IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

ITA No.483 & 484/Bang/2023
Assessment Years: 2018-19 & 2019-20

The Dy. Commissioner of Income Tax, Central Circle – 1, Mangalore.	Vs.	Shri Suresh Kanaji, Nagappa Street, 3rd Cross PG Halli, Bengaluru – 580 001. **PAN – ASYPK 0245 K**
APPELLANT		RESPONDENT

Assessee by	:	Shri H Shiva Prasad Reddy, IRS
Revenue by	:	Shri Sridhar E, CIT (DR)

Date of hearing	:	14.11.2024
Date of Pronouncement	:	18.12.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These appeals filed by the Revenue are against the order passed by the ld. CIT-(A) – 2, Panaji both dated 25/04/2023 for the assessment years 2018-19 and 2019-20.

First, we take up ITA No. 483/Bang/2023, an appeal by the Revenue for A.Y. 2018-19

2. The Revenue has raised following grounds of appeal.

"(i) Whether on the facts and circumstances of the case, the CIT(A) was correct in reducing the estimation of business income from 10% made

by AO to 6.05% as declared by the AC in the return of income filed without any reasoning?
(ii) Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in accepting the contention of assessee that he had declared income @6.05% of the receipts in Form 26AS and the same was in addition to income of Rs. 1 crore declared during the search without appreciating that the claim was factually incorrect?
(iii)Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition made on undisclosed investment in land with respect to cash payments made towards purchase of site which the assessee had admitted to have paid during the course of search?
(iv) Whether on the facts and circumstances of the case, the order of CIT(A) is perverse in holding that the addition towards undisclosed investment in land was without any evidence, ignoring the seized document written in assessee's own hand writing towards payment of cash and admitted by the assessee during the course of search?
(v) Whether on the facts and circumstances of the case, the order of CIT(A) is perverse in holding that provisions of TDS was not applicable on the commission claimed as expenditure relying on the decision rendered by Hon'ble Delhi High Court in the case of DIT Vs M/s Ericsson Communications Ltd pertaining to TDS u/s 195 which stands on different footing from the provisions pertaining to TDS on the domestic payments?

(vi) Whether on the facts and circumstances of the case, the CIT(A) was correct in holding that provisions of TDS was not applicable on the commission claimed as expenditure on the ground that there was no actual payment made by the assessee and the said amount was not received by the assessee from the payee ie contractor which was as per agreement entered?
For the above grounds and any additional grounds that may be agitated during the course of hearing."

3. The first issue raised by the revenue vide ground Nos. (i) & (ii) is that the learned CIT(A) erred in reducing the estimation of business profit from 10% to 6.05% of the turnover.

4. The necessary facts are that the assessee is an individual and a class 1 PWD contractor executing civil contract and subcontract through proprietary concern namely M/s Suresh Kanaji. The assessee is also partner in different firms run by Shri Uday Shetty. For the year under

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consideration, the assessee has declared income at Rs. 1,26,80,170/- which was processed and accepted under section 143(1) of the Act.

4.1 Subsequently, a search proceeding was conducted on January 23, 2019, on the entities associated with Shri Uday Shetty. During the search, various materials, including diaries, notebooks, loose sheets, and computerized folders, were found, which contained information regarding transactions carried out by the appellant-assessee in an individual capacity. Based on these materials and the statements recorded from the assessee, it was alleged that the assessee had inflated expenditures by showing bogus payments toward subcontracting expenses and other expenditures. The appellant-assessee also agreed to offer additional income of ₹1 crore for the assessment year under consideration (A.Y. 2018-19) and ₹3 crore for the subsequent assessment year (A.Y. 2019-20).

4.2 Accordingly, the assessment proceedings under section 153C of the Income Tax Act were initiated through a notice issued on August 12, 2020. In response to the notice under Section 153C, the assessee filed a revised return, declaring an income of ₹2,26,80,170, as compared to ₹1,26,80,170 declared in the original return.

4.3 However, the AO found that the quantum of additional income offered by the assessee lacked a sound basis. Consequently, the AO proceeded with the assessment based on entries in the books of accounts and materials found during the search proceedings.

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4.4 The AO observed that the assessee failed to properly account for contract receipts in the books of accounts while claiming full TDS credit. This discrepancy was evident from a mismatch between the figures of receipts reported in Form 26AS and those declared in the financial statements. Contract receipts were revised multiple times without sufficient justification. For example, in AY 2017-18, receipts were initially declared as ₹4.86 crore, later revised to ₹17.92 crore, and ultimately reported as ₹4.93 crore. Additionally, a substantial Work-in-Progress (WIP) claim of ₹11.60 crore was made for AY 2017-18 in the last revised return filed in response to the notice under Section 153C of the Act, whereas no such WIP claim was made in the original or first revised return. This claim was unsupported, as the assessee admitted to the absence of proper records for the valuation and documentation of WIP.

4.5 The repeated revisions of financial statements and returns demonstrated inconsistency and raised questions about the intent to comply with accounting and tax regulations. As a result, the AO proposed estimating income based on gross receipts as per Form 26AS at 10%, rejecting the books of accounts due to their unreliability. The AO accordingly calculated the business profit at 10% of the total gross receipts and determined the addition to the total income of the assessee on account of revenue recognition from the business. This was done after deducting the business profit already declared by the assessee in the final return. The detailed workings were provided as under:

A.	Gross Receipt as per 26 AS	Rs. 33,98,58,242/-
B.	Business profit estimated @10%	Rs. 3,39,85,824/-
	Net Profit as per last return	Rs. 2,81,99,261/-
	Less: Other Income	Rs. 27,65,122/-

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C.	Business profit as per last return	Rs. 2,53,10,985/-
D.	Net Addition [B – C]	Rs. 86,74,839/-

4.6 Thus, the AO based on the above after rejecting the books of accounts made an addition of ₹86,74,839 to the total income of the assessee on account of business profit.

Aggrieved by this decision, the assessee filed an appeal before the learned CIT(A).

4.7 Before the learned CIT(A), the assessee explained that in the immediately preceding assessment year (AY 2017-18), it had received an advance of ₹12,98,85,239 from M/s RMN Infrastructure on account of a subcontract, out of which ₹11,60,96,620 was shown as Work-in-Progress (WIP). During the current year, the work was completed, and accordingly, the WIP amount, along with the contract receipts for the year and an additional income of ₹1 crore, was offered to tax. The details of these transactions were presented as follows:

Contract Receipt of the year	Rs. 33,98,58,242/-
WIP from previous year	Rs. 11,60,96,620/-
Additional income of Rs.	Rs. 1,00,00,000/-
Total turnover offered	Rs. 48,58,30,876/-

4.8 On the above turnover, a net profit of ₹2,81,99,281, calculated at 6.05%, was offered to tax. In earlier assessment years, a profit rate of 4% to 5% on net receipts had been offered and accepted by the tax authorities. The assessee further submitted that under the subcontract agreement, the contractor, M/s RMN Infrastructure, also demanded a business profit of 4% on the project. Therefore, considering these

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circumstances, the estimation of profit at 10% of the contract receipts by the AO was argued to be inappropriate.

5. The learned CIT(A), after considering the facts in totality, allowed the assessee's ground of appeal with the following observations:

> *"5.3 I have gone through the assessment order, argument made by the AR of the appellant and submissions made by the AR. The AO made addition on estimation basis without bringing on record any comparable case of similar nature or give reasons for adopting such rate of net profit. The AO has to bring- on record certain material to support his finding with regard to rate of profit admitted for estimation of profit with some comparable cases of similar nature or the profit declared in the similar industry. In the instant case the AO adopted the profit at 10% but failed to bring on record any comparable case of similar nature nor give reasons for adopting such rate of net profit. On the other hand,. the appellant had already declared profit at 6.05% profit considering the nature of business and place of work. As seen in construction work, the rate of profit varies from nature of contract executed by the appellant and place of such contracts. Therefore, no uniform yardsticks can be applied for estimating net profit. The appellant placed reliance in the case of Shri LakshmananVs ITO TAT wherein it was held that:*
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> *It is an admitted fact that if books of accounts maintained by the assessee are incomplete or not supported by necessary evidences then the AO is empowered to complete assessment in the manner provided in section 144 of the Act. But fact remains that still in the best judgement assessment, the AO has to bring on record material on the basis of which he has arrived at the conclusion with regard to rate of profit for estimation of income from the business. No doubt, under the best judgement assessment there is an element of guesswork but it should not be arbitrary. Therefore, while completing the assessment under best judgement assessment, the AO has to bring on record certain material to support his finding with regard to rate of profit admitted for estimation of profit with some comparable cases of similar nature or the profit declared in the similar industry. In this case, although the AO has adopted 5% net profit on gross receipts, but failed to bring on record any comparable case of similar nature nor give reasons for adopting such rate of net profit. On the other hand, the assessee has agreed for estimation of 3% profit on gross receipts considering the nature of business and place of work. Further in the civil construction work, the rate of profit varies from nature of contract executed by the assessee and place of such contracts. Therefore, no*

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uniform yardsticks can be applied for estimating net profit. Therefore, considering the pact that the assessee is into civil construction business and also the AO has not given any reasons for adopting 5% net profit rate, we are of the considered view that a reasonable profit of 3% on total receipts would meet the ends of justice. Therefore, we direct the AO to estimate 3% profit on total gross receipts received by the assessee for the year.

5.4 In the case of Shri LakshmananVs ITO (supra) it was also held that if the

AO rejected the books of account then the AO is bound to complete the assessment as per the provisions of Section 144 of the Act. However, in the instant case the AO completed the assessment under section 153C r.w.s 143(3) of the Act and not followed the provisions of Section 144 of the Act nor provide any finding to support his claim. Therefore, without going into the technicality and following the decisions of Shri Lakshmanan Vs. ITO (Supra) and considering the fact that the appellant is into construction business and also the AO has not given any reasons for adopting 10% net profit rate, I am of the considered view that a reasonable profit of 6.05% as declared by the appellant would meet the ends of justice; Therefore, the A(1 to re - estimate 6.05% profit on total gross receipts received and additional income declared by the appellant of Rs.1,00,00,000/- for the year under consideration. In view of the above discussion ground no. 3 may be treated as allowed."

6. Being aggrieved by the order the learned CIT(A) the revenue is in appeal before us.

7. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

8. We have heard the rival contentions of both the parties and perused the materials on record. From the preceding discussion, we note that the primary contention of the revenue pertains to the learned CIT(A)'s decision to reduce the profit estimation from 10% to 6.05%, as declared by the assessee. In this regard we note that the AO's estimation of profit at 10% was made without bringing any comparable

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cases or industry benchmarks on record to substantiate such a high rate of profit. In tax assessments, particularly in cases involving estimations, it is imperative for the assessing authority to rely on data from comparable businesses or industry norms to justify the profit rate applied. The absence of such data makes the AO's estimation arbitrary and unsupported.

8.1 The learned CIT(A) rightly observed that the AO's action of arbitrarily applying a 10% profit rate, without any evidence or supporting reasoning, violates the principle of fair estimation in cases of best judgment assessments. Taxation law requires assessments to be based on facts and logical reasoning, not conjectures or assumptions.

8.2 We are also conscious to the fact that the assessee has consistently offered profits in the range of 4% to 5% on net contract receipts in previous assessment years, and these declarations were accepted by the tax authorities. This establishes a pattern of reasonable profit margins within the business operations of the assessee. The declaration of 6.05% in the year under consideration already represents an increase over past years. Deviating from this trend without any valid reasoning raises questions about the AO's approach.

8.3 We also note that the assessee operates in the construction industry, where profit margins can vary significantly depending on the nature of contracts, geographical location, and other project-specific factors. The subcontracting agreement with M/s RMN Infrastructure, where the contractor demanded a profit margin of 4%, further underscores the industry realities of lower profit margins in such

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contracts. This supports the assessee's contention that a profit margin of 10% is excessive and unrealistic in the given circumstances.

8.4 It is well-settled law that in cases where books of accounts are considered unreliable, the AO is empowered to make a best judgment assessment under Section 144 of the Income Tax Act. However, such assessments must be grounded in reasonableness and fairness, relying on relevant facts and evidence. Arbitrarily adopting a profit rate of 10% without considering industry norms, past trends, or specific circumstances of the case contravenes these principles. The learned CIT(A) rightly observed that the AO's estimation was made in a high-handed manner and without due consideration of material facts.

8.5 The view taken by the learned CIT-A is supported by the judicial precedents, including the case of Shri Lakshmanan vs. ITO by Chennai ITAT bearing ITA No. 2668/Chny/2019, where it was held that profit estimation must be based on relevant evidence and that arbitrary assessments are not sustainable. As the AO failed to bring any concrete evidence or justification for 10% profit rate, the learned CIT(A)'s reliance on established principles to reduce the profit rate to 6.05% was thus justified.

8.6 In view of the above, the Tribunal finds that the AO's estimation of profit at 10% is arbitrary, unsupported, and lacks a reasonable basis. The learned CIT(A) has rightly rejected the AO's estimation and accepted the profit rate of 6.05% of the turnover. Hence, we hereby uphold the decision of the learned CIT(A) and dismisses the revenue's ground of appeal.

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9. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition made on account of unexplained investment in property amounting to ₹27 lakh.

10. The Assessing Officer (AO), based on search documents, observed that the assessee had entered into an agreement to purchase land property for ₹2,43,62,400 only. However, the AO further noticed that in the registry document, the impugned property was purchased for ₹1.46 crore only. Accordingly, it was alleged that the assessee had made an unexplained investment of ₹97 lakh, out of which ₹27 lakh was during the year under consideration, and the remaining ₹70 lakh was paid in the subsequent year. Therefore, the AO added ₹27 lakh to the total income of the assessee for the year under consideration.

11. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee contended that the agreement was originally entered into for the purchase of a completed building, with the consideration agreed upon as ₹2,43,62,400 only. However, subsequently, the property was purchased without the building being completed, and thus, the consideration was reduced to ₹1.46 crore. The vendors of the property, Shri Ravindra and Smt. Shantha, in response to a notice, also confirmed to the AO via a letter dated 08-02-2021 that the vacant property was sold for ₹1.46 crore. The assessee, in support of its claim, also furnished a copy of the market price of the property as per the Sub-Registrar authority.

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12. The learned CIT(A), after considering the facts in totality, concurred with the submissions of the assessee and held that the AO made the addition of unexplained investment without having any corroborative material. Thus, the learned CIT(A) deleted the addition made by the AO. The findings of the learned CIT(A) are as follows:

"6.2 I have gone through the assessment order, argument made by the AR of the appellant and submission made by the appellant. The AO made addition of Rs.27,00,000/- regarding unexplained investment without any corroborative evidence. The appellant had stated from the course of search proceedings that the property was registered only for Rs. 1,46,00,000/-. It was made clear by the appellant in the statement that the agreement was made for the completed building for a consideration of Rs.2,43,62,400/-and the property was purchased without building for the consideration of Rs.1,46,00,000/-. The appellant had given details of the payments made at Rs. 1,46,00,000/- being the purchase consideration before the learned AO. Even the AO had a correspondence with the seller of the property on 08.02.2021 in which Sri. Ravindra and Mrs.Shantha jointly stated that "we sold our empty land for Rs. 1,46,00,000/- only which is the fair market price consideration of the property" the appellant submitted the copy of the same. Further, the appellant submitted the copy of the market price of the property given by the sub registrar authority. The appellant has submitted plenty of evidence in support of his claim. The AO made addition without application of mind and without any corroboration. Before making the addition the AO need to prove that the money has been paid over and above the registration amount with confronting evidences however, in the instance case the AO failed to prove any transaction over and above the registration amount) The AR of the appellant placed reliance in the case of Solitaire Fabrics Pvt.Ltd. V/s Department Of Income Tax wherein it was held that:

It is held that there is no rule of law to the effect that the value determined for the purposes of stamp duty is the actual consideration passed between the parties to the sale. In the present case the Assessing Officer has applied this provision of Section 50C for the computation of unexplained investment u/s. 69B of the Act and which is not permissible under the Act. Apart from the stamp duty valuation, there is nothing on record which suggests that the Revenue has proved that the assessee has accepted over and above, what has been recorded as purchase consideration of the land in the instrument i.e. the sale deed. We are in full agreement with the arguments of the ITA No.2576/Ahd/2009 A.Y. 2006-07 ITO Wd-4(3) Surat v. Solitaire Fabrics Pvt. Ltd. Page 12 assessee that Section 50C is not applicable in the case of purchaser and this provision being a deeming provision will apply for determining the full value of consideration as a result of transfer of capital assets for the purposes of computation of capital gains u/s.48 of the Act. We further find that there is no evidence on record to show that the consideration over and above, what has been recorded in the sale deed, has been made by the assessee and in the absence of the same, no addition of undisclosed investment can be made by invoking the provision of Section 69B of the Act. Accordingly, we confirm the

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order of CIT(A) deleting the addition and this issue of the Revenue's appeal is dismissed.

10. In the result, Revenue's appeal is dismissed.

6.3 Considering the facts and the decision in the case of Solitaire Fabrics Pvt Ltd. v/s Department Of Income Tax it is evident that the addition made by the AO is without application of mind and with proving that the money has been paid over and above the registration amount. The appellant has submitted plethora of evidence in support of his claim and proved his genuineness. Therefore, the addition made by the AO regarding unexplained investment of Rs.27,00,000/- is hereby deleted. In view of the above discussion ground no. 4may be treated as allowed."

13. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

14. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

15. We have heard the rival contentions of both the parties and perused the materials available on record. The core issue under consideration pertains to the addition of ₹27 lakh made by the Assessing Officer (AO) on account of alleged unexplained investment in property.

15.1 The assessee has contended that the original agreement was entered into for the purchase of a completed building at a consideration of ₹2,43,62,400. The argument advanced by the learned AR of the assessee, corroborated by the vendors Shri Ravindra and Smt. Shantha through their letter dated 08-02-2021, establishes that the property was sold in an incomplete state (vacant land), and the final consideration was reduced to ₹1.46 crore. The learned CIT(A) after examining the record has accepted the submission of the assessee. There was not any material evidence brought on record by the learned DR contrary to the finding of the learned CIT(A).

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15.2 The AO has failed to bring on record any cogent evidence to substantiate the claim that the assessee made unexplained investments of ₹97 lakh, of which ₹27 lakh pertains to the year under consideration. The AO's conclusion appears to be speculative, relying solely on the difference between the originally agreed amount and the registry value, without considering the material facts and explanations provided by the assessee.

15.3 The assessee has furnished a copy of the market price of the property from the Sub-Registrar authority, which supports the consideration of ₹1.46 crore as the fair market value of the property. The AO has not contradicted or disproved this evidence.

15.4 The vendors have independently confirmed the sale of the property for ₹1.46 crore. This confirmation further strengthens the assessee's contention that the final consideration was reduced due to the change in the condition of the property.

15.5 The learned CIT(A), after considering the submissions of the assessee and the corroborative evidence, rightly concluded that the addition made by the AO was based on presumptions and lacked any substantive basis. The deletion of the addition by the CIT(A) was therefore justified.

15.6 In view of the above, we hold that the addition of ₹27 lakh made by the AO on account of unexplained investment in property is unsustainable. The explanation provided by the assessee, supported by

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documentary evidence and third-party confirmation, has adequately demonstrated that the property was purchased for ₹1.46 crore, and no unexplained investment was made. Therefore, we uphold the order of the learned CIT(A) and dismiss the ground of appeal filed by the Revenue.

16. The next issue raised by the revenue is that the learned CITA(A) erred in deleting the disallowances of commission expenses on account of non-deduction of tax at source.

17. The necessary facts are that the assessee got award of subcontract from M/s. RMN Infrastructure Ltd (hereafter M/s RMN) for contract value of 48,84,08,117/- only. M/s RMN in accordance with the agreement retained an amount of Rs. 1.86 crores. The assessee treated same as expenses in its books of account in connection with obtaining the subcontract work. Accordingly, the AO was of view of that the amount retained by the M/s RMN was in nature of business commission on which assessee was required to deduct TDS. However, the assessee failed to do so. Thus, the AO by invoking the provision of section 40(a)(ia) disallowed the 30% of the amount paid and added to the total income of the assessee for Rs. 55,89,971/- only.

18. The aggrieved assessee preferred an appeal before the learned CIT(A).

19. The assessee before the learned CIT(A) contended that the (AO) erred in making the disallowance under section 40(a)(ia) of the Income Tax Act by failing to consider key facts and the supporting

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documentation. The assessee points out that, as per the agreement with RMN Infrastructure Ltd., 4% of the total contract value was deducted by the contractor towards TDS and other business profit components, amounting to Rs. 1.86 crores. This amount was directly retained by the payer and was never received by the appellant. As a result, the appellant argued that it is not obligated to deduct TDS on the retained amount since the sum was not part of its actual receipts.

19.1 Further, the appellant clarified that the entire bill amount was raised, including GST/VAT, and the gross contract amount was accurately reflected in the financial statements as turnover. However, the retention of 4% as per the agreement required the appellant to record this retention under "business profit" and other heads such as "royalty, labor welfare, and cess" to adjust for the withheld amount. Therefore, the AO's claim of disallowance for failure to deduct TDS was not applicable, as the appellant did not control the payment mechanism. The assessee also referenced judicial precedents, particularly the Hon'ble Delhi High Court's decision in the case of Ansal Landmark Township (P) Ltd. (377 ITR 635), which held that when the recipient includes the retained amount in their income and files returns accordingly, disallowance under Section 40(a)(ia) cannot be made. Furthermore, the assessee highlighted that RMN Infrastructure Ltd. had already included the retained receipts in its financials, reinforcing the argument that there was no loss of revenue to the tax authorities. Therefore, in light of these facts and legal principles, the assessee requested the disallowance under Section 40(a)(ia) to be dropped.

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19.2 However, the learned CIT(A) after considering the facts in totality accepted the appellant's contention that the amount in question, amounting to Rs. 1.86 crores (4% of the contract value) were deducted and retained by RMN Infrastructure Ltd. as per the agreement. Since the appellant did not actually receive the amount, the liability to deduct TDS under Section 40(a)(ia) of the Income Tax Act does not arise.

19.3 The learned CIT(A) observed that the agreement between the appellant and RMN Infrastructure Ltd. clearly stipulated the 4% deduction towards business profit and other components. The CIT(A) noted that this deduction was made at the source and recorded in the books of the payer. The learned CIT(A) also recognized that the appellant had included the gross contract amount in its turnover and paid the applicable VAT/GST on it. This demonstrated compliance with the reporting requirements, further substantiating the appellant's position.

19.4 The learned CIT(A) also considered relevant judicial precedents cited by the appellant, such as decision of Hon'ble Delhi high court the case of DIT vs. Ericsson Communications Ltd. In ITA 106 of 2002, which support the position that when the amount is not received by the assessee and is retained by the payer, the question of deducting tax does not arise. The ld. CIT(A) acknowledged that these judgments were appropriately applicable to the appellant's case.

19.5 Based on these findings and the evidence provided, the learned CIT(A) directed the deletion of the addition of Rs. 55,89,971/- made by the AO under Section 40(a)(ia) of the Act.

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20. Being aggrieved by the order of the learned CIT(A) the Revenue is in appeal before us.

21. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

22. We have heard the rival contentions of both the parties and perused the materials available on record. After thoroughly analysing the facts, submissions, and relevant legal provisions, we note that the amount of Rs. 1.86 crores retained by M/s RMN Infrastructure Ltd. was a contractual retention specified in the agreement. This retention, classified under business profits, royalty, labor welfare, and other cess components, was not a payment made or credited by the assessee. The AO erred in treating the retained amount as a commission expense for which the assessee was obligated to deduct TDS under Section 40(a)(ia). The retention is distinct from expenses incurred directly by the assessee.

22.1 We find that the retained amount never reached the assessee's hands. The liability to deduct TDS arises when a payment is made or credited to the account of a payee by the deductor. Since the assessee neither paid nor credited the retained amount, it cannot be held liable for TDS. Retention at the source by M/s RMN Infrastructure Ltd. was beyond the control of the assessee.

22.2 It is also important to highlight that the gross contract value, inclusive of the retained amount, was correctly reflected as turnover in

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the assessee's financial statements. Additionally, the assessee discharged its VAT/GST liability on the entire gross contract amount. The retained amount's accounting treatment as an expense under business profits, royalty, and welfare demonstrates proper documentation and substantiation of the assessee's claims. A critical consideration is the fact that M/s RMN Infrastructure Ltd., the retaining party, accounted for the retained amount in its financial records and paid taxes on the same. As such, there is no loss to the Revenue. Disallowance under Section 40(a)(ia) serves to safeguard the Revenue's interest where tax is not collected or remitted. In this case, the Revenue's position was never at risk, as the amount was fully accounted for by the retaining party.

22.3 In our considered opinion the AO incorrectly invoked Section 40(a)(ia) without recognizing the distinct treatment of retained amounts under contractual agreements. The AO failed to consider the agreement terms and the factual circumstances, which clearly established that the amount was withheld at the source and not credited to the appellant. The AO also ignored the judicial precedents that were directly applicable. We also find that the reliance on judicial decisions by the CIT(A) and the assessee to be well-founded which are analysed as under:

a. **Hon'ble Delhi High Court in the case of CIT vs. Ansal Landmark Township (P) Ltd. (377 ITR 635)**: This case held that no disallowance under Section 40(a)(ia) could be made when the recipient has included the amount in its taxable income and filed returns.
b. **Hon'ble Delhi High court in DIT vs. Ericsson Communications Ltd. (supra).** This judgment clarified that

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TDS liability arises only when an amount is paid or credited, and not when it is retained or withheld by a third party. The relevant observation of the Hon'ble High Court extracted as under:

> *15. The rationale for imposing an obligation to deduct TAS on a credit entry being passed by a payer in favour of payee, is that such entry represents an acknowledgement of debt by a payer in favour of a payee; the debt acknowledged is in respect of an income that has accrued in favour of the payee; and such income is exigible to tax under the Act. Once a payer has unequivocally acknowledged the debt payable by crediting the account of payee in its books or has actually paid the same (whichever is earlier), the provisions of Chapter XVII of the Act relating to deducting TAS and depositing with the Income Tax Authorities are triggered and not otherwise.*
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> *16. It is also necessary that the question whether a transaction results in an obligation to deduct TAS, be viewed from the standpoint of the payer and not from the standpoint of a person claiming any amount from the payee. Thus, if a debt owed by a person is not acknowledged as payable, there would be no obligation to withhold or deposit any tax. The obligation imposed on a person to deduct TAS and deposit the same with the Authorities is an obligation similar in nature to the directions in garnishee proceedings where the person obliged to deduct TAS stands as a garnishee and Income Tax Authorities stand as a garnisher; there cannot be an obligations to pay, where the debt allegedly payable is disputed by a garnishee.*

22.4 These precedents support the assessee's argument that no disallowance can be made under Section 40(a)(ia) of the Act when the amount is retained by the payer and accounted for in their income. Section 40(a)(ia) aims to ensure tax compliance by making TDS deductions mandatory on certain payments to secure tax collection. This provision is not intended to penalize taxpayers where no actual payment has been made or where the Revenue has not suffered any loss. In this case, since M/s RMN Infrastructure Ltd. accounted for the retained amount and discharged its tax obligations, the policy objective of Section 40(a)(ia) was not undermined. Imposing a TDS obligation on the

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assessee for an amount which was neither paid nor controlled is impractical and contrary to the legislative intent. The retained amount was entirely governed by the contractual terms, and the assessee's inability to influence the retention nullifies the AO's rationale for disallowance.

22.5 Based on the above reasoning, we hold that the CIT(A) correctly deleted the disallowance of Rs. 55,89,971/- under Section 40(a)(ia). The AO's decision was based on an incorrect understanding of the facts and the law. As the retention was not a payment or credit by the assessee and did not result in any loss to the Revenue, no TDS obligation arises. Hence, we dismiss the Revenue's ground of appeal and upholds the CIT(A)'s order in favor of the assessee.

23. In the result, the appeal of the revenue is hereby dismissed.

Coming to ITA No. 484/Bang/2023, an appeal by the Revenue for A.Y. 2019-20

24. The revenue has raised the following ground of appeal :-

> *"(i) Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition of Rs 1 crore made towards admitted income not declared in the returns of income filed consequent to search conducted?*
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> *ii) Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition of Rs 1 crore on the ground that the same was offered to tax by the assessee for the AY 2018-19 ignoring that the total declaration made by assessee was Rs 5 crore for 2 asst years 2018-19 & 2019-20 and the income offered to tax in the returns filed for two years was Rs 4 crore only?*
>
> *iii) Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition made on undisclosed investment in land with respect to cash payments made towards*

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purchase of site which the assessee had admitted to have paid during the course of search?

iv) Whether on the facts and circumstances of the case, the order of CIT(A) is perverse in holding that the addition towards undisclosed investment in land was without any evidence, ignoring the seized document written in assessee's own hand writing towards payment of cash and admitted by the assessee during the course of search?

v) Whether on the facts and circumstances of the case, the CIT(A) was correct in deleting the addition made towards value of seized jewellery on the ground that the same belonged to parents-in law of the assessee which was not stated by the assessee during the course of search?

Whether on the facts and circumstances of the case, the order of CIT(A) is perverse in deleting the addition made towards value of seized jewellery ignoring the statement given by assessee's wife during the course of search proceedings that the whole of the jewellery belonged to her and that there was no jewellery belonging to any other person kept in the premises based on which unexplained jewellery was seized?

vii) For the above grounds and any additional grounds that may be agitated during the course of hearing."

25. The first issue raised by the revenue is that the learned CIT(A) erred in deleting the addition made by the AO for Rs. 1 crore on account of disclosure of income.

26. During the assessment proceedings, the AO observed that the assessee, both at the time of the search and during the post-search proceedings, admitted offering an additional income of Rs. 4 crores for the assessment year (A.Y.) 2019-20. However, the assessee only declared an additional income of Rs. 3 crores in their return. Consequently, the AO added the sum of Rs. 1 crore to the total income of the assessee.

26.1 The assessee, being aggrieved by this addition, filed an appeal before the learned CIT(A).

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26.2 The assessee, in their appeal before the learned CIT(A), contended that they had agreed to offer an additional income of Rs. 4 crores over two assessment years, namely A.Y. 2018-19 and A.Y. 2019-20. Specifically, Rs. 1 crore was offered as additional income in A.Y. 2018-19, while the remaining Rs. 3 crore was offered in the assessment year under consideration. Therefore, the assessee argued that the addition made by the AO was misplaced and unwarranted.

26.3 The learned CIT(A), after examining the facts on record, deleted the addition made by the AO. The ld. CIT(A) observed that the additional income of Rs. 1 crore had already been offered in the previous assessment year, A.Y. 2018-19, and thus no further addition was required for the year under consideration.

27. Being dissatisfied with the order of the learned CIT(A), the Revenue has filed an appeal before us.

28. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

29. We have carefully considered the rival contentions of both parties and reviewed the materials on record. The Assessing Officer (AO) contended that the assessee, during the search and post-search proceedings, agreed offering an additional income of Rs. 4 crores for the year under consideration but only disclosed Rs. 3 crores in the return of income filed in response to the notice issued under Section 153C of the Income Tax Act.

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29.1 To address this contention, we examined the statement recorded under Section 132(4) of the Act on 24-01-2019 during the search, as reproduced on page 10 of the AO's order. In this statement, the assessee had initially agreed to offer an additional income of Rs. 1.5 crore in his personal capacity and Rs. 3.5 crore in the hands of the partnership firm, M/s. USK Construction. However, in a subsequent statement recorded under Section 131(1) of the Act on 28-06-2019, the assessee clarified that after verifying the seized materials, it was found that the entries in the documents are related to the assessee's personal business. Accordingly, the assessee agreed to offer Rs. 1 crore as additional income for A.Y. 2018-19 and Rs. 3 crores for A.Y. 2019-20. This clarification is detailed on page 12 of the AO's order.

29.2 Based on the above, it is evident that the AO incorrectly assumed that the assessee had agreed to offer Rs. 4 crores entirely in the year under consideration (A.Y. 2019-20). In fact, the additional income was split across two assessment years, with Rs. 1 crore offered in A.Y. 2018-19 and Rs. 3 crores offered in A.Y. 2019-20, as clarified by the assessee. In light of these facts, we find that the learned CIT(A) correctly deleted the addition made by the AO, as it was based on a misinterpretation of the facts. The grounds of appeal raised by the Revenue are, therefore, without merit and are hereby dismiss the same.

30. The next issue raised by the assessee is that the learned CIT(A), erred in deleting disallowances of unexplained investment.

31. The identical issue has already been decided in favour of the assessee in revenue's appeal bearing ITA number 483/Bang/2023 for the

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AY 2018-19 vide paragraph No. 15 of this appeal. Respectfully, following the same, we don't want to interfere in the order of the ld. CIT-A. Hence, the ground of appeal of the Revenue is hereby dismissed.

32. The next issue raised by the Revenue pertains to the deletion of an addition made on account of unexplained jewellery by the learned CIT(A).

33. The facts of the case are that during the search proceedings conducted at the residence of the assessee, gold jewellery weighing 1,724.82 grams was discovered, out of which 612.86 grams were seized on the grounds that the assessee could not explain its source at the time of the search.

33.1 During the assessment proceedings, the assessee submitted that the gold jewellery belonged to various family members, including his wife, mother-in-law, father-in-law, and himself. Specifically, the assessee explained that 500 grams of gold belonged to his mother-in-law, 90 grams to his father-in-law, and 95 grams to himself. The remaining jewellery belonged to his wife and was received on the occasion of their marriage in 2009. The assessee further clarified that the jewellery owned by his wife was already disclosed in her balance sheet.

33.2 However, the AO, disagreed with the assessee's explanation and held that the assessee despite being asked to substantiate the source of the jewellery with evidence, the assessee failed to provide additional corroborative documents beyond reiterating earlier statements. The jewellery's ownership and source were not adequately explained or

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supported by credible documentation. The wife of the assessee, during examination, showed no knowledge of the business affairs and stated that she only signed documents when asked by the assessee. She indicated that the jewellery belonged to family members and not others outside the premises. Thus, the AO treated jewellery weighing 612.86 gram, as unexplained and attributed to the assessee. The AO valued the unexplained jewellery at Rs. 16,15,611/- and added to the total income.

The aggrieved assessee preferred an appeal before the learned CIT(A). The learned CIT(A) after considering the facts in totality deleted the addition made by AO by observing as under:

> *"7.3 1 have gone through the assessment order, the written submissions made by the appellant and the reasoning given by the AR of the appellant during the appellate proceedings. The AR of the appellant stated that the appellant's wife and his another-in-law who was staying with the appellant during the course of the search and her jewellery were also added to the income of the appellant without giving credit as per the Board's instruction no.1916 dated 11.05.1994. During the course of the search jewellery only weighing 612.86 grains amounting to Rs.16,15,61 1/- was seized. As stated by the appellant that the jewellery was accepted by the wife of the appellant in her return and the credit for the jewellery of his mother-in-law was also not-given. The AR has further submitted that, as seen from the income declared by the appellant as well as their family status, they had substantial sources of income for investment in the seized jewellery. Therefore, as per the Board's instruction no.1916 dated 1.05.1994, AO or the appellate authority, having regard to the status of the family and the custom and practices of the community to which the family belongs may decide the extent of jewellery held by the members of the family., The instruction referred above is more related to the seizure of jewellery found during the course of the search but it more or less lays crown the guidelines for the assessment of jewellery found as well during the course of the search.*
>
> *7.4 Appellant's mother-in-law is the family of the appellant and staying with him during the course of the search. Therefore, an fair estimation needs to be made about the jewellery belonging to the mother-in-law of the appellant. As the appellant comes from a well-to-do family and as per the customs and practices of Hindus from Karnataka, to which the appellant belongs, gold ornaments are bought and gifted on almost all occasions right since naming ceremony, birthdays, engagement, marriages etc. Thus, accordingly, estimated jewellery possessed by the mother-in-law of the appellant and wife of the appellant is quite reasonable.*
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> *7.5Hence, the addition made by the AO of Rs.16,15,611/- is hereby deleted and the AO is directed to give credit as per the Board's instruction no.1916*

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dated 11.05.1994. Ground of appeal no. 4 raised by the appellant is treated to have been allowed."

33. Being aggrieved by the order of the learned CIT(A) the revenue is in appeal before us.

34. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

35. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly gold jewellery weighing 1,724.82 grams was discovered from the assessee's residence, out of which 612.86 grams treated as unexplained. We note that **CBDT Circular No. 1916 dated 11 May 1994**, specifically provides that during a search operation, gold jewellery up to the following limits shall not be seized:

- **500 grams per married woman**,
- **250 grams per unmarried woman**, and
- **100 grams per male member of the family**.

35.1 The circular acknowledges that such quantities are considered reasonable and customary, reflecting societal norms and cultural practices. In the case on hand the assessee has explained that the jewellery belonged to multiple family members:

- **Wife**
- **Mother-in-law (Married Woman)**:
- **Father-in-law (Male Member)**:
- **Self (Male Member)**

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35.2 Considering the above gold jewellery totalling to 1195 grams (500+500+100+95 grams), are within the permissible limits as outlined in the CBDT Circular whereas in the case of the assessee only 612.86 gram of jewellery which the assessee was not able to explain.

35.3 It is also important to note the assessee claimed that the jewelry was gifted to his wife at the time of their marriage in 2009 and included inherited items from other family members. Such explanations are reasonable and customary for Indian households, aligning with the guidelines in the CBDT Circular.

35.4 The AO has not brought any evidence to contradict the assessee's claim that the jewellery belonged to the family members or that the source of acquisition is unexplained. The mere inability of the assessee to provide detailed documentation for older, inherited jewellery does not automatically render the jewelry unexplained.

35.5 Since the total quantity of jewellery falls well within the permissible thresholds under Circular No. 1916, no addition should be made under Section 69B of the Income Tax Act. The circular explicitly allows this presumption to avoid unnecessary disputes and harassment of taxpayers during searches. Considering the provisions of CBDT Circular No. 1916 and the explanation provided by the assessee, the seized gold jewellery up to the specified thresholds for each family member should be treated as explained. Accordingly, we uphold the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the revenue is hereby dismissed.

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36. In the result, appeal of the revenue is hereby dismissed.

37. In the combined result, both the appeals of the Revenue are hereby dismissed.

Order pronounced in court on 18th day of December, 2024

Sd/-	**Sd/-**
(SOUNDARARAJAN K)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 18th December, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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