. AR relied upon



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the certificate obtained by NHAI which had pegged the profit margin from such construction contracts at 10%. The Ld. AR also furnished the comparative details of his peers to show that the net profit of 10% was fair and justified. The Ld. AR also relied on the decisions rendered by the jurisdictional High Court and coordinate Benches at Chennai, wherein in the similar line of business, viz., execution of road contracts, profit margin in and around the range of 5% was held to be fair and reasonable. The Ld. AR thus urged that the estimation of income by the Ld. CIT(A) at 12.5% was excessive and ought to be reduced.

10. We have heard both the parties and perused the material available on record. It is noted that, the assessee is *inter alia* engaged in the business of constructing road projects for National Highway Authority of India (NHAI). The books of accounts in relation to this construction contract business is noted to have been maintained in the tally software under the title '*I.Vetrivel, Contractor*'. Upon analysis of the entries found in the books of accounts maintained in the tally software, the AO had noted that the assessee was debiting expenses in a bulk manner, either on the last day of the financial year or on a periodical basis under certain heads viz. '*Coolie & Wages*', '*Power / Electricity*', '*Repairs & Maintenance*', '*Staff Welfare Expenses*' & '*Site operating expenses*'. Since these were bulk entries which also did not have proper narration and payment details led the AO to believe that they were bogus in nature. The AO also noted



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that the corresponding credit entries were either in 'Cash' account or 'Bills & Expenses payable - Sundries' account or certain other ledger accounts which further cast doubt on the genuineness of such expenses. The details of the bulk entries disallowed by the AO in the AYs before us are as follows:-

AY	Head of Expenses	Date of Debit	Amount of Expenditure debited (Rs.)	Account to which corresponding credit is given
2016-17	Coolie and Wages	30.04.2015	1,96,98,887	Cash
		31.05.2015	1,96,98,887	Cash
		30.06.2015	1,96,98,887	Cash
		31.07.2015	1,96,98,887	Cash
		31.08.2015	1,96,98,887	Cash
		30.09.2015	1,96,98,887	Cash
		31.10.2015	1,96,98,887	Cash
		30.11.2015	1,96,98,887	Cash
		31.12.2015	1,96,98,887	Cash
		31.01.2016	1,96,98,887	Cash
		29.02.2016	1,01,00,000	Cash
		31.03.2016	80,00,000	Cash
		31.03.2016	34,00,076	Bills and Expenses Payable-Sundries
		31.03.2016	4,40,31,000	Fuel Expenses - Diesel
		31.03.2016	17,64,560	Construction materials - Other Bulk items
	Fuel Expenses - Diesel	31.03.2016	1,96,56,758	Cash
	Repairs & Maintenance - Vehicle / Equipments	31.03.2016	39,34,226	Cash
TOTAL		28,78,75,490		



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2017-18	Coolie Wages &	31.03.2017	20,90,91,650	Bills and Expenses Payable-Sundries
	Fuel Expenses	31.03.2017	2,53,26,831	Fuel Expenses - Site
	Staff Welfare Expenses	31.03.2017	41,65,032	Staff Welfare Expenses - Others
	TOTAL		25,85,83,513	
2018-19	Coolie Wages &	31.03.2018	17,56,51,936	Laksha Blue Metal; IVLR - Concrete; VV Enterprises; Vetri Cinemas
	Power Electricity /	31.03.2018	6,95,57,100	Laksha Blue Metal; IVLR - Concrete; VV Enterprises; Vetri Cinemas
	Site Operating Expenses	31.03.2018	1,89,00,000	Laksha Blue Metal; IVLR - Concrete; VV Enterprises; Vetri Cinemas
	TOTAL		26,41,09,036	
2019-20	Coolie Wages - ODC &	31.03.2019	17,30,00,000	Cash (2,87,00,000); Cash Main office (10,87,87,758); Bills & Expenses payable (11,58,05,717); Oddanchathiram Site Expenses (11,99,338)
	Coolie Wages - Natham	31.03.2019	8,15,32,250	
	Coolie Wages - ODC &	31.03.2019	2,04,81,919	Om Sakthi Constructions- I Vetrivel (JV)
	Site Operating Expenses - ODC	02.08.2018	2,64,67,334	Not mentioned in the assessment order
		28.02.2019	2,05,85,080	
	Site Operating Expenses	01.03.2019	1,12,00,000	
		06.03.2019	1,12,00,000	
		20.03.2019	2,94,19,652	
TOTAL	31.03.2019	53,30,700		
TOTAL		37,92,16,935		



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2020-21	Coolies and wages	Various dates	17,65,97,837	Bills and Expenses
		Various dates	42,91,24,560	Payable-Sundries
		Sub-Total	60,60,23,497	
	Site operating expenses	21.09.2019	9,28,36,450	Bills and Expenses
		21.03.2020	10,17,68,370	Payable-Sundries
		Sub-total	19,46,04,820	
	TOTAL	80,06,28,317		
2021-22	Coolies and wages	Various dates	52,55,10,803	Cash
		Various dates	14,78,900	Coolie and wages advance account
		TOTAL	52,69,89,703	

11. Before us, the Ld. CIT, DR reiterated the above observations made by the AO regarding the above discussed characteristics of the bulk expense entries recorded in the books of accounts, which according to him, showed that bogus expenses were being debited by the assessee to reduce the income. Hence, the first issue to be adjudicated by us is, whether these bulk entries constituted bogus expenses debited in the books of accounts and was therefore disallowable u/s 37 of the Act. In this regard, we note that, the assessee had explained the reasons for passing these bulk entries in his written submissions filed on 25.03.2022 before the AO. The assessee is noted to have explained that, due to shortage of proper accounting staff and lack of proper knowledge, the accounting staff would not pass the entries on a day-to-day basis but update the books of accounts in the Tally software and pass the



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finalization entries only at the fag-end of the statutory time for filing the return of income. The assessee tacitly acknowledged the accounting anomaly in maintaining the books of accounts but contended that these accounting anomalies, viz., passing of bulk expense entries cannot be treated as booking of bogus expenses. The assessee is also noted to have brought on record several factual aspects regarding the bulk entries which showed that these were only accounting anomalies and did not represent bogus expense. The explanation furnished by the assessee was not considered by the AO before framing the assessments and therefore the Ld. CIT(A) is found to have forwarded the same to the AO for his comments. We however note that the AO did not offer any specific comments on this particular aspect. It is noted that, the Ld. CIT(A) took cognizance of the explanation furnished by the assessee and found it to be acceptable, for the following reasons:

"8.3. In the written submission uploaded to the AO on 25.03.2022, the Appellant explained that the accounting entries were not passed by his accounting staff routinely on a day-to-day basis and they used to update the books of account and pass finalization entries only at the fag-end of the statutory time allowed for filing the returns of income. He explained that the primary reason for the same is the limited availability of skilled resources in his office, which are mostly deployed for various bank works and project related works during most part of the year. As a result, very little time was devoted by the accounting staff for the maintenance and updating of accounts. As regards preparation of self-made vouchers for Coolies & Wages expenditure centrally at the head office, he explained that the maintenance of such vouchers at the work sites is not practicable and reliable as the same may lead to defalcation.

8.4. The AO did not offer any comments with regard to the said explanation of the Appellant in the remand report, though the furnishing of the written submission by the Appellant through the e-proceedings on 25.03.2022 has been acknowledged by him. On careful examination of the explanation furnished by



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the Appellant, it is considered that the same is reasonable and acceptable. The contract works of the Appellant are carried out at various remote work sites whereas his accounting staff are deployed at the head office. The head office of the Appellant is located in Madurai and the availability of accounting staff with good knowledge of accounting as necessary for maintaining the books of account of a super class I construction contractor is scarce in the said city which is a tier-II city and which is distantly located from Chennai. The accounting staff employed by the Appellant therefore have limited knowledge of account keeping. Further, since the Appellant has limited number of accounting staff and their time is primarily devoted towards bank and project related works which are required to be completed in a time bound manner, the work relating to day-to-day maintenance and up-dation of accounts does not receive necessary attention and priority of the accounting staff. As a result, the entries are not made contemporaneously on a day-to-day basis in the books of account. The entries are made periodically or at the end of the year due to this reason at the convenience of the staff and as per their work priorities. While making entries in such a manner, the accounting staff have resorted to making bulk entries instead of making day-wise entries in view of their limited knowledge of accounts, ignorance regarding the adverse implications of making such bulk expense entries and paucity of time. As the entries were made in bulk by aggregating large number of transactions that occurred over a period of one or more months, it was a concomitant feature of such entries that they could not be given proper narration including payment details. It is therefore considered that the reasons for the incidence of bulk expense entries in the books of account have been properly explained by the Appellant in relation to the facts of his case.

8.5. In view of the practical difficulties and constraints faced by the Appellant in maintaining the accounts contemporaneously as mentioned above, it needs to be appreciated that the booking of bulk entries of the expenses periodically or at the end of the year cannot be viewed with suspicion with regard to the genuineness of whole of the relevant expenditure, unless there are other strong reasons to aid such suspicion. The submissions of the Appellant with regard to this issue at paras 8.1.1 to 8.1.3 of the written submission dated 02.05.2023 are considered to be pertinent to dissipate such suspicion of the AO. The practice of making bulk entries of expenses periodically or at the end of the year instead of making each entry of expense separately on a day-to-day basis followed by the Appellant certainly constitutes an accounting anomaly. However, the existence of such an anomaly in the books of account cannot be construed as booking of bogus expenditure by the Appellant in respect of the entire amount debited in such a manner, as sought to be done by the AO. In order to draw any inference regarding the bogus nature of the whole or any part of the expenditure represented by the bulk expense entries, it is necessary to take into consideration all other facts and circumstances of the case which have a bearing on the issue and appreciate them in a cumulative manner so that the assessment is not rendered an unreasonably high-pitched assessment. Accordingly, the other facts and circumstances having a bearing on this issue are examined in the following paragraphs."



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12. Having perused the above in light of the facts on record, we agree with the Ld. CIT(A) that, the practice of making bulk entries was indeed an accounting anomaly, but the existence of such an anomaly cannot be straightaway construed as booking of bogus expenses. Rather, it is necessary to examine all the relevant facts and circumstances in a cumulative manner to ascertain whether these bulk entries were bogus or not and/or how much element of inflation/bogus expenses was embedded therein, which we will discuss in the ensuing paragraphs.

13. We first take note of the fact that, the above bulk debit entries *inter-alia* comprised corresponding credit to '*other ledger accounts*'. These are noted to be certain bulk journal entries which were passed at the end of respective FY to transfer the expenses, debited to '*Coolies and wages*' account, '*Power/electricity*' account, '*Staff welfare expenses*' account and '*Site operating expenses*' account, to certain other ledger accounts such as '*Fuel Exp-Diesel*', '*Construction materials-other bulk items*', '*Fuel Expenses - site*', '*Staff welfare Expenses - Others*', '*M/s Laksha Blue Metal*', '*M/s. IVLR - Concrete*', '*M/s. VV Enterprises*', '*M/s. Vetri Cinemas*', '*Oddanchathiram Site Expenses*' and '*Om Sakthi Constructions- I Vetrivel (JV)*' across various AYs in consideration. The details thereof as noted by us, are as under:-



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AY	Head of Expenses	Date of Debit	Amount of Expenditure debited (Rs.)	Account to which corresponding credit is given
2016-17	Coolie and Wages	31.03.2016	4,40,31,000	Fuel Expenses – Diesel
		31.03.2016	17,64,560	Construction materials – Other Bulk items
	TOTAL		4,57,95,560	
2017-18	Fuel Expenses	31.03.2017	2,53,26,831	Fuel Expenses – Site
	Staff Welfare Expenses	31.03.2017	41,65,032	Staff Welfare Expenses – Others
	TOTAL		2,94,91,863	
2018-19	Coolie & Wages	31.03.2018	17,56,51,936	Laksha Blue Metal; IVLR – Concrete; VV Enterprises; Vetri Cinemas
	Power / Electricity	31.03.2018	6,95,57,100	Laksha Blue Metal; IVLR – Concrete; VV Enterprises; Vetri Cinemas
	Site Operating Expenses	31.03.2018	1,89,00,000	Laksha Blue Metal; IVLR – Concrete; VV Enterprises; Vetri Cinemas
	TOTAL		26,41,09,036	
2019-20	Coolie & Wages – ODC	31.03.2019	11,99,338	Oddanchathiram Site Expenses
	Coolie & Wages – Natham	31.03.2019		
	Coolie & Wages – ODC	31.03.2019	2,04,81,919	Om Sakthi Constructions- I Vetrivel (JV)
	TOTAL		2,16,81,257	



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2021-22	Coolies wages and Various dates	14,78,900	Coolie and wages advance account
	TOTAL	14,78,900	

14. The assessee is noted to have explained before the lower authorities that, such journal entries are passed at the end of the year for the purpose of transferring the amounts incurred during the year, which may have been erroneously debited to wrong ledger accounts, to the correct/appropriate ledger account, which is relevant to the concerned expenditure or for the purpose of consolidating the entries under primary ledger accounts. After examining the above entries, we agree with the Ld. CIT(A) that this explanation was tenable in as much as these journal entries passed to simply transfer the amounts debited under a wrong ledger to the correct ledger, and thus cannot be construed to be booking of bogus expense. The relevant findings of Ld. CIT(A) recorded in the common appellate order for AYs 2016-17 to 2019-20, is noted to be as under:-

"9.5 The explanation furnished by the Appellant on this issue in the written submissions furnished during the course of the appellate proceedings has been carefully considered. In this regard, it is noticed that the AO has completely misunderstood the nature of the said entries and erroneously remarked that such credit entries are passed only for the purpose of balancing the debit entries and that the expenditure represented by the said bulk debit expense entries cannot be considered to be genuine for the said reason. It is considered that the said remarks of the AO have been made without regard to the facts of the case and the principles of accounting.

9.6 It is a normal part of the accounting process that such journal entries are passed at the end of the year for the purpose of transferring



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the amounts, which may have been erroneously debited to wrong ledger accounts, to the correct/appropriate ledger account which is relevant to the concerned expenditure or for the purpose of consolidating the entries under primary ledger accounts. In the case of the Appellant, the "Coolies and wages" expenditure which was erroneously debited to "Fuel Exp - Diesel", "Construction materials - other bulk items" in A.Y 2016-17 and to "Oddanchathiram Site Expenses" in A.Y 2019-20 was transferred to the "Coolies and wages" account by means of such journal entries. Further, expenses like "Coolies and wages", "Power / electricity" and "Site operating expenses" pertaining to the contract business of the Appellant, which were incurred on behalf of the Appellant by various other proprietary concerns of the Appellant and debited in their accounts, were transferred to the accounts of the contract business of the Appellant at the end of the year by debiting the concerned ledger account in the contract accounts of the Appellant and by crediting the account of such other proprietary businesses such as M/s. Laksha Blue Metal, M/s. IVLR Concrete, M/s. VV Enterprises, M/s. Vetri Cinemas and M/s. Om Sakthi Constructions - I Vetrivel (JV) in AY 2018-19 and 2019-20.

9.7 Further, the expenditure debited to "Fuel expenses - site" account and "Staff welfare expenses - others" account was transferred at the end of the year to the corresponding primary ledger accounts viz "Fuel expenses" account and "Staff welfare expenses" account respectively in AY 2017-18 by crediting the former accounts and debiting latter accounts. Such transfer was made for the purpose of merging the cost center-wise accounts into the main accounts relating to an expenditure. As can be gauged from the discussion made above, the entries of these nature cannot be regarded as bogus or non-genuine expenses by any stretch of imagination. The view adopted to the contrary by the AO is not tenable."

15. At the time of hearing, the Ld. CIT, DR was unable to rebut the above specific findings of the Ld. CIT(A). Accordingly, the disallowance of the above bulk journal entries aggregating to Rs.36,25,56,616/- added across AYs 2016-17, 2017-18, 2018-19, 2019-20 & 2021-22 is held to be unsustainable on facts.



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16. Apart from the above, the AO, in AY 2019-20, is found to have noted that, certain bulk expense entries aggregating to Rs.10,42,02,766/- was debited under '*site operating expenses*' account whose corresponding credit entries was not found. The AO thus presumed the same to be bogus in nature and disallowed the aforesaid sum. The assessee however brought to notice before the Ld. CIT(A) that, these entries represented individual entries of sub-contract expenses in respect of which the corresponding credit was given to the concerned party accounts and the payments thereof were made to the parties through banking channel after due deduction of TDS u/s 194C of the Act. We find that, the Ld. CIT(A) after considering the details furnished by the assessee, noted that the AO had erroneously treated these bulk entries as bogus in nature without naming the details of corresponding credit entry. The Ld. CIT(A) is found to have recorded categorical finding of fact in respect of each of these entries and held that they were not bulk but individual entries which was credited to respective party's account to whom payments were made through banking channel after deducting appropriate tax at source. The relevant findings of the Ld. CIT(A) as taken note of by us, is as follows:-

"9.15 However, on perusal of the information available in the seized tally accounts, it is noticed that the relevant entries debited in the "site operating expenses" account are individual entries pertaining to specific invoices and they are not in the nature of aggregate / bulk entries. It is noticed that the said entries pertaining to sub-contract expenses and the corresponding credit entries have been posted to the accounts of the sub-contractors. It is also noticed that the payments to the said sub-



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contractors have been made subsequently through banking channel after due deduction of TDS u/s194C. The details of said transactions are summarized in the following table.

Date of transaction	Nature of Expenditure	Name of the Party	Amount	Date of Payment	Mode of Payment
02.08.2018	Electrical Utility shifting charges	NR Projects	2,64,67,334	04.08.2018	Through Bank
28.02.2019	Electrical Utility shifting charges	NSS Infrastructure	2,05,85,080	01.03.2019	Through Bank
01.03.2019	Sub contract work in Four laning of Chettikulam - Natham project	Ksheerabad Construction Pvt Ltd	1,12,00,000	20.11.2018	Through Bank
06.03.2019			1,12,00,000	07.03.2019	Through Bank
20.03.2019	Water Pipeline Utility shifting	Future Fibres Engineering and Projects	2,94,19,652	30.03.2019	Through Bank
31.03.2019	Transportation charges	RR lorry Service	53,30,700	Various date during FY 2019-20	Please see the note below*
TOTAL			10,42,02,766		

**Part payment through bank and part payment settled against diesel bills of the party in the other proprietary concerns of the Appellant*

9.16 As can be seen from the details furnished in the table, the above mentioned entries in the 'site operating expenses' account do not represent bulk entries, as wrongly assumed by the AO. The said entries are individual entries of sub-contract expenses, where corresponding credit entries were made in the respective party accounts. The inclusion of the said entries in the bulk expense entries considered by the AO for disallowance u/s 37 is found to be based on an incorrect factual premise. Therefore, it is held that the disallowance of relevant amount of expenditure of Rs.10,42,02,766/- u/s 37 by the AO is not sustainable on facts."

17. The above findings remained uncontroverted before us. We therefore uphold the finding of the Ld. CIT(A) that the disallowance of the above expenses of Rs.10,42,02,766/- u/s 37 of the Act was also unsustainable on facts.



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18. We now come to those bulk debit entries whose corresponding credit was to '*Bills and expenses payable – Sundries*' account, which was shown by way of liability in the balance-sheet to be discharged in the succeeding financial years. The AO observed that, such liabilities were continued in the subsequent years without any payments being made in relation thereto, which according to him, showed that these bulk entries were passed to book bogus expenditure. The assessee is noted to have explained that, following the matching principle of accounting, he had made year-end provisions for expenses relatable to the construction work undertaken in each year, for which bulk entries were posted to '*Bills and expenses payable – Sundries*' account at the end of AYs 2016-17, 2017-18, 2019-20 & 2020-21. The assessee had submitted that, this method of accounting for providing the year-end provisions was done in accordance with the decision of the Hon'ble Supreme Court in the case of **Calcutta Co. Ltd Vs. CIT (37 ITR 1)**. The Ld. CIT(A) is however noted to have observed that, the explanation given by the assessee was flawed because, if that be so, then ideally, the preceding year-end provisions was required to be reversed in the succeeding year and set-off against the matching expenses / payments claimed in that year. The assessee however has not disputed the fact that, this was not done, viz., the provisions were not reversed in the immediately succeeding financial year for the purpose of adjusting the same against the expenditure booked and



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payments made to the concerned parties in the subsequent year. Instead, the assessee rectified this accounting anomaly subsequent to the search, while recasting the Profit & Loss Account for the AY 2020-21, by reversing the entire outstanding balance of Rs.33,86,42,659/- brought forward as on 01.04.2019 and thereby re-stated and offered higher profits for AY 2020-21 to tax. Although the assessee is noted to have nullified the impact of the year-end provisions made in AYs 2016-17, 2017-18 & 2019-20 in the AY 2020-21, but the fact however remains that, such reversal has not been effected in the year immediately succeeding the year in which the corresponding provision was credited in the books. This anomaly in the accounts, according to us, affected the correctness and completeness of the accounts of the assessee for those years. We accordingly agree with the Ld. CIT(A) that, the books of accounts for AYs 2016-17, 2017-18 & 2019-20 did not reflect the true and correct state of affairs.

19. It is further noted that, the assessee had also passed a bulk entry for year-end provision of Rs.62,37,29,380/- in AY 2020-21 by crediting it to the "*bills and expenses payable-sundries*" account, which was disallowed & added back by the AO. The Ld. CIT(A) however noted that, the aforesaid sum had already been reversed/removed by the assessee in the re-casted P&L A/c for AY 2020-21, which formed the basis for the return of income filed u/s 153A of the Act for that year. Having taken note



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of this fact, we in principle are in agreement with the Ld. CIT(A) that, the disallowance of aforesaid bulk entry in the assessment order for AY 2020-21 was not in order, as the same was not claimed as expenditure in the return filed u/s 153A of the Act.

20. Although the Ld. CIT, DR was unable to rebut the above factual position, but he disputed the exercise of re-casting the P&L A/c for AY 2020-21 itself wherein the assessee had re-drawn the accounts following the percentage completion method. It was brought to our notice that, the above-mentioned provision was originally created by the assessee in relation to the Chettikulam-Natham project awarded by NHA. The said year-end provision was however removed, while drawing up the re-casted P&L A/c for AY 2020-21 under the recognized percentage completion method. The Ld. CIT, DR contended that, on one hand, the assessee had removed the year-end provision, but it had also re-stated the revenues in the re-casted P&L A/c, which according to him, was an after-thought and a ruse to net-off the reversal/removal of the provision.

21. We note that this particular aspect has been exhaustively dealt with by the Ld. CIT(A) in his appellate order. Before the Ld. CIT(A), the assessee is noted to have explained that, earlier it would recognize the entire progressive receipts by way of revenues and correspondingly provide for the provision for expenses to be incurred in relation thereto,



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following the matching concept of accounting. Hence, any and all receipts in their entirety would be recognized as revenues, irrespective whether the work/construction has been completed or not, and correspondingly provision for expenses yet to be incurred in future would be debited under the matching concept of accounting.

22. The Ld. AR showed us that, for the Chettikulam-Natham project, the authorities had released aggregate payments to the extent of Rs.139.83 crores in advance in AY 2020-21. The assessee originally in the books of accounts had therefore recognized the entire receipt of Rs.139.83 crores by way of revenues in AY 2020-21 and accordingly made corresponding provision for expenses of Rs.62,37,29,850/- to be incurred in future years in relation to the aggregate revenue recognized in this year. Subsequent to the search action, the assessee, had obtained professional advice, and he was advised to draw up the accounts following percentage completion method, as mandated in ICDS-III under Section 145(2) of the Act, which was applicable to the relevant AY 2020-21. It was shown to us that, the road construction work completed in AY 2020-21 did not commensurate with this advance payment received from NHAI. Having regard to the percentage of work completed in the AY 2020-21, the revenues to the extent of Rs.67,96,27,285/- had only accrued and that the balance sum of Rs.71,87,23,319/- [Rs.139,83,50,604 - Rs.67,96,27,285] represented advance received during the year which was to be adjusted/ credited by



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way of revenues in succeeding years, as and when the work would be completed. The assessee accordingly recognized revenues corresponding to the extent of work completed i.e. Rs.67,96,27,285/- in the re-casted P&L A/c for AY 2020-21. Likewise, only those expenses which was actually incurred in relation to the work completed during the year had been debited in the re-casted P&L A/c and accordingly the provision for expenses, earlier provided, was removed therefrom. The assessee is also noted to have furnished the statement giving the year-wise break-up of the percentage of work completed, revenues recognized vis-à-vis payments received and expenditure incurred for this particular project, which was further corroborated by an engineer's certificate. The assessee accordingly demonstrated that the balance sum of Rs.71,87,23,319/- had been offered as revenues in the subsequent year/s, under the percentage completion method. It was therefore not a case that the aggregate receipts were not offered to tax. Rather, the assessee had offered the receipts to tax in a phased manner, in line with the proportion of the construction work completed each year.

23. We note that, the Ld. CIT(A) had sought a remand report from the AO in relation to the above explanation furnished by the assessee. Before us, the Ld. CIT, DR reiterated the comments given by the AO in his remand report rejecting the foregoing explanation of the assessee and holding it to be an after-thought. The Ld. CIT, DR also doubted the



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reliability and completeness of the Engineer's certificate furnished by the assessee. We however find that, the Ld. CIT(A) had objectively analyzed the entries passed in the re-casted P&L A/c, manner of accounting under the percentage completion method, engineer's certificate, comments of the AO in his remand report, relevant provisions of law and thereafter rightly upheld the assessee's adoption of percentage completion method for recognition of revenues for the Chettikulam Natham project. We accordingly find ourselves in agreement with the following relevant findings of the Ld. CIT(A), which is as under:-

"18.12 The observations made by the AO in the remand report with regard to the reliability and completeness of the Engineer's certificates furnished as additional evidence in support of the percentage of completion of work as on 31.03.2020 and 31.03.2021 and the explanation furnished by the Appellant with regard to the said observations have been carefully examined. In the tally books of accounts maintained by the Appellant for the previous years relevant to AYs. 2020-21 and 2021-22, which were found and seized during the search, the Appellant followed the method of recognition of revenue from contracts whereby the amount of progressive payments received from the contractee during the year is recognized as the revenue. Further, where ever the expenditure relating to the progressive receipts has not yet been incurred, the Appellant made a provision for such expenses in the books of accounts in accordance with the accounting principle of matching the expenses with the revenue. Subsequent to the search, the Appellant changed the method of recognition of revenue followed hitherto by him and adopted the percentage completion method. Accordingly, the Appellant has recast the P & L account for AY 2020-21 and prepared the P & L for AY 2021-22 after updating the books as per the said method.

18.13 On perusal of the remand report, it is noticed that the AO did not make any adverse observations therein with regard to the applicability of percentage of completion method of revenue recognition as per ICDS III in respect of Chettikulam- Natham project executed by the Appellant, which is a long duration project. Since it is mandatory as per the provisions of section 145(2) of the Act to follow the ICDS, it is



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considered that the Appellant who did not follow the percentage completion method for recognition of revenue in accordance with ICDS III in the books of accounts prior to the search, has correctly adopted the said method of revenue recognition after the search with regard to Chettikulam Natham project and arrived at the recast P & L account for AY 2020-21 and updated books of account and P & L account for AY 2021-22 in accordance with the said method. Hence, it is held that the adoption of percentage completion method for recognition of revenue by the Appellant, which is in accordance with the mandatory provisions of the Act, is in order.

18.14 As regards the percentage of work completed in respect of Chettikulam Natham project as on 31.03.2020 and 31.03.2021 considered by the Appellant for recasting the P & L account for AY 2020-21 and preparing the P & L account for AY 2021-22, it is noticed that the Appellant has relied on the Engineer's certificates issued by M/s Infra Design Consultants and the same were furnished as additional evidence during the course of the appellate proceedings. In the remand report, the AO observed that the said certificates cannot be considered as reliable since they have been prepared on 10.02.2022 with regard to the estimation of percentage of completion of the work as on 31.03.2020 and 31.03.2021. The AO observed that the said certificates are not based on physical examination of the completion of the project. The AO expressed the opinion that the said certificates are based on the data provided with regard to the cost of completion by the Appellant, which is not reliable in the light of the fact that the Appellant could not provide proper details of bills/vouchers for the expenses debited in the books. Accordingly, the AO observed that the data relied upon by the engineers for arriving the percentage of completion of work cannot be accepted.

18.15 On careful examination of the explanation and clarifications furnished by the Appellant in the Rejoinder refuting the observations on the AO on this issue, it is found that the same are acceptable. On perusal of the engineer's certificates regarding the percentage completion of work as on 31.03.2020 and 31.03.2021 respectively, it is noticed that the engineer's have clearly stated therein that they have assessed the works executed in the Chettikulam Natham project based on their physical inspection and assessments, adherence to designs, plans and their discussion with the project engineers vis-à-vis the specification of the works to be completed as per the EPC contract. It is evident from the said contents of the engineer's certificates that the observation of the AO that the said certificates are not based on physical examination of the completion of the work is merely a surmise. The AO appears to have made the said observation based on the date of the said certificates i.e. 10.02.2022, wherein the extent of completion of the



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work as on the earlier dates i.e. 31.03.2020 and 31.03.2021 was assessed by them. However, since such assessment has been made by the engineers not merely based on physical examination of the project at a later date but also based on the discussion with the project engineers vis-à-vis the specification of the works and examination of adherence to designs, plans etc, it needs to be considered that the said assessment has been made on the basis of scientific principles of valuation. In view of the methodology adopted for estimating the extent of completion of work in the engineer's certificates as stated therein, it is incorrect to assume that the engineers have solely relied on the cost/expenditure incurred on the project as recorded in the books of account as on 31.03.2020 and 31.03.2021 for the said purpose.

18.16 In the remand report, the AO pointed out that it has been stated in the engineer's certificates that the amount of estimated actual cost incurred is calculated on the basis of the amount of total estimated cost. In the said context, the AO referred to the following qualifications given in the notes to the engineer's certificates to express the view that the said certificates cannot be considered as complete and reliable:

- 1)As this is an estimated cost, any deviation in quantity required for execution of the project will result in amendment of the cost incurred/to be incurred.
- 2)All components of work with specifications are indicated and not exhaustive.

18.17 The explanation furnished by the Appellant in the rejoinder with regard to these observations of the AO has been carefully examined and the same is found to be acceptable. The notes to the engineer's certificates contained general disclaimers which do not render the certificates as incomplete, as erroneously appreciated by the AO. The percentage of completion of work has been worked out in the engineer's certificates having regard to the estimated actual cost incurred as on the relevant date and the total estimated project cost. Since the total estimated project cost as well as the estimated actual cost are based on assessment of the quantities of various materials required for execution of the project, it has been clarified in the disclaimer that if there is any deviation in such quantities, the same would result in amendment of the cost incurred and the cost to be incurred. The said comment in the notes is a normal incident whenever any estimation of such nature is made and the same cannot be construed as indicative of incompleteness of the certificate. The same is applicable with regard to the comment made that all components of work with specifications are indicative and not exhaustive. In view of these reasons, it is considered that the observations of the AO in the remand report that the engineer's certificates are not complete and reliable are not tenable.



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18.18 Further, the AO made a comparison of the revenue and expenses shown under various heads in the P & L account as per the return of income filed u/s 139 of the Act and the recast P & L account as per the return of income filed u/s 153A for AY 2020-21 and stated that the Appellant has increased/decreased the direct/indirect expenses and deleted some expenses in the recast P & L account in comparison to the P & L account filed with the return of income u/s 139. The AO stated that the recast P & L account is not acceptable since the Appellant did not produce any evidences/supporting documents to substantiate the expenses claimed either as per the return of income filed u/s 139(1) of the Act or as per the recast P & L account. The AO made similar remarks on comparing the revenue and various expenses as per the seized tally data as on the date of search with that of the P & L account filed with the return of income u/s 139 of the Act based on updated books of account in respect of AY 2021-22.

18.19 The explanation furnished by the Appellant in the Rejoinder in respect of the said observations of the AO have been carefully examined and the same have been found to be acceptable. As correctly explained by the Appellant, the increase/decrease in the amounts of various expenses in the recast P & L account is due to the re-alignment of expenses in respect of the heads of expenses such as "coolies and wages", "site operating expenses" and "purchases" (of gravel and aggregates). The circumstances which necessitated the re-alignment of expenses effected by the Appellant has already been discussed in detail earlier in this order and the same has been held to be justified. Apart from the re-alignment, the Appellant has also effected reclassification/re-grouping of certain expenses from direct expenses to indirect expenses and vice versa in order to work out the gross profit correctly. Such reclassification/re-grouping of certain expenses has resulted in increase/decrease in some expenses and deletion of some expenses. The Appellant has furnished the necessary details and demonstrated the effect of such reclassification/re-grouping of expenses in respect of "Repairs and maintenance" and "Power and fuel" in the Rejoinder. On examination of the said details, the same are found to be in order.

18.20 In the remand report, the AO observed that the fresh claim of the Appellant of recasting the P & L account based on the percentage completion method is an afterthought since he could not substantiate the expenses debited in the P & L account with evidence. The AO also stated that the Appellant is unable to produce any evidence by way of bills/vouchers in support of the relevant expenses shown in the recast P & L account also. As rightly explained by the Appellant in the rejoinder,



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the view of the AO that recasting of P&L account based on the percentage completion method is merely an afterthought is incorrect as the said action by the Appellant was necessitated by the requirement to comply with ICDS III, which is mandatory as per provisions of section 145(2) of the Act.

18.21 As regards the issue of availability of bills and vouchers in support of the expenses debited to the P & L account adverted to by the AO in the remand report, it is relevant to observe that there was no adverse finding during the search on the said issue except with regard to the expenses debited in a bulk manner under the heads "coolies and wages" and "site operating expenses" for AY 2020-21 and under the head "coolies and wages" for AY 2021-22. During the course of the assessment proceedings also, the AO proposed disallowance of the said expenses only which aggregated to Rs.80,06,28,317/- and Rs.52,69,89,703/- for assessment years 2020-21 and 2021-22 respectively and required the Appellant to furnish evidence by way of bills and vouchers in support of the same. The amount of disallowance proposed by the AO for AY 2020-21 included the provision for expenses aggregating to Rs.62,37,29,380/- under the heads "coolies and wages" and "site operating expenses" and the entire amount of such provision for expenses has been removed while recasting the P & L consequent to the adoption of percentage completion method of revenue recognition. The balance amount of disallowance proposed by the AO for AY 2020-21 after the removal of the provision for expenses amounted to Rs.17,65,97,837/- and the said amount pertains to the "coolies and wages" expenditure. The entire amount of disallowance proposed by the AO for AY 2021-22 of Rs.52,69,89,703/- also pertains to "coolies and wages" expenditure.

18.22 As mentioned by the AO himself in the assessment order, the Appellant maintains self-made vouchers in support of the "coolies and wages" expenditure debited in the books and such self-made vouchers pertaining to the FY 2020-21 were found and seized during the course of the search. The "Coolies and wages" expenditure in respect of which the self-made vouchers were prepared by the Appellant are of such a nature that it is not practically possible to have third party vouchers from the concerned workers at all times. In view of such practical difficulties in obtaining third party vouchers, there is no alternative to the Appellant other than supporting the expenses under the head "Coolies and wages" with self-made vouchers. As explained by the Appellant, the said vouchers were prepared on the basis of the disbursement sheets received from the site offices and this fact has not been disputed by the AO. Further, as discussed earlier in this order, the expenditure incurred in cash towards purchase of gravel and aggregates from local villagers in small loads is being accommodated by the Appellant under the head



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“coolies and wages” in view of non-issue of any bills by such suppliers in the unorganized sector. Since the maintenance of self-made vouchers in respect of “coolies and wages” expenditure and non-availability of third-party bills/vouchers has been admitted by the Appellant, the said deficiency remains unaffected by the recasting of P & L account subsequent to the search based on adoption of percentage completion method of revenue recognition. The said deficiency cannot be quoted as a reason for non-acceptance of the recast P & L account, as sought to be done by the AO in the remand report.

18.23 Further, the AO made an observation in the remand report that the recasting of the P & L account is an afterthought and without any basis since the difference in the method of recognizing the revenue is only postponement or preponement of recognising the profit for different financial years and the same cannot result in increasing or decreasing the profit of the project as a whole. In this regard, the Appellant explained in the Rejoinder that the said remark of the AO is not relevant to the case on hand since the Chettikulam-Natham project is not a completed project for the impugned AYs. 2020-21 & 2021-22 as the same is a long duration project spreading across various FYs commencing from FY 2018-19 and is expected to be completed by FY 2022-23. The said explanation of the Appellant is found to be acceptable. Though the observation made by the AO with regard to the effect of the change in the method of recognition of revenue is correct in general over the entire period of the project, it is pre-mature to apply the same to the facts of the Appellant’s case since the Chettikulam Natham project has not been completed by the AY 2021-22 and the same is continuing beyond the said assessment year. Hence, it is held that the said observation of the AO lacks any relevance for the assessment years under consideration.

18.24 In view of the aforesaid discussion, it is held that the adoption of percentage completion method for recognition of revenue by the Appellant for the Chettikulam Natham project from AY 2020-21 onwards by effecting a change in the method followed so far is justified in law and the facts of the case. It is held that the percentage completion of work determined for the AYs. 2020-21 and 2021-22 based on the engineer’s certificates is reliable and acceptable. Consequently, it is held that the revised turnover as per the recast P & L account for AY 2020-21 and the P & L account for AY 2021-22 prepared based on the updated books of account on adoption of the percentage completion method is required to be taken in to consideration.”



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24. We also agree with the Ld. AR that the AO had not disputed the revenues credited and the re-alignment of expenses in the re-casted P&L A/c, and therefore the dispute now being raised by the Ld. CIT, DR does not emanate from the assessment order of AY 2020-21. Instead, the scope of adjudication in the appeal for AY 2020-21 before us, is limited to the extent whether the bulk provision of Rs.62,37,29,380/- disallowed by the AO is tenable or not. As held above, since there was no such debit of year-end bulk provision in the re-casted P&L A/c filed u/s 153A of the Act, the disallowance made by the AO was untenable on facts.

25. We now take up the remaining bulk debit entries which are noted to comprise of those entries, where corresponding credit was made to 'Cash Account'. The details thereof, as tabulated by us, is noted to be as follows:-

AY	Head of Expenses	Date of Debit	Amount of Expenditure debited (Rs.)	Account to which corresponding credit is given
2016-17	Coolie and Wages	30.04.2015	1,96,98,887	Cash
		31.05.2015	1,96,98,887	Cash
		30.06.2015	1,96,98,887	Cash
		31.07.2015	1,96,98,887	Cash
		31.08.2015	1,96,98,887	Cash
		30.09.2015	1,96,98,887	Cash
		31.10.2015	1,96,98,887	Cash
		30.11.2015	1,96,98,887	Cash
		31.12.2015	1,96,98,887	Cash



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		31.01.2016	1,96,98,887	Cash
		29.02.2016	1,01,00,000	Cash
		31.03.2016	80,00,000	Cash
	Fuel Expenses - Diesel	31.03.2016	1,96,56,758	Cash
	Repairs & Maintenance - Vehicle / Equipments	31.03.2016	39,34,226	Cash
	TOTAL		23,86,79,854	
2019-20	Coolie & Wages - ODC	31.03.2019	13,74,87,758	Cash (2,87,00,000); Cash Main office (10,87,87,758)
	Coolie & Wages - Natham	31.03.2019		
2020-21	Coolies and wages	Various dates	17,65,97,837	Cash
2021-22	Coolies and wages	Various dates	52,55,10,803	Cash

26. It is noted that, in AY 2016-17, the assessee had debited cash expenses under the head '*Fuel Expenses-Diesel*' account and '*repairs and maintenance-vehicles / equipment*'. The Ld. CIT(A) had noted that these amounts aggregated to Rs.2,35,90,984/- [Rs.1,96,56,758 + Rs.39,34,226]. The Ld. CIT(A) did not dispute the AO's finding that, the impugned sum was disallowable as the expenses was incurred in cash and not supported by invoices/vouchers. The Ld. CIT(A) however took note of the fact that the assessee has already offered and disallowed sum of Rs.4,11,73,020/- u/s 37 of the Act in the return of income for A.Y 2016-17 filed u/s 153A of the Act and therefore the aforesaid sum of



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Rs.2,35,90,984/- stood squarely covered and subsumed by the same. We are thus in agreement with the finding of the Ld. CIT(A) that no further disallowance in this regard was warranted.

27. Now we come to the remaining bulk entries of Rs.105,46,85,268/- [21,50,88,870 + 13,74,87,758 + 17,65,97,837 + 52,55,10,803] passed in respect of cash payments debited under the head '*Coolie & Wages*'. Before the Ld. CIT(A), the assessee had explained that, though the relevant cash expenses were incurred on a day-to-day basis, the entry with regard to the same was passed by the accounting staff in a bulk / aggregate manner at the end of the year or periodically, and the reasons for doing so has already been taken note of at Paras 11 & 12 above. The Ld. CIT(A) is noted to have found this explanation to be plausible by observing as under:-

"...By its very nature, the Coolies and Wages expenditure is incurred on a day-to-day basis and the payment towards the same are made in cash either on a daily basis or a weekly basis in contracts business. Hence, the mere fact that the corresponding credit for the bulk expense entries debited to "Coolies and Wages" account is given to cash ledger account does not give any adverse indication regarding the genuineness of such expenditure. Moreover, the AO did not set forth any cogent reasons and evidence to prove that the expenditure in this regard is excessive or over and above the acceptable standards and instead resorted to disallowance of huge quantum of expenditure as being bogus in nature which cannot be reflective of the actual situation."

28. It is not in dispute before us that, vouchers in support of the above expenses '*Coolie & Wages*' were also found and seized during the course



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of search. The AO however found these vouchers to be self-made and therefore disputed its genuineness. The Ld. AR however explained to us the modus followed by the assessee for maintenance of these self-made vouchers. It was pointed out that, the assessee was executing construction road projects at different locations which were having substantial magnitude. Accordingly, the local engineers or the site-office in charge to regularly maintain the disbursement sheets for the daily coolie & wages, which would be later on shared by the site offices for centralized preparation of vouchers. This was done as a measure of internal control to prevent any defalcation of cash at the local sites. The Ld. AR thus contended that mere centralized preparation of vouchers did not prove any wrong doing by itself as due weightage ought to be given to the specific commercial factors, business expediency, compelling situations etc. He reiterated that the accounting staff employed by the assessee had limited knowledge and therefore this particular manner of accounting and preparation of vouchers was being followed consistently over the years. The Ld. AR further argued that, the contemporaneous fact remained that, the assessee had indeed constructed the roads and successfully delivered the projects to the NHAI, which could not have been possibly done without hiring coolie & labour.

29. The Ld. AR further pointed out to us that, the head '*Coolie & Wages*' also inter alia contained the expenses incurred for purchasing gravel &



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aggregates at the local site offices, which was also wrongly classified as 'Coolie & Wages' by the accounting staff. This mistake was a consequence of the fact that the disbursement sheets shared by the site offices was being accounted under one single head i.e. 'Coolie & Wages'. It is for this reason that, later on, the expenses which were identifiable towards other heads of expenses/cost centers, were being transferred by way of journal entry at the year-end to the respective heads. The Ld. AR however showed us that, the expenses incurred for purchasing gravel & aggregates was not initially bifurcated but was only done later at the time of drawing up re-casted P&L A/c for the purposes of filing return of income u/s 153A of the Act. In this regard, the Ld. AR invited our attention to the statement recorded u/s 131 of the Act on 11.06.2021, wherein the assessee had stated that the projects being executed by him for NHAI required the laying of roads at a much higher level than the original ground level viz., the finished road level fixed under NHAI projects ranges from 5 ft to 35 ft from the original ground level. Due to this, the assessee had to incur substantial expenditure towards procurement of gravel and aggregates, which are required for raising the ground level. The assessee had accordingly stated before the Investigating authority that, he had incurred more expenses towards gravel and blue metal (collectively called as aggregates) than the amount recorded under the relevant head of expenditure in the books of account, which was debited under the head



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'coolies and wages'. The Ld. AR showed us that, the assessee had accordingly re-aligned the cash expenses recorded under the 'coolies and wages' and 'purchases' and demonstrated that post the re-alignment, the overall value of expenses debited in the books of accounts remained the same and it did not have any impact on the overall profit. Referring to the re-aligned expenses, which has not been disputed by the AO in the impugned assessment orders, the Ld. AR took us through the details of total coolie & wages debited in re-casted P&L A/c and the amount disallowed by the AO to show that, if the disallowance made is upheld, then it would give rise to an anomalous situation wherein such huge value of road projects had been executed by incurring minimalistic coolie & wage expenses. He accordingly contended that, the AO's finding that, the bulk entries under the head 'Coolie & Wages' whose corresponding credit was made to 'Cash' Account represented bogus expenses, was unjustified.

30. We note that, the Ld. CIT(A) has taken note of the above submissions, the nature of business of the assessee viz., construction of road contracts and its magnitude and found incurrence of 'Coolie & Wages' to be genuine and imperative in the assessee's line of work. The Ld. CIT(A) also held that, although this manner of maintaining self-made vouchers and passing debit entry in bulk cannot be countenanced but for this accounting anomaly, the entire expenditure debited under this



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particular head of expenses cannot be viewed adversely. The reasoning given by Ld. CIT(A) in this regard, as taken note of, is as under:-

"10.1 The detailed explanation furnished by the Appellant on this issue in the written submissions furnished during the course of the assessment proceedings and appellate proceedings has been carefully considered. The Appellant explained therein that the maintenance of self-made vouchers has been centralized at the head office since their maintenance at the respective work sites is impracticable and unreliable as the same may lead to defalcation of funds. The said explanation of the Appellant is considered to be in tune with the business constraints and practical difficulties involved in carrying on the business of contracts with multiple remote work locations. Further, as explained by the Appellant, it becomes imperative to centralize the preparation of self-made vouchers in order to have stringent internal financial control. Further, the "Coolies and wages" expenditure in respect of which the self-made vouchers were prepared at the head office are of such a nature that it is not practically possible to have third party vouchers from the concerned workers at all times. In view of such practical difficulties in obtaining third party vouchers, there is no alternative to the Appellant other than supporting the expenses under the head "Coolies and wages" with self-made vouchers. As explained by the Appellant, the said vouchers were prepared on the basis of the disbursement sheets received from the site offices and this fact has not been disputed by the AO. Moreover, the AO did not independently assess and quantify the extent of expenditure under "coolies and wages" involved for the magnitude of work carried out by the Appellant. In view of these reasons, the mere act of preparation of self-made vouchers at the head office in respect of "Coolies and wages" cannot be regarded as an adverse conduct designed with the sole purpose of booking bogus expenses under the said head of expenditure.

10.2 Consequently, it is held that making disallowance of whole of the expenditure, which is supported only of self-made vouchers, as sought to be done by the AO without regard to the requirements of the business to incur the relevant expenditure, is held to be untenable. At the same time, since the relevant expenditure is supported only by self-made vouchers without third party evidences, there is a distinct possibility that there may be inflation of such expenditure and it may not be correct to accept the entire expenditure as genuine. This aspect is required to be borne in mind in determining the income of the Appellant from contracts business."



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31. We further note that, the Ld. CIT(A) had also examined the assessee's action of re-aligning the expenses debited to '*Coolie & Wages*' in the re-casted P&L A/c furnished for all these AYs and after giving due consideration to the relevant facts and prevailing circumstances then, found the same to be tenable. The relevant findings in this regard as taken note of by us are as follows:-

"15.3 The Appellant further explained in the submission furnished on 25.03.2022 that in view of the scarcity of gravel and aggregates in the organized market, he was compelled to source the gravel primarily from the villagers in the local market who supply smaller quantities (unit of measurement: loads) in tractors and the payments are required to be made to them in cash on the spot. The Appellant explained that construction aggregates such as blue metal, GSB, WMM, etc., have been sourced from individually owned stone crushers and since the said materials were in high demand, the Appellant had to make immediate payments in cash for purchasing them from the stone crushers. The Appellant explained that the payments made in cash to such persons from whom the gravel and the aggregates were procured are well within the limits prescribed under section 40A(3) of the Act, since each unit of load of gravel costs around Rs.1250/- to Rs.1275/- (Rs.450/- per cu.m) and the cost of each unit of the aggregates like GSB, WMM varied between Rs.3145/- and Rs.3825/-. The Appellant explained that the purchase of gravel and aggregates were recorded/accomodated under the "coolies and wages" expenditure account since no proper bills were available in respect of the same. Consequently, the accounts have shown substantially higher percentage of spending towards "coolies and wages" in comparison with the percentage of spending towards "purchases" and "site operating expenses".

15.4 The explanation furnished by the Appellant, as outlined in the preceding paragraphs, is considered to be acceptable having regard to the facts and circumstances explained by him including the statement of the Union Minister which appeared in the press. In view of improper recording of the expenditure incurred towards purchases of gravel and aggregates under the "coolies and wages" account in the absence of proper bills and payment of consideration for the said items in cash, it is apparent that the expenditure recorded under the head "coolies and wages" in the books of account is excessive and the expenditure



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recorded under the heads "purchases" and "site operating expenses" is understated. As a result, the excessive expenditure recorded under the head "coolies and wages" has wrongly conveyed the impression of being bogus in nature, though such excessive expenditure is actually represented by the expenditure incurred towards purchase of gravel and aggregates. Further, the under-statement of the expenditure shown under the heads "purchases" and "site-operating expenses" was unfairly ignored by the AO.

15.5 The factual situation as mentioned above also explains the reason why it was noticed during the course of the search that self-made vouchers were being prepared at the head office of the Appellant by his own staff in support of the expenditure debited under the head "coolies and wages". As no third-party bills were available in respect of the actual purchase of gravel and aggregate, the concerned expenditure was booked under the head "coolies and wages" and self-made vouchers were prepared in support of the expenditure booked under the said head.

15.6 In this backdrop of the facts of the case and in order to demonstrate that the expenditure debited under the head "coolies and wages" in the seized books of account is not excessive, the Appellant has resorted to re-alignment of the relevant heads of expenditure and re-cast the P&L account based on such re-alignment for the assessment years under consideration, while filing the returns of income in response to notice u/s 153A of the Act. The details of such re-alignment are furnished in the tables below:

Head of Expenses	AY 2016-17		AY 2017-18	
	Before Realignment	After Realignment	Before Realignment	After Realignment
Purchase Accounts	22,77,18,818	34,27,18,818	26,32,26,970	37,32,26,970
Coolie and Wages	27,61,34,147	13,51,34,147	24,38,83,086	13,38,83,086
Site Operating Expenses & Others	4,98,13,953	7,58,13,953	No Re-alignment	
Total	55,36,66,918	55,36,66,918	50,71,10,056	50,71,10,056

Head of Expenses	AY 2018-19		AY 2019-20	
	Before Realignment	After Realignment	Before Realignment	After Realignment



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Purchase Accounts	14,93,60,830	30,93,60,830	21,91,06,685	57,91,06,685
Coolie and Wages	23,63,60,363	12,63,60,363	37,72,03,714	26,72,03,714
Site Operating Expenses & Others	39,75,969	1,19,75,969	31,66,65,772	13,66,55,772
Power and Fuel	11,94,96,071	6,14,86,071	No Re-alignment	
Labour and Staff welfare	No Re-alignment		3,72,03,572	72,03,572
Repairs and Maintenance	No Re-alignment		4,85,96,399	85,96,399
Total	50,91,93,233	50,91,83,233	99,87,76,142	99,87,66,142

15.7 In this regard, it is relevant to state that the re-alignment of expenses does not affect the net profit as per the P&L account, which continues to remain the same. The re-alignment has resulted in inter-se modification of the expenditure debited under certain heads of expenditure and there is no change in the total expenditure debited to the P&L account. The total of the relevant expenditure before and after the realignment are the same as tabulated above.

15.8 For the purpose of carrying out the re-alignment of expenses in respect of the heads of expenditure as shown above, the Appellant has taken the aid of the proportion of various heads of direct expenditure within the total direct cost in a project as stipulated by NHAI in the price adjustment clause of EPC contracts awarded by it to the Appellant. The copies of the documents containing such price adjustment clauses have been furnished by the Appellant to the AO along with the written submission electronically uploaded on 25.03.2022.

15.9 On perusal of the price adjustment clause in the EPC Agreement of Chettikulam – Natham Project awarded to the Appellant by NHAI, it is noticed that the percentages of various direct expenses in the total direct expenditure have been specified therein for different categories of road works for the purpose of working out the price adjustment. The table containing the relevant information as appearing at page 83 of the said agreement is extracted as under:



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Cost Component	Item				
	Road Works				Major Bridges and Structures
	Earthwork, Granular work, and Other works	Bituminous work	Cement Concrete pavement	Culverts, minor bridges and other structures	
1	2	3	4	5	6
Bitumen (PB)	-	15%	-	-	-
Steel (PS)	-	-	-	15%	20%
Cement (PC)	5%	-	20%	15%	15%
Plant, machinery usage and spares.(PA)	15%	15%	15%	15%	15%
Other Materials(PM)	50%	40%	35%	30%	25%
Fuel and lubricants(PF)	10%	10%	10%	10%	10%
Labour (PL)	20%	20%	20%	15%	15%
Total	100%	100%	100%	100%	100%

15.10 It is observed on perusal of the above that NHAI (the contractee) has stipulated the proportion of various heads of direct expenses in the total direct cost based on its evaluation and assessment of the cost structure of the road / highway project works awarded by it to the contractors. The proportion of direct expenses specified in the EPC agreement for the purpose of price adjustment can be considered to be a reliable indicator of the proportion of various direct expenses involved in the execution of such projects by the contractor. On making reclassification of the heads of direct expenses shown in the table above by aggregating the expenditure heads of Bitumen, Steel, Cement and Plant & machinery usage & spares into the broad expenditure head of "Purchases / Site operating expenses" and on working out the average for various categories of road works specified in the price adjustment clause, the proportion of various heads of direct expenses in the total direct cost works out as under:

Cost Component	Road Works				Major Bridges and Structures	Aggregate Estimated Cost
	Earthwork, Granular work, and Other works	Bituminous work	Cement Concrete pavement	Culverts, minor bridges and other structures		
Purchases / Site operating	20%	30%	35%	45%	50%	36.00%
Other Materials	50%	40%	35%	30%	25%	36.00%
Coolie and Wages	20%	20%	20%	15%	15%	18.00%
Fuel and Lubricants	10%	10%	10%	10%	10%	10.00%
						100.00%



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15.11 As can be seen from the above, the average percentage of cost of Purchases / site operating expenses, Cost of other materials, Coolies & wages and Fuel & lubricants works out to 36%, 36%, 18% and 10% respectively in the total direct cost as per the specifications of NHAI in the price adjustment clause. The "other materials" shown in the table above represent the cost of purchase of other materials such as gravel and aggregates. The Appellant has adopted the above-mentioned average proportion of various heads of direct expenses as the basis for effecting re-alignment of expenses. The details of percentage of various heads of expenditure in the total direct expenditure before and after the re-alignment have been furnished in the tables below:

Major Expenses	Percentage (%)					
	Average Indicative Cost embedded in NHAI's EPC Projects as per agreement	Indicative Cost Converted to 90% leaving a margin of 10%	AY 2016-17		AY 2017-18	
			After Realignment	Before Realignment	After Realignment	Before Realignment
Purchase & Site operating	72	64.8	63.53	42.13	61.26	46.35
Coolie and Wages	18	16.2	20.51	41.92	18.17	33.09
Fuel Expenses	10	9	6.49	6.49	11.06	11.06

Major Expenses	Percentage (%)			
	Average Indicative Cost embedded in NHAI's	Indicative Cost Converted to 90% leaving	AY 2018-19	AY 2019-20



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	EPC Projects as per agreement	a margin of 10%				
			After Realignme nt	Before Realignme nt	After Realignme nt	Before Realignme nt
Purchase & Site operating	72	64.8	59.75	32.13	57.45	48.94
Coolie and Wages	18	16.2	20.77	38.85	20.51	28.95
Fuel Expenses	10	9	10.11	19.64	11.09	11.09

15.12 Having regard to the discussion above, it is held that there was justifiable reason for the re-alignment of the expenses carried out by the Appellant while filing the returns of income in response to notices u/s 153A. Further, it is held that the basis adopted by the Appellant for such re-alignment of expenses constitutes a sound and rational basis."

32. Having regard to the above findings of the Ld. CIT(A), we find ourselves in agreement with his conclusion that, it was not a case that the assessee did not incur any expenses towards 'Coolie & Wages' at all so as to disallow the bulk entries of cash payment in its entirety. The above reasoning of the Ld. CIT(A) is found to be supported by his subsequent analysis that, if the AO's reasoning is upheld, then the disallowance would result in abnormally and unrealistically high net profit margins, which again underlines the lack of rationale in the disallowance of bulk entries made by the AO. The Ld. CIT(A) at Para 17.1 of his appellate order noted that, the net profit margin of the assessee would then range between 40% in A.Y 2019-20 to 54.40% A.Y 2018-19 which is an impossible



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number and cannot be achieved in any line of business. We also note that, the assessee had also filed a grievance petition before the Pr. CCIT, Chennai on 07.06.2022 regarding the high-pitched additions made in the impugned assessment orders, to which the Member Secretary, Local Committee on high-pitched scrutiny assessments vide letter dated 27.09.2022 acceded to the assessee's prayer that the additions made were indeed high-pitched. These surrounding facts and circumstances are found to further support the assessee's plea that, the entire bulk expenses debited under the head 'Coolie & Wages' cannot be said to be bogus.

33. It is also not in dispute that the assessee had actually executed and delivered the road projects and therefore understandably he would have indeed incurred the above expenses on 'coolie & wages'. Moreover, the addition on account of bogus expenses in cash aggregated in excess of Rs.105 crores and if that be so, then some unaccounted assets or unaccounted investments relatable to the disallowance would have been found or unearthed by the Investigating authorities. It was brought to our notice that, search did not result in unearthing of any excess cash, jewellery, bullion or any other valuable article or undisclosed investment. Also, no evidence of any unexplained cash expenditure, parallel books of accounts etc. was found. We thus find merit in the Ld. CIT(A)'s observations that, in the absence of unearthing of any evidence during



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the search regarding the deployment of huge quantum of undisclosed income alleged to have been generated by the assessee by booking of bogus expenses towards any undisclosed assets/ investments/ expenditure, the case of the Revenue stands on a very weak footing.

34. Having held so above that, the entire bulk expenses whose corresponding credit was to 'Cash Account' could not be treated as bogus, at the same time, it cannot be ruled out that certain element of these cash entries were meant to inflate the expenses under this head to reduce the profitability of the projects. This is fortified by the fact that, even the assessee in the returns filed u/s 153A/139 of the Act had re-stated the P&L A/c and reported higher profits. Hence, we find that the Ld. CIT(A) had rightly denounced the AO's action of disallowing the entire sum and instead estimated the profits derived from this business.

35. The Ld. CIT, DR however still urged before us that, the entire expenditure debited under the head '*Coolie & Wages*' where corresponding entry was cash, ought to be held as bogus, on the basis of admission made by the employees and the assessee, which were recorded during the search. We however find that, these statements had been later on retracted, albeit almost after a year. The Ld. CIT(A) is noted to have taken due cognizance of the same and found the reasons adduced by the assessee for delayed filing of retraction to be tenable. The Ld. CIT(A) also



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examined the factual aspects mentioned in the retraction against the original statement and found the explanation put forth by the assessee and other key persons to be justifiable. The relevant findings taken note of by us are as follows:-

"11.1 During the course of the assessment proceedings, the Appellant filed a retraction statement dated 10.03.2022 on 14.03.2022. A physical copy of the same was furnished to the AO on 16.03.2022. Similarly, the retraction statements of the employees were filed with the AO on 21.03.2022. In his retraction statement, the Appellant stated that he has no technical knowledge regarding the maintenance of books of accounts, being from civil engineering background and he was not aware of the entries passed in the books of account until he was confronted with the entries by the investigation team at the time of recording the statement. He stated that in view of his lack of knowledge on book keeping, he had to accept / admit the interpretations of the investigation team with regard to such entries. He added that he was not allowed to seek technical assistance of any professional and to check the facts with his accounts team and the investigation team required him to sign the statements prepared by them without any deviation. He pointed out that the investigation team made allegations on various counts including misappropriation of funds by booking bogus expenditure to the tune of hundreds of crores during the course of recording of the statement by using technical and accounting jargon which could not be understood by him at all. He stated that he was thoroughly confused and fell into a perturbed state of mind due to prolonged ordeal since the search proceedings continued non-stop from 03.03.2021 till the wee hours on 06.03.2021. He stated that since he was suffering from hypertension and was subjected to continuous grilling for more than 3 days, he was totally exhausted, mentally disturbed, emotionally down and he could not think of anything else except to bring an immediate end to the on-going search by signing the sworn statements which were recorded as per the interpretation of the investigation team with regard to the seized tally accounts and the impugned entries therein. He clarified that the statements recorded with respect to bogus expenditure and entries in the tally accounts was not given by him after due verification of facts and understanding of the accounting entries and that they were recorded to match with the interpretation of the investigation team.



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11.2 In their retraction statements, the employees of the Appellant have stated their statements recorded during the search were not voluntary and out of free will and the same were obtained under duress. It was also stated that on verification of the accounts and the other materials subsequent to the search, the averments made by them in their statements are found to be incorrect.

11.3 The explanation furnished by the Appellant on this issue in the written submissions furnished during the course of the assessment proceedings and appellate proceedings has been carefully considered. In the Assessment Orders for A.Ys 2016-17 to 2019-20, the AO rejected the retraction statements of the Appellant and his employees on the ground that they are merely an after-thought having been filed almost 1.5 years after the recording of their sworn statements. In this regard, it is noticed that the time taken for filing retraction statements by the Appellant and his employees is less than one year as they were filed in March 2022, while the sworn statements during the search were recorded in March and April 2021. Further, it is noticed that the AO has failed to appreciate the detailed reasons furnished by the Appellant in his retraction statement regarding the reasons for the long time taken for filing the retraction statements. He explained therein that there was exponential surge in covid-19 cases from the end of March 2021 leading to the dreadful second wave of the pandemic. He stated that he was affected by Covid on 04.04.2021 and was admitted to BGM Hospitals, Madurai for treatment. He stated that he had attended the proceedings for lifting of the prohibitory order on 23.04.2021 despite his continued ill health and sworn statement was recorded once again on the said date. He stated that all his family members were also affected by Covid one by one after the date of lifting of prohibitory order and he had to concentrate only on recovery of the health of himself and his family members and not on any other matters. He pointed out that his statement u/s 131 was recorded on 11.06.2021 under the said circumstances.

11.4 The Appellant stated that subsequent to the final closure of the search proceedings in June 2021, he was under tremendous pressure to cope up with the project schedules that were behind the milestones for completion on account of covid situation and any further delay in delivery and completion of work would have jeopardized his entire business, including payment of damages to the Government. He stated that since many of his site engineers, who are from North India, left for their home town and could not return due to the covid pandemic, he had to single handedly manage the affairs of his business during the said period. He stated that his internal auditor was also affected by covid in the meantime and could not attend to the office for nearly 3 months. He explained that though he knew that the contents of the



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sworn statements were not true at the time of deposition itself, he wished to obtain necessary inputs from his accounting team and project engineers in respect of the expenditure incurred in the projects in comparison to the Bill Of Quantity (BOQ) and the Government estimates of the expenditure for the said projects. He explained that such a detailed reconciliation process took 6 – 7 months' time and he was able to file the retraction statement only after completing the said exercise in March 2022.

11.5 On careful examination of the reasons explained by the Appellant for the time taken by him to file the retraction statement, it is considered that the Appellant had genuine and valid reasons for the delay that occurred in filing of retraction statement by him and that such reasons were beyond the control of the Appellant. Considering the gravity of the situation arising out of the second wave of covid pandemic in 2021, the CBDT had issued several circulars and notifications during 2021 extending the due dates for filing the returns of income, TDS statements and other statutory forms. The Hon'ble Supreme Court has also taken cognizance of the covid situation and issued directions for extending the limitation of time for filing of any suits, appeals, etc. in such cases where the limitation date fell during the period from 20.03.2020 to 28.02.2022. Since the covid pandemic had paralyzed the operations in all walks of life, it would be unreasonable and unfair to disregard the reasons furnished by the Appellant for the delay in filing the retraction statement. It is therefore held that the filing of retraction statements by the Appellant and his employees with a delay of one year cannot be viewed adversely as a mere after-thought and the same need to be given due consideration on merits.

11.6 With regard to the retraction statements, the AO also observed in the assessment orders that the transactions of bulk expense entries communicated to the Appellant in the notice u/s 142(1) issued during the course of the assessment proceedings were based on the data extracted from the seized tally accounts and the said entries themselves represented credible evidences and the sworn statements referred to in the said notice are merely to corroborate the facts and findings which are otherwise evident from the perusal of the seized tally accounts. This observation of the AO in the assessment orders is considered to be lacking in merit. The examination of the seized tally accounts has merely brought out the fact that bulk expense entries have been debited therein under certain heads of expenditure either at the end of the year or at periodical intervals. The said fact by itself cannot lead to any adverse inference against the Appellant, as already discussed in detail earlier in this order. In the assessment orders, the AO sought to rely on the sworn statements recorded during the search in order to assist his inference that such bulk expense entries were



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made with a view to book bogus expenses. Hence, the contention of the AO that the facts and findings with regard to the transactions of bulk expense entries are evident on mere perusal of the seized tally accounts without any aid from the sworn statements cannot be regarded as acceptable.

11.7 In view of the aforesaid discussion, it is held that the retraction statements have to be given due consideration in conjunction with other evidences and material available on record for the purpose of drawing appropriate inferences with regard to the entries in the seized accounts. It is a settled law as per the decision of the Hon'ble Supreme Court in the case of *Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18* that "*though an admission is an extremely important piece of evidence, the same cannot be said to be conclusive and that the maker of the statement can show that it was incorrectly made*". In the case of the Appellant, there was an admission by him and his employees during the search that the self-made vouchers were prepared for claiming bogus cash expenses. However, as pointed out by the Appellant, it is an undisputed fact that no evidence whatsoever was found during the search regarding the deployment/utilisation of the undisclosed income generated from the alleged booking of bogus expenses towards any undisclosed asset or undisclosed investment or undisclosed expenditure. Moreover, the Appellant explained in the retraction statement that the deposition given by him during the search is not correct since he lacked personal knowledge of accounts and he could not take any inputs from the accounting team or any other professional while giving the statement. It is therefore evident that the admission made by him during the search is on account of misapprehension of facts. The retraction of the statement which was rendered with such misapprehension needs to be treated as valid and acceptable, where the admission made in the statement is shown to be contrary to other facts available on record. Accordingly, it is held that the retraction of the Appellant is required to be treated as valid and that the reliance placed on his sworn statement recorded during the search in support of the disallowances made in the assessment orders is not tenable."

36. We countenance the above findings of the Ld. CIT(A) and thus hold that these statements, which have since been retracted, does not aid the case of the Revenue that the entire bulk entries has to be disallowed and added to the total income.



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37. The Ld. CIT, DR further sought to justify the action of the AO by referring to the quantum of cash withdrawals made from the bank accounts by the assessee in AYs 2018-19 & 2019-20. The Ld. CIT, DR argued that the total bulk entries passed in these AYs far exceeded the cash withdrawals, which showed that the bulk entries were being passed to inflate the expenses and thus ought to be disallowed in its entirety. The comparative details as noted by the AO, which was relied upon by the Ld. CIT, DR, is as follows:

Assessment Years	Expenditure represented by the bulk expense entries (Rs.)	Total Cash withdrawals from the bank accounts (Rs.)
2018-19	26,41,09,036	11,75,45,000
2019-20	37,92,16,935	36,29,35,000

38. We find that this particular aspect has been dealt with by the Ld. CIT(A) who noted that, these cash withdrawals had no relevance to the facts of case. The Ld. CIT(A) found that, no part of the bulk entries of Rs.26,41,09,036/- disallowed by the AO in AY 2018-19 comprised of any corresponding entry to 'Cash' Account. Rather these bulk entries only pertained to corresponding credit entries to other ledger accounts, which we have already dealt with at Paras 13 to 15 above, and held these bulk entries to have no co-relation with 'Cash' Account for A.Y 2018-19. Likewise, in AY 2019-20, out of the total addition of Rs.37,92,16,935/-, the bulk entries where there was a corresponding credit to 'Cash Account'



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was only Rs.13,74,87,758/-. We thus countenance the Ld. CIT(A)'s finding that, the cash withdrawals from the bank account in AY 2019-20 i.e. Rs.36,29,35,000/- was sufficient to cover these bulk entries of cash expenses of Rs.13,74,87,758/-. The relevant findings of the Ld. CIT(A) in this regard are noted to be as under:-

"12.1 Based on the said data, the AO held that it is evident that the cash withdrawals from the bank account are in agreement with the expenditure booked by way of bulk expense entries without corresponding credit entry to party accounts. However, the said finding of the AO is found to be erroneous on facts. In the case of A.Y 2018-19, it is noticed that no part of the expenditure of Rs.26,41,09,036/- represented by the bulk expense entries debited in the books has been incurred by way of cash. As per the details furnished by the AO in the assessment order itself, the corresponding credit entries in respect of the said bulk expense entries have been given to other ledger accounts such as M/s. Laksha Blue Metal, M/s. IVLR- Concrete, M/s. VV Enterprises and M/s. Vetri Cinemas. As already discussed earlier in this order, the said debit and credit entries represented the transfer of expenditure incurred by the other Proprietary concerns of the Appellant on behalf of his contracts business and debited in the accounts of such Proprietary concerns to the relevant heads of expenditure in the accounts of the contract business of the Appellant at the end of the year. Hence, the cash withdrawals made from the bank accounts have no relevance to the interpretation of the nature of the said debit and credit entries for A.Y 2018-19.

12.2 In respect of A.Y 2019-20 also, the finding of the AO is found to be erroneous on facts. It is noticed from the details available in the assessment order with regard to the bulk expense entries aggregating to Rs.37,92,16,935/- that expenditure to the extent of Rs. 13,74,87,758/- (Rs.2,87,00,000/- + Rs.10,87,87,758/-) only has been incurred in cash. It is noticed that the corresponding credit entry has been made either in the 'Bills and expenses payable - sundries' account or in other ledger accounts in respect of the balance expenditure of Rs.24,17,29,177/-. In view of this, it is noticed that the AO is not correct in stating that the cash withdrawals from the bank account are in agreement with the expenditure represented by the bulk expense entries debited in the books. Consequently, it is held that that the cash withdrawals from the



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bank accounts of the Appellant have no bearing on the genuineness of the bulk expenses debited in the books for A.Ys 2018-19 and 2019-20.”

39. For the reasons set out above therefore, we thus agree with the Ld. CIT(A)'s findings that, the bulk entries passed in the books of accounts was accounting anomaly and cannot be said to constitute debit of bogus expenses in its entirety. To that extent, we are in agreement with the appellate order of Ld. CIT(A).

40. The next argument of the Ld. CIT, DR was that, in case these bulk entries are not held to be bogus, then these bulk entries ought to be disallowed either under Section 40A(3) since these expenses were incurred in cash or because the assessee had violated the provisions of Section 40(a)(ia) of the Act by not deducting tax at source on such expenses. As rightly noted by the Ld. CIT(A), the expenditure incurred in cash amounted only to Rs.37,61,67,612/- (in AYs 2016-17 to 2019-20) and Rs.70,21,08,640/- (in AY 2020-21), out of the aggregate disallowance of Rs.118,97,84,974/- & 132,76,18,020/- for A.Ys 2016-17 to 2019-20 and AYs 2020-21 & 2021-22 respectively. Accordingly, the provisions of Section 40A(3) of the Act had no relevance and applicability to the extent of bulk entries of Rs.143,91,26,742/- [81,36,17,362 + 62,55,09,380].

41. Out of the remaining sum, the Ld. CIT(A) rightly noted that, the expenditure to the extent of Rs.2,35,90,984/- debited under the heads



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"Fuel Expenses-Diesel" account and "Repairs and maintenance-vehicles / equipment" account in A.Y 2016-17 had already been disallowed by the assessee in the return filed u/s 153A of the Act and therefore no further disallowance in this regard was called for. The Ld. CIT, DR also did not dispute this factual aspect.

42. So far as the balance sum is concerned, we find that it comprised only of the cash payments made on account of '*Coolie & Wages*'. According to us, the Ld. CIT(A) had rightly held that, the provisions of Section 40A(3) had no application in this regard, by observing as under:-

"13.4 ...By its very nature, the 'coolies and wages' expenditure is incurred on a day-to-day basis and the payment towards the same are made in cash either on a daily basis or a weekly basis in contracts business. As correctly explained by the Appellant, the wages paid to each worker on each occasion does not exceed the threshold limit of Rs.20,000/- for A.Ys 2016-17 and 2017-18 and Rs.10,000/- for A.Ys 2018-19 and 2019-20 specified in sec 40A(3) of the Act, since the average wages payable to the workers per day does not exceed Rs.500/-. Hence, it can be concluded that the provisions of sec 40A(3) of the Act are not attracted to the bulk expenditure debited towards "Coolies and wages" which was paid in cash."

43. On the applicability of Section 40(a)(ia) of the Act, we find that both the AO and the Ld. CIT, DR were unable to adduce any reasons as to why the said provision would apply to such expenditure. Understandably, the wages paid to the labour would not exceed the tax exemption limit and therefore the TDS provisions had no application. Also, the provisions of Chapter XVII-B would not apply to expenses on fuel & diesel, staff welfare



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expenses etc. We thus agree with the following findings of the Ld. CIT(A)

in this regard:-

"13.7 As regards "coolies and wages" expenditure aggregating to Rs.92.40 crores out of the total expenditure of Rs.118.97 crores represented by the bulk expense entries for A.Ys 2016-17 to 2019-20, it is evident there is no liability to make TDS on the disbursement of wages since the wages paid to each worker would not exceed the tax exemption limit and consequently the provisions of sec 40(a)(ia) are not attracted to such expenditure. The provisions of sec 40(a)(ia) are also not attracted in respect of expenditure of Rs.11.45 crores incurred towards "Fuel expenses - diesel / power / electricity" and expenditure of Rs.0.41 crores incurred towards "Staff welfare expenses", as the nature of the said expenditure does not invite any legal obligation to make TDS. Similarly, since the "site operating expenses" which include expenses in the nature of consumables, spares, water spraying expenses, loading & unloading expenses etc., are not liable for TDS, the provisions of section 40(a)(ia) of the Act are not applicable in respect of the relevant expenditure of Rs.12.31 crores. In view of these reasons, it is held that the provisions of sec 40(a)(ia) of the Act are not attracted to the expenditure represented by the bulk expense entries debited in the books of account and the finding given by the AO in this regard without citing any supporting reasons is not tenable on facts and in Law."

44. For the above reasons therefore, the contention of the Revenue that the bulk entries ought to be otherwise disallowed u/s 40A(3) and 40(a)(ia) of the Act is rejected.

45. We now take up the issue of rejection of the books of accounts of the assessee and the estimation of profits. From the facts as discussed above, it is not in dispute that, the assessee was passing bulk entries in the books of accounts instead of passing the relevant expense entries on a day-to-day basis, as and when they were incurred. We agree with the Ld. CIT(A) that, when the entries are passed in such a manner, the



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accounts do not present the correct picture of the dates on which relevant expenditure was incurred, the amount of expenditure incurred on each of such dates and the exact narration of the expenditure incurred on each occasion. We thus countenance the Ld. CIT(A)'s finding that, the books of account of the assessee containing bulk expense entries under certain heads of expenditure, as maintained in tally software, represented rough books of accounts and was therefore not fully reliable. This is further corroborated by the fact that, the assessee had re-aligned and re-casted the Profit & Loss Account for AYs 2016-17 to 2019-20, primarily because there was improper recording of the expenditure incurred towards purchases of gravel and aggregates under the "*coolies and wages*". It is further noted that, the assessee himself also adopted the average proportion of various heads of direct expenses as specified by NHA I for effecting re-alignment of expenses and thereafter reported higher profits in each of these AYs 2016-17 to 2019-20 in the returns filed u/s 153A of the Act. It is thus evident that, the books of accounts of the assessee in relation to his contracts business are not correct and complete and income cannot be correctly deduced from the said accounts. We find merit in the following findings rendered by the Ld. CIT(A) while rejecting the books of accounts of the assessee by invoking Section 145(3) of the Act:-

"19.0 The reasons cited by the AO in the assessment order in support of the disallowance of expenditure represented by the bulk expense entries found debited in the books under certain heads of expenditure have been subjected to



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detailed analysis earlier in this order, in relation to each of the factors taken into consideration by the AO. It emerges from the said discussion that though most of the reasons cited by the AO are not tenable in the facts of the Appellant's case, it can be seen therefrom that there are certain anomalies / deficiencies in the maintenance of books of accounts whose occurrence has distorted the financial results of the Appellant, though the reasons for incidence of such anomalies have been satisfactorily explained by the Appellant.

19.1 One of the accounting anomalies in the case of the Appellant is the debiting of aggregate / bulk expense entries in the books of account in respect of heads of expenditure such as 'Coolies & Wages', 'Site Operating Expenses', 'Fuel Expenses', 'Staff welfare expenses' and 'Repairs & Maintenance Expenses'. The incidence of such bulk entries result in distortion of the accounts, in as much as the bulk entries take the place of individual entries of separate transactions and consequently, the accounts do not reflect the correct picture of the financial transactions as they occurred in reality. The recording of expense entries in an aggregate manner prevents proper verification of the correctness of the entries of such nature made in the accounts, as the identity of the individual transactions which were aggregated to make the bulk expense entries is not ascertainable. As several individual transactions which have occurred over a period of time are substituted by an aggregate entry, the accounts having such bulk entries of expenses cannot be construed as correct and complete accounts, from which the income can be correctly deduced. At the same time, the existence of such an anomaly in the accounts cannot be construed as booking of bogus expenditure by the Appellant in respect of the entire amount debited in such a manner, as sought to be done by the AO.

19.2 The carry forward of the year-end provisions created during the financial years relevant to A.Ys 2016-17, 2017-18 and 2019-20 under the head 'Coolies & Wages' without adjusting the said provision against the relevant expenditure incurred in the immediately succeeding financial year is another accounting anomaly noticed in the accounts of the Appellant. The fact regarding the occurrence of the said anomaly has not been denied by the Appellant. Though the Appellant has undone the said anomaly subsequent to the search while recasting the accounts for the previous year relevant to A.Y 2020-21 by reversing the entire outstanding balance brought forward on 01.04.2019 in the 'Bills and Expenses Payable' account, the fact remains that such reversal has not been effected in the year immediately succeeding the year in which the corresponding provision was credited in the books. This anomaly in the accounts has also affected the correctness and completeness of the accounts of the Appellant, as a result of which it is not possible to deduce the income correctly based on such accounts.

19.3 Another accounting anomaly/deficiency which is prevalent in the case of the Appellant is the absence of bills and vouchers in support of the expenditure debited in the books of account by way of such bulk expense entries wherein the payments were shown to have been made in cash, barring self-made vouchers with regard to 'Coolies & Wages' expenditure for the F.Y 2020-21 found during the search. In view of the said deficiency, the veracity of the quantum of expenditure debited by means of such bulk expense entries is not amenable for verification. The said deficiency persisted even after re-alignment



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of expenditure effected by the Appellant, which formed the basis for the returns of income filed by the Appellant u/s 153A of the Act for A.Ys 2016-17 to 2019-20. Consequently, the accounts cannot be considered to be correct and the income deduced therefrom is not reliable.

19.4 Besides the above, the proportion of various cost components as per the stipulation of NHAI establishes that the purchase of gravel and aggregates have been claimed as "coolies and wages" in the absence of proper bills for their purchases. Further, it is noticed that the proportion of various cost components after realignment of expenses by the Appellant is not in strict consonance with the proportion stipulated by NHAI, though the same is in close proximity to the same.

19.5 In view of the aforesaid reasons, it is evident that the books of accounts of the Appellant in relation to his contracts business are not correct and complete and income cannot be correctly deduced from the said accounts. The said books of account do not facilitate arriving at the true and correct profits of the Appellant and consequently, it is held that the books of account are required to be **rejected** and the income of the Appellant from the business of contracts requires to be estimated by **invoking the provisions of section 145(3) of the Act**. The said rejection of books and estimation of income is also justified in the facts of the case having regard to the abnormally high and unrealizable rate of Net profit assessed by the AO in the assessment orders for the assessment years under consideration consequent to the disallowance of whole of the expenditure represented by the bulk expense entries debited in the books of account made by him."

46. Now we come to the issue of estimating the profits of the assessee.

The Ld. CIT(A) is noted to have estimated the profit at 12.5% of the contractual receipts. For doing so, the Ld. CIT(A) is noted to have relied on the following decisions rendered by the Hyderabad Bench of this Tribunal.

- KNR Constructions Ltd Vs DCIT in ITA No.1141/Hyd/2005
- ITO vs. K.C. Reddy Associates in ITA No.1843/Hyd/89
- Sri Srinivasa Constructions in ITA Nos. 804 & 805/Hyd/93
- Krishnamohan Constructions vs. ACIT in ITA No.380/Hyd/94 dated 10.3.1999



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47. On the other hand, the Ld. AR has sought to justify the net profit rate of 10% disclosed by it in the returns filed u/s 153A of the Act, which according to him, was considered acceptable by NHAI in the road construction projects awarded by it. Having gone through the facts, it is noted that, due to the change in the indirect taxation regime in 2017 i.e., post introduction of GST, the assessee had approached the NHAI to claim GST on the contracted value. Accordingly, an external engineering agency was appointed from the engineers empaneled with NHAI, who had furnished a GST impact sheet, which is found to be extracted in the Ld. CIT(A)'s order. It is noted from the said calculation that, the external engineering agency had pegged the profitability from the NHAI projects at 10%. Similarly, the assessee also placed on the record contemporaneous details available in public domain regarding the lowest and highest bid for the Chettikulam Project of NHAI wherein the Project cost as per Request for Proposal issued by NHAI was Rs.483.77 crores whereas the successful bid of the assessee was Rs.345.54 Crores, which was less by almost 28% of the project cost fixed by the NHAI. We thus find force in the assessee's plea that, when the bid price itself was 28% lower than the price fixed by NHAI, the estimate of profit margin at 10% would be reasonable.

48. It is also noted that, similar road construction companies engaged in the same line of business, viz., M/s Dilip Buildcon Limited, M/s D P Jain and Co Infrastructure Private Limited had reported profitability in the



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range of 3% to 9% across these years. Further, M/s SPL Infrastructure Private Limited, which is found to be most functionally comparable, as it is a Chennai-based entity engaged in executing road construction projects for NHAI, had also reported profitability in the range of 4% to 6%. It is noted that Hon'ble jurisdictional Madras High Court in the case of **SPL Infrastructure Private Limited (420 ITR 213)** had found net profit rate of 3.83% from road projects of NHAI to be a justifiable margin. As far as the decisions relied upon by Ld. CIT(A) is concerned, it is noted that the facts involved therein were factually distinguishable. We note that the years involved in these cases were 1980s & 1990s. We agree with the Ld. AR that the economics of road construction, tax structure, infrastructure and overall economic scenario was vastly different and hence the estimation exercise undertaken in these decisions cannot be considered as a comparable barometer for the years in question before us. Having regard to the foregoing, we thus hold that the profit of the assessee is to be estimated at 10% of the contractual receipts.

49. At this juncture, we also countenance the Ld. CIT(A)'s findings that once the books of accounts have been rejected and the profits are being estimated, then no further separate disallowance u/s 40A(3) or 40(a)(ia) is warranted. The Ld. AR further pointed out to us that, the assessee had offered 10% or more of contractual receipts in the returns of income filed u/s 153A of the Act for AYs 2016-17 to 2019-20 and profit in the range of



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9.8% in AYs 2020-21 & 2021-22. The AO is accordingly directed to verify this contention and if found correct, no further addition shall be made in AYs 2016-17 to 2019-20; and he shall ensure that the total income is assessed at 10% of the contractual receipts from this road construction business in AYs 2020-21 & 2021-22. With these directions, the grounds raised by Revenue in all these appeals stands dismissed and the grounds taken by the assessee are partly allowed.

50. In the result, all the appeals of the Revenue are dismissed and the appeals of the assessee are partly allowed.

Order pronounced on the 01st day of October 2024, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 01st October, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF