**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**

**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.76/Nag./2024**
(Assessment Year :2016–17)

Dy. Commissioner of Income Tax
Central Circle–1(2), Nagpur ……. Appellant

v/s

Vidarbha Infotech Pvt. Ltd.
14, Pushpkunj Complex
Ramdaspeth, Nagpur 440 010
PAN – AABCV2557M ……. Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

| Date of Hearing – 10/12/2024 | Date of Order – 10/02/2025 |
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**O R D E R**

**PER V. DURGA RAO, J.M.**

The present appeal preferred by the Revenue is against the impugned order dated 29/12/2023, passed by the learned Commissioner of Income Tax (Appeals)–3, Nagpur, [*"learned CIT(A)"*], for the assessment year 2016–17.

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

*"1. On the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs.7,50,00,000/- on account of Unexplained Expenditure u/s 69C of the I.T. Act, 1961, without appreciating the fact that the addition of Rs.7,50,00,000/- made by the AO was supported with independent finding by issuing notice u/s 133(6) of the I. T. Act, 1961 to Bhagwat Power & Steel Ltd and Aarti Sponge & Power Ltd.*

*2. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.20,67,364/- on account of difference in additional*

*income disclosed during survey proceedings and returned income declared by the assessee in his return of income for AY 2016-17.*

*3. Any other question of law and fact to be raised at the time of appeal."*

3. The only issue before us is, whether or not the learned CIT(A) was correct in deleting the addition of ₹ 7.50 crore made by the Assessing Officer under section 69C of the Income Tax Act, 1961 ("*the Act*") on account of unexplained expenditure.

4. Facts in Brief:– The assessee is a company. On 26/12/2019, a survey under section 133A of the Act was conducted by the Investigation Wing, Income Tax Department, Nagpur. The assessee company is engaged in the business of construction, wholesale and retail trade and other services. On 17/10/2016, the assessee filed its return of income for the year under consideration declaring total income of ₹ 4,60,44,360. On 25/12/2016, the Assessing Officer completed assessment under section 143(3) of the Act determining total assessed income a ₹ 4,81,11,724. During the survey proceedings, the assessee disclosed an additional income of ₹2.03 crore. The Assessing Officer re–opened the assessment under section 147 of the Act and notice under section 148 was issued on 31/03/2021 which was served upon the assessee. In response to notice under section 148, the assessee filed return of income on 26/05/2021, declaring total income at ₹ 6,63,44,360. Thereafter statutory notices were also issued by the Assessing Officer from time to time. The Assessing Officer completed the assessment under section 147 of the Act on 30/03/2022, determining total assessed income at ₹ 14,34,11,724, after making addition of ₹ 7.50 crore on account of

unexplained expenditure under section 69C of the Act and ₹ 20,67,364, on account of difference under section 69C of the Act.

5. Before the learned CIT(A), the assessee made following submissions:–

*"The appellant submitted the written submission which is reproduced as under:*

*Assessee is a Company incorporated under the provisions of Companies Act, carrying on the business of Construction, trading, and services. It maintains regular books of accounts which are audited u/s 44AB of IT Act as well as under the provisions of Companies Act:*

*The present appeal is against the reopening of assessment and the additions made in the assessment order passedu/s 147 of the Act on 25/12/2018.*

*Facts of the case:*

*Assessee filed return of income under section 139(1) of I T Act on 17/10/2016 declaring income of Rs.4,60,44,360/–. Case was selected for scrutiny and various notices were issued which were duly replied by the assessee. Assessment order under section 143(3) was passed on 25/12/2018 wherein AO made following additions and computed the total income at Rs.4,81,11,724/-.*

| | |
|---|---|
| *Belated payment of EPF/ESIC* | *Rs. 18,60,893/-* |
| *Other Disallowance out of expenses* | *Rs. 2,06,471/-* |

*Addition of belated payment of EPF/ESIC was disputed by assessee in appeal and the Hon'ble CIT Appeal, NFAC, Delhi vide order u/s 250 dated 28/05/2021 allowed assessee's appeal and directed to delete the addition of Rs. 18,60,893/-.*

*A survey u/s 133A was conducted at business premises of the assessee on 26/12/2019 wherein assessee agreed to declare additional income of Rs. 2.03 crores on account of certain discrepancies in investment in construction of building.*

*In the meantime the Hon'ble PCIT 1, Nagpur vide order u/s 263 of IT Act dated 23/02/2021held that the assessment order passed u/s 143(3) on 17/10/2016 is erroneous and prejudicial to the interest of revenue as the AO has not looked into genuineness of Consultancy Charges of Rs. 7.50 crores paid by the assessee. The PCIT, accordingly set aside the assessment order passed u/s 143(3) with a direction to reassess the income after conducting proper inquiry on. issue of consultancy charges of Rs. 7.50 crores.*

*A notice u/s 148 of IT Act dated 31.03.2021 was served on assessee to file ITR for AY 2016-17. In response to said notice assessee filed return on 26.05.2021 declaring total income ofRs. 6,63,44,360/- which included*

*additional income ofRs. 2,03,00,000/- surrendered during the course of survey u/s 133A on 26.12.2019.*

*During re-assessment proceeding the la. Ao observed that during the relevant previous year assessee has claimed legal and professional expenses of Rs.7,70,50,279/- whereas in the preceding year the same was only Rs. 13,85,322/-. Assessee was asked to justify increase in these expenses.*

*Assessee, vide its submission dated 08/03/2022, submitted that:*

> *"2. The assessee company is an Information Technology and IT enabled services provider, IT hardware procurement and software development engaged inter-alia in the business of turnkey projects related to IT infrastructure hardware and software, consultancy and implementation of such projects.*
>
> *The company was awarded the contract for the installation as well as commissioning and operating of various Octroi check posts of Municipal Corporation of Greater Mumbai with suitable IT infrastructure and trained manpower. During the year under consideration it had earned revenue of Rs.2970 lakh from Nagpur Municipal Corporation (NMC) and Municipal Corporation of Greater Mumbai (MCGM) for operating their various Octroi check posts in their jurisdiction as per contracts awarded to the company by providing suitable IT infrastructure hardware and software, trained manpower and also necessary technical consultancy for above.*

*For the automation project of Municipal Corporation of Greater Mumbai, the company has entered into agreements for providing technical consultancy services from Aarti Sponge and Power Ltd. and Bhagwati Power and Steel Ltd. The scope of work performed by above two companies was as under:*

> *Technical advisory services for successful construction, installation as well as commissioning of the IT infrastructure, IT automation and software development activity at various check posts including knowledge sharing in related field.*

*Timely selection of contractors who have trained manpower, procurement of hardware/ software and related infrastructure.*

*Overseeing the implementation of the project.*

*Technical assistance for preparation and submission of any bid proposal relating to the project during the duration of the agreement.*

*Backup support with relevant expertise in the field of overall construction/development of infrastructure project.*

*Liasioning work.*

*The durations of the agreements were up to completion of the work.*

*Copies of Agreements of Understanding between company and Aarti Sponge and Power Ltd. (Agreement dated 12/01/2015) and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015) along with their ledger accounts are enclosed (Annexure - II)*

*In terms of agreements and understanding, during the year under consideration, company has credited/ paid Rs. 2.50 Crore to Aarti Sponge and Power Ltd. and Rs. 5.00 Crore to Bhagwati Power and Steel Ltd. towards technical consultancy services provided to the company as detailed above and their invoices are placed on record."*

*Assessee vide its submission dated 29/03/2022 further submitted that the increase in expenses is justified as there is substantial increase in turnover of the assessee to Rs. 34.15 crores as compared to Rs. 22.75 crores in earlier year. Assessee also placed on record the scope of work done by these two companies, the copies of invoices 7,50,00,000/-, copy of agreement, copy of Ledger accounts and details of payment made after due deduction of tax at source at applicable rates. It was also submitted that the expenses have been incurred exclusively for the business purpose of the assessee company.*

*During assessment proceeding the A.O. called for information under section 133(6) of IT Act to from Arti Sponge and Bhagvati Power. Both the Companiesresponded to notice under section 133(6) and confirmed of providing services to the assessee company and receipt of payment from it. They also provided copy of agreement, their bank statements and audited financial statements.*

*In the assessment order Id. AO held that though the two companies have shown this amount as income in their P&L a/c but they are majorly engaged in manufacturing sector SO without IT employees and new administrative/technical set up it is not possible to provide consultancy services of huge amount of Rs. 7.50 crores and therefore he treated this amount as unexplained expenditure u/s 69C of IT Act and added to income.*

*The Id. AO has further held that during survey u/s 133A assessee had surrendered income of Rs. 2.03 crores but while filing ITR in response to notice u/s 148 he has shown total income of Rs. 6,63,44,360/- whereas income assessed vide order u/s 143(3) dated 25/12/2018 was Rs. 4,81,11,724/-. As such there is additional income of Rs. 1,82,32,636/- instead of Rs. 2,03,00,000/-. He therefore, made an addition of Rs. 20,67,364/-.*

*1. Appellant's submissions on facts:*

*4.1)At the outset the assessee most humbly and respectfully submits that the Id. AO has not found any defect or inadequacy with the documents and evidences submitted by the assessee. The Id. AO has not:*

> *Refuted the fact that the transactions are duly recorded in the books of the assessee.*
>
> *Refuted the fact that channels. payments are made through banking*
>
> *Refuted, the fact that the other parties to the transaction have received the payments and have confirmed the transaction and have paid taxes on the same.*
>
> *Refuted the fact that proper records in the form of invoices, TDS details, etc. are maintained and produced.*

*Refuted the fact that the increase in expenses is justified as there is substantial increase in turnover of the assessee to Rs. 34.15 crores as compared to Rs. 22.75 crores in earlier year.*

*Appreciated the fact that the disallowance of expenditure gives impossibly high Gross Profit ratio.*

*Doubted the genuineness of the Agreements of Understanding between*

*company and Aarti Sponge and Power Ltd. (Agreement dated 12/01/2015) and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015), pursuant to which the payments are made.*

*Found that the moneys of Rs. 7.50 Crore paid by the assessee are in fact recycled back to the assessee.*

*In the absence of any of the above, the Id. AO has disallowed the expenditure of Rs. 7.50 Crores on the following presumptions, surmises, conjectures and misreading of the facts.*

*The Ld. AO has stated that both Aarti Sponge and Power Ltd. and Bhagwati Power and Steel Ltd. are in the business of manufacturing and they do not have any administrative/ technical set-up or infrastructure set-up to render the required services to the assessee. No new appointments are made by these companies. The Id. AO has simply ignored the statements of these companies that the existing employees were used for the assessee's projects. In view of these specific assertions of these companies it was incumbent upon the Id. AO to bring on record at least some positive evidence as to how the existing manpower employed by these companies was inadequate and incompetent, as to how it lacked administrative/technical set-up or infrastructure set-up to perform the work. The appellant most humbly and respectfully submits that there is simply no evidence in support with the Id.AO and that he has merely presumed that it was not possible for these companies to perform the work with the existing staff/ infrastructure. It is trite law that mere suspicion cannot be the basis of any addition to the income.*

*The appellant most humbly and respectfully submits that the Id. AO has also got quite unnecessarily influenced with his assertion that neither the assessee nor the two companies provided the bifurcation of the work. It is most humbly submitted that the Id. AO has not appreciated the fact that payments were made to these companies after almost 14-15 months of the execution of the Agreements of Understanding between company and Aarti Sponge and Power Ltd. (Agreement dated 12/01/2015) and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015).*

*From the Agreement of Understanding between company and Aarti*

*Sponge and Power Ltd. (Agreement dated 12/01/2015) it is evident that:*

*Para 1.4 That, at the Nagpur site as stated above the project had already reached the desired level of construction within the defined time frame. This was possible only due to the timely assistance of the second party. The first party was somewhat new in such type of the contracts. Further for the successful commissioning of such type of project, selection of the contractors, procurement of the construction material as well as the plant & machinery etc. was a tough job. For this contract, as per the contract terms, time was the essence of the contract. In order to meet all such contingencies as well as to successfully complete this infrastructure project already on a large scale, the second party had rendered valuable advises from time to time. That, with this*

*arrangement the project had already attained the committed results and shall be definitely completed in the desired time frame.*

*Para 1.5 That, the purpose of this agreement is to fix certain remunerative benefits in the form of consultancy charges to the second party by the first party and in order to establish the principles governing the relationships of the parties with each other. That the e amount of consultancy charges was fixed at a lumpsum of Rs. 3,00,00,000/- (Rupee Three Crore Only, and applicable taxes extra for both works DEP*

*The above citations make it clear that on 12/01/2015 itself the project had already attained the committed results and that the payment was not item-wise or item specific but on a lump sum basis. Thus it was simply not subject to any bifurcation as sought by the Id. AO.*

*Similarly is worded the Agreement of Understanding between company and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015).*

*In fact, in its letter dated 24/03/2022 Bhagwati Power and Steel Ltd. have specifically stated that Mr. Kashyap Kejriwal, Executive Director of the company, by profession a Chartered Accountant and well versed in IT is engaged in the technical services. He along with his team viz. existing employees of the company was engaged in providing the technical advisory and consultancy services to undertake the assignment of Infrastructure Projects. This very specific and very crucial assertion of Bhagwati Power and Steel Ltd. has been completely ignored and blocked out by the Id. AO.*

*It is thus clear that the Id. AO has misguided himself on the issue of bifurcation of the work.*

*The appellant most humbly and respectfully submits that the Id. AO has completely overlooked the financials of the assessee. From the Statement of Profit and Loss for year ended 31st March, 2016 it is evident that while the revenue has increased from 22.75 Cr to 34.15 Cr. the assessee's Operating Cost related to IT Park Project has actually come down from Rs. 14.50 Cr to Rs.13.38 Cr. The employee benefit expense has marginally increased from Rs.3.15 Cr to Rs.3.46 Cr. These reductions are clearly on account of payments to Aarti Sponge and Power Ltd. and Bhagwati Power and Steel Ltd. which account for Rs.7.50 Cr.*

*From the above appreciate, that the Id. AO has grievously erred in holding that the expenditure of Rs. 7.50 Cr is bogus and has further erred in simultaneously holding it to be unexplained expenditure u/s. 69C of the Act.*

*As regards the other addition of belated payment of EPF/ESIC of Rs. 18,60,893/-, the same was disputed by assessee in appeal and the Hon'ble CIT Appeal, NFAC, Delhi vide order u/s 250 dated 28/05/2021 allowed assessee's appeal and directed to delete the addition of Rs. 18,60,893/-. Hence it is respectfully submitted that this addition may kindly be deleted.*

*Appellant's submissions on law involved:*

*The Id. AO has not doubted the source of expenditure of Rs. 7.50 Cr and has still proceeded to make the addition u/s 69C of the Act. It is most humbly and respectfully submitted that it is trite law that the bedrock for making an*

*addition under section 69C is that there must have been some expenditure incurred by the assessee, the source of which is not disclosed. If however such expenditure is recorded in the books of accounts, there cannot be any reason to invoke the provisions of section 69C of the Act. ( PAREKH CORPORATION UI BUILDING & PAREKH DISTRIBUTORS UI BUILDING vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITA No. 3293/Mum/2008 & ITA No.3294/Mum/2008, May 30, 2012, (2012) 32 CCH 0129 Mum Trib). In the case of M/s. Fancy Wear vs. ITO (ITAT Mumbai, itat online) it is held that S. 69C cannot be applied where all purchase and sales transactions are part of regular books of accounts. The basic precondition for invoking s. 69C is that the expenditure incurred by the assessee should be out of books of accounts. In the case of PCIT v. Tejua Rohitkumar Kapadia (2018) 94 Taxmann.com 324 (Guj) (HC), it is held that purchases (in our case services) cannot be treated as bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon.*

*Hon SC has dismissed the SLP filed by the department in this case. [2018] 94 taxmann.com 325 (Supreme Court) "Where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque and there was no evidence to show that amount was recycled back to assessee, Assessing Officer was not justified in treating said purchases as bogus under section 69C."*

*In the case of CIT v. Bhagwati Developers Pvt. Ltd. [2003] 261 ITR 658 (Cal.) it is held that if the source of the expenditure is explained section 69C has no applicability.*

*It is also respectfully submitted that the addition u/s. 69C has been made merely on suspicion and conjectures without refuting any facts, by disregarding the crucial evidences and without any evidence in support. This addition, it is most respectfully submitted, is totally illegal, invalid and unjust. Suspicion alone without there being evidence specific to a transaction cannot become the basis for creating charge for levying tax as each transaction has to be independently inquired into. Suspicion howsoever strong cannot take the character of evidence. For this proposition assessee relies on Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC), Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), CIT v. East Coast Commercial Co. Ltd. [1967] 63 ITR 449 (SC) and Anil Tibrewala v. ITO [2004] 1 SOT 90 (Mum); CIT v. Daulatram Rawatmull [1964] 53 ITR 574 (SC); Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC); Pr. CIT v. Ajay Surendrabhai Patel [2016] 69 taxmann.com 309 (Guj.).”*

6. The learned CIT(A), considering the above submissions of the assessee, deleted the addition of ₹ 7.50 crore made by the Assessing Officer under

section 69C of the Act on account of unexplained expenditure. The relevant findings of the learned CIT(A) are as under:–

> *"I have carefully considered the written submission of the appellant, the assessment order and the material available on record before deciding this appeal.*
>
> *4. Discussion and decision:-*
>
> *The appellant has raised five grounds of appeals. ground no. 5are genera of appeals. Out of which ground no. 4 and nature and not adiudicaten dismissed.*
>
> *Ground no. 1 to Ground No. 3: These grounds of appeals are regarding addition of Rs.7,50,00,000/- and Rs. 20,67,364/- u/s 69C.*
>
> *The appellant company is an Information Technology and IT enabled services provider, IT hardware procurement and software development engaged inter-alia in the business of turnkey projects related to IT infrastructure hardware and software, consultancy and implementation of such projects. The company was awarded the contract for the installation as well as commissioning and operating of various Octroi check posts of Municipal Corporation of Greater Mumbai with suitable IT infrastructure and trained manpower. During the year under consideration it had earned revenue of Rs.2970 lakh from Nagpur Municipal Corporation (NMC) and Municipal Corporation of Greater Mumbai (MCGM) for operating their various Octroi check posts in their jurisdiction as per contracts awarded to the company for providing suitable IT infrastructure hardware and software, trained manpower and also necessary technical consultancy for above. For the automation project of Municipal Corporation of Greater Mumbai, the company has entered into agreements for providing technical consultancy services from Aarti Sponge and Power Ltd. and Bhagwati Power and Steel Ltd.*
>
> *The scope of work performed by above two companies was as under:*
>
> *Technical advisory services for successful construction, installation as well as commissioning of the IT infrastructure, IT automation and software development activity at various check posts including knowledge sharing in related field.*
>
> *Timely selection of contractors who have trained manpower, procurement of hardware/ software and related infrastructure.*
>
> *Overseeing the implementation of the project.*
>
> *Technical assistance for preparation and submission of any bid proposal relating to the project during the duration of the agreement.*
>
> *Backup support with the relevant expertise in the field of overall construction development of infrastructure project.*
>
> *Liasioning work.*

*The durations of the agreements were up to completion of the work.*

*In terms of agreements and understanding, during the year under consideration company has credited/ paid Rs. 2.50 Crore to Aarti Sponge and Power Ltd. and Rs. 5.00 Crore to Bhagwati Power and Steel Ltd. towards technical consultancy services provided to the company as above*

*During assessment proceeding the AO called for information under section 133(6) of IT Act from Arti Sponge and Bhagvati Power. Both the Companies responded to notice under section 133(6) and confirmed providing services to the appellant company and receipt of payment from it. They also provided copy of agreement, their bank statements and audited financialthis amount in their P&L alc but they are majorly engaged in manufacturing sector, so without IT employees and new administrative/technical set up it is not possible to provide consultancy services of huge amount of Rs. 7.50 crores and therefore he treated this amount as unexplained expenditure u/s 69C of IT Act and added the same to the returned income. Another reason which the AO has cited is that the appellant company or the contracted companies did not provide any bifurcation of the work. For these two principal reasons AO has made an addition of Rs. 7.50 Cr. u/s. 69C of the Act to the returned income.*

*The appellant vehemently disputes the above addition and also disputes his liability to pay such tax demanded from him. The appellant has assailed the order both on facts and in law. The appellant has laid great stress on the following facts which are not disputed by the AO. That the transactions are duly recorded in the books of the appellant. That all the payments are made through banking channels. That the contracted companies have received the payments and have confirmed the transactions and have paid taxes on the same. That proper records in the form of invoices, TDS details, etc. are, maintained and produced. That the increase in expenses is justified as there is s substantial increase in turnover of the appellant to Rs. 34.15 crores as compared to Rs. 22.75 crores inearlier year. The AO has also not appreciated the fact that the disallowance of expenditure gives impossibly high Gross Profit ratio. Further, the AO has also not doubted the genuineness of the Agreements of Understanding between company and Aarti Sponge and Rower Ltd. (Agreement dated 12/01/2015) and Bhagwati Power recycled back to the fore paid by the appellant are in fact and Steel Ltd. (Agreement dated 01/01/2015) pursuant to which the payments are made. It is also not the AO's case at the moneys of Rs 7,50 paid by the appellant are in fact recycled back to the appellant.*

*The appellant is aggrieved that in the absence of any of the above, the Id. AO has disallowed the expenditure of Rs. 7.50 Crores on presumptions, surmises, conjectures and misreading of the facts.*

*I find substantial force in the appellant's arguments. The AO has stated that both Aarti Sponge and Power Ltd. and Bhagwati Power and Steel Ltd. are in the business of manufacturing and they do not have any administrative/ technical set-up or infrastructure set-up to render the required services to the appellant. No new appointments are made by these companies. The AO has simply ignored the statements of these companies that the existing employees were used for the appellant's projects. In view of these specific assertions of*

*these companies it was incumbent upon the AO to bring on record at least some positive evidence to show that the existing manpower employed by these companies was inadequate and incompetent and not well suited for the job. AO has also not brought out how the contracted companies lacked administrative/ technical set-up or infrastructure set-up to perform the work. I find that there is simply no evidence in support for the inferences drawn by the AO and that the has merely presumed that it was not possible for these companies to perform the work with the existing staff/ infrastructure. It is trite law that mere suspicion cannot be the basis of any addition to the income. The AO has also ignored the fact that, in its letter dated 24/03/2022 Bhagwati Power and Steel Ltd. have specifically stated that Mr. Kashyap Kejriwal, Executive Director of the company, by profession a Chartered Accountant and well versed in IT is engaged in the technical services. He along with his team viz. existing employees of the company was engaged in providing the technical advisory and consultancy services to undertake the assignment of Infrastructure Projects. This very specific assertion of Bhagwati Power and Steel Ltd. has also been simply glossed over and remains unproven by the AO.*

*The appellant has also submitted that the AO has also got unduly influenced with his assertion that neither the appellant nor the two companies provided the bifurcation of the work. The appellant has drawn my attention to the Agreements and has submitted that the Id. AO has not appreciated the fact that payments were made to these companies after almost 14-15 months of the execution of the Agreements of Understanding between appellant company and Aarti Sponge and Power Ltd (Agreement dated 12/01/2015) and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015). Emphasis has been laid on Agreement of Understanding between company and Aarti Sponge and Power Ltd. (Agreement dated 12/01/2015), especially the following two paras:*

*Para 1.4 stated above the project had already reached the desired level of construction within the defined time frame. This was possible only due to the timely assistance of the second party. The first party was somewhat new in such type of the contracts. Further for the successful commissioning of such type of project, selection of the contractors, procurement of the construction material as well as the plant & machinery etc. was a tough job. For this contract, as per the contract terms, time was the essence of the contract. In order to meet all such contingencies as well as to successfully complete this infrastructure project already on a large scale, the second party had rendered valuable advises from time to time. That, with this arrangement the project had already attained the committed results and shall be definitely completed in the desired time frame.*

*Para 1.5 - That, the purpose of this agreement is to fix certain remunerative benefits in the form of consultancy charges to the second party by the first party and in order to establish the principles governing the relationships of the parties with each other That the amount of consultancy charges was fixed at a lumpsum of Rs. 3,00,00,000 (Rupees Three Crore Only), and applicable taxes extra for both works.*

*The above citations make it clear that on 12/01/2015 itself the project had already attained the desired and agreed results and that the payment was not to be made item-wise but was to be made on a lump sum basis, Thus it was simply not subject to any bifurcation as sought by the Id. AO. Similarly is*

*worded the Agreement of Understanding between company and Bhagwati Power and Steel Ltd. (Agreement dated 01/01/2015). In this view of the matter I am unable to agree with the AO that in the absence of the said bifurcation this becomes a case of addition u/s, 69C.*

*The appellant has also invited my attention to the financials of the appellant. From the Statement of Profit and Loss for year ended 31st March, 2016 it is evident that while the revenue has increased from 22.75 Cr to 34.15 Cr. the appellant's Operating Cost related to IT Park Project has actually come down from Rs.14.50 Cr to Rs.13.38 Cr. The employee benefit expense has marginally increased from 13.15 cr to Rs.3.46 Cr. It is pleaded that these reductions in expenses are clearly on account of payments to the contracted companies which account for Rs.7.50 Cr. It is evident that the expenditure of Rs. 7.50 Cr were to be disallowed it will throw up an absurd GP ratio.*

*I find that the A.O. at best could be suspicious of the transaction, But, it is well settled that, suspicion alone without there being evidence specific to a transaction cannot become the basis for creating charge for levying tax as each transaction has to be independently inquired into. Suspicion howsoever strong Cannel-lake the character of evidence (Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC), Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC), CIT v. East Coast Commercial Co, Ltd. [1967] 63 ITR 449 (SC) and Anil Tibrewala v. ITO [2004] 1 SOT 90 (Mum); CIT v. Daulatram Rawatmull [1964] 53 ITR 574 (SC); Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC); Pr. CIT v. Ajay Surendrabhai Patel (2016) 69 taxmann.com 309 (Guj.))*

*In view of the above facts I have to hold that the disallowance of expenditure of Rs. 7.50 Crores u/s. 69C is not correct and is not sustainable. I hold that there is no case of disallowance on merits,*

*The appellant has also assailed the impugned order on law. It is submitted that AO has not doubted the source of expenditure of Rs. 7.50 Cr and has still proceeded to make the addition u/s 69C of the Act. It is also submitted that it is trite law that the bedrock for making an addition under section 69C is that there must have been some expenditure incurred by the appellant, the source of which is not disclosed. If however such expenditure is recorded in the books of accounts, there cannot be any reason to invoke the provisions of section 69C of the Act. (PAREKH CORPORATION UI BUILDING & PAREKH DISTRIBUTORS UI BUILDING vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITA No. 3293/Mum/2008 & ITA No.3294/Mum/2008, May 30, 2012, (2012) 32 CCH 0129 MumTrib). In the case of M/s. Fancy Wear vs. ITO (ITAT Mumbai, itatonline) it is held that S. 69C cannot be applied where all purchase and sales transactions are part of regular books of accounts. The basic precondition for invoking s. 69C is that the expenditure incurred by the appellant should be out of books of accounts. In the case of PCIT v. Tejua Rohitkumar Kapadia (2018) 94 Taxmann.com 324 ( Guj)(HC), it is held that purchases (here services) cannot be treated as bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the appellant in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the appellant and paid taxes thereon. Hon SC has dismissed the SLP filed by the department in this case [2018] 94*

*taxmann.com 325 (Supreme Court) In the case of CIT v. Bhagwati Developers Pvt. Ltd. [2003] 261 ITR 658 (Cal.) it is held that if the source of the expenditure is explained section 69C has no applicability.*

*I respectfully agr (Supreme and follow the decision of the Hon, ISC in [2018] 256 Taxman 213 Court) to the effect that where purchases made by appellant -trader were duly supported by bills and payments were made by account pay payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to appellant, Assessing Officer was not justified in treating said purchases as bogus u/s 69C. I, therefore, hold that the impugned addition is not sustainable in law also."*

The Revenue being aggrieved is in appeal before the Tribunal.

7. The learned Departmental Representative submitted that the assessee has not filed any details before the Assessing Officer and the expenditure incurred by the assessee is bogus in nature. He further submitted that the assessee is in the manufacturing business and how such expenditures were incurred has not been explained. He strongly supported the assessment order passed by the Assessing Officer.

8. The learned Counsel for the assessee, during the course of hearing, invited our attention to the reply filed by the Assessee dated 27/01/2022, placed at Page–89 to 108 of the Paper Book, wherein the assessee, during the course of assessment proceedings, furnished each and every details with respect to the expenditure of ₹ 7.50 crore including justifying the same with respect to the increase in revenues of the assessee company. The learned counsel for the assessee submitted that during the impugned assessment year, the assessee company provided I.T. Enables Services and earned revenue of ₹ 2,970 lakh from Nagpur Municipal Corporation and Municipal Corporation of Greater Mumbai and Mumbai for operating their various octroi check posts by providing suitable I.T. infrastructure-hardware / software and

trained manpower in the jurisdiction as per contracts awarded to the company. The learned counsel for assessee further submitted and reiterated that the consultancy charges of ₹ 7.50 crore was paid to 2 firms towards consultancy services for these octroi check posts / IT Automation and Software Development Commission at their various check posts of the client of the assessee company.

9. The learned counsel for the assessee then invited our attention to Page–94 to 101 of the Paper Book wherein the invoices received by the assessee towards providing services were enclosed and on which the necessary service tax was also charged by the parties issuing the invoices.

10. The learned counsel for the Assessee further invited our attention to Page–69 to 83 wherein copies of agreements entered into by the assessee with the parties in relation to the contract for payment of ₹ 7.50 core are exhibited in support of the payments made by the assessee.

11. The learned Counsel for the assessee further very importantly invited attention to the fact that both the companies to whom payments totalling to ₹ 7.50 crore were made duly responded to the notices issued by the Assessing Officer under section 133(6) of the Act.

12. The learned counsel for the assessee then further, without prejudice to the arguments on merits, objected to the legality of the addition so made inviting attention to the assessment order wherein the addition of ₹ 7.50 crore which is the subject matter of the appeal has been made under section 69C of the Act by the Assessing Officer, which has been objected by the

learned counsel for the assessee on the ground that the payments having been duly recorded in the books of accounts by the assessee and which are duly audited, the said payments cannot be regarded as unexplained expenditure under section 69C of the Act as has been assessed by the Assessing Officer and further holding that the provisions of section 69C are applicable only to transactions wherein it is held that the assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or the explanation so offered is not in the opinion of the Assessing Officer satisfactory. According to the learned Counsel for the assessee, it is not a case where the source of the expenditures so incurred is in question by the Assessing Officer so as to invoke the provisions of section 69C of the Act and the addition so made is thus illegal on this ground as well.

13. The learned Counsel for the assessee strongly placed reliance of the impugned order passed by the learned CIT(A) and submitted that the learned CIT(A) was absolutely right in deleting the additions made by the Assessing Officer and prayed that the impugned order so passed by the learned CIT(A) be upheld and the appeal filed by the Revenue be dismissed in the interest of justice.

14. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We are inclined to agree with the arguments made by the learned counsel for the assessee. We find force in the argument of the learned counsel for the assessee that the payments totalling to ₹ 7.50 crore are duly supported by third-party invoices as well as contracts entered into between the assessee and the said

companies. We further find that the said transactions are duly recorded in the books of accounts of the assessee and the assessee has during the course of assessment proceedings demonstrated and substantiated the need for entering all such expenditures coupled with the fact that during the impugned assessment year the assessee earned an amount of ₹ 2,970 lakh and for which the assessee was required to incur the impugned expenditures. It is very pertinent to mention here that during the course of investigation by the Assessing Officer, the notices were sent to the concerned companies under section 133(6) of the Act, which were duly replied to and complied with by the said companies confirming the transaction with the assessee. The Assessing Officer merely on assumptions and presumptions has proceeded to disregard all the evidence, as filed by the assessee, as well as information so received in response to notices issued under section 133(6) of the Act. The Assessing Officer has primarily proceeded to disallow the claim of expenditure firstly on the ground that the details, as provided under section 133(6) of the Act are not in the opinion of the Assessing Officer *"satisfactory"* without elaborating as to what other details were required and which have not satisfactory been provided to by the said companies. The Assessing Officer has further proceeded to make the addition disregarding the submissions filed by the assessee, but without any valid reason holding it to be not tenable. The Assessing Officer failed to bring on record any credible and concrete evidence or explanation to prove that the expenditure incurred by the assessee was not genuine or was not in connection with the business of the assessee and has simply on the basis of assumptions, presumptions, surmises and conjectures proceeded to hold that the expenditures so incurred were not

genuine and consequently disallowed the same in the hands of the assessee. It is a trite law that presumption, however, strong cannot substitute evidence. This is a classic case where the Assessing Officer has disregarded all the evidence filed during the course of assessment proceedings and has simply on the presumption that the expenditure incurred are not genuine proceeded to disallow the same. The learned CIT(A) has rightly held at Page–14 of his order that it was incumbent upon the Assessing Officer to bring on record at least some positive evidence to show that the existing manpower employed by the companies was inadequate and not well suited for the job. The Assessing Officer has not brought out how the contracted companies lacked administrator/technical setup or infrastructure setup to perform the work. It is further trite law that it is open for the assessee to conduct its business and affairs to the best of his capabilities and choices and it is solely the prerogative of the assessee to run the business in any manner that it deems fit and that the Assessing Officer cannot enter into the shoes of the assessee and direct how to proceed with the business. We further find force in the argument of the assessee that the addition made by the Assessing Officer under section 69C is grossly illegal as the same is not applicable to the facts of the present case. On a bare perusal of the provisions of section 69C of the Act it is very clear that the said section can be invoked only when there has been some expenditure incurred by the assessee, the source of which is not disclosed and that in cases where such expenditure is recorded in the books of accounts the provision of section 69C are not applicable. The basic condition for invoking the provisions of section 69C of the Act is that the expenditure incurred by the assessee should be outside the books of accounts

which are not the case here. The addition made by the Assessing Officer deserves to be deleted on this ground itself. On a conspectus of the above facts and submissions made by the learned counsel for the assessee, we find absolutely no justification on merits and in law for the Assessing Officer to disallow the expenditure incurred of ₹ 7.50 crore and that too under section 69C of the Act. We also find that the assessee had duly discharged the onus cast upon it under law and proved the genuineness of the transaction pertaining to the expenditure of ₹ 7.50 crore as well as the same being related to the business being run by the assessee and accordingly hold that the Assessing Officer was not justified in treating the said expenditure as bogus ignoring the facts and evidence submitted by the assessee during the course of assessment proceedings. We further hold that the Assessing Officer grossly erred in making the addition under section 69C of the Act ignoring the fact that the said section has absolutely no applicability to the facts and circumstance of the case especially considering that the impugned expenditure of ₹ 7.50 crore has been duly debited in the books of accounts of the assessee and considering the same provisions of section 69C has no applicability and consequently hold that the addition made of ₹ 7.50 crore by the Assessing Officer under section 69C is illegal on this ground as well. We accordingly find absolutely no fault in the findings of the learned CIT(A) and we thus uphold the impugned order passed by the learned CIT(A) and confirm the deletion of the addition of ₹ 7.50 crore as made by the Assessing Officer.

15. The Revenue has further challenged the deletion of addition of ₹ 20,67,364 by the learned CIT(A).

16. The Assessing Officer has made the addition amounting to ₹ 20,67,364 primarily holding that the assessee filed return of income for the assessment year 2016-17 under section 139(1) of the Act on 17/10/2016, declaring total income at ₹ 4,60,44,360, and the assessment under section 143(3) was completed on 25/12/2018 on the income assessed at ₹ 4,81,11,724. The Assessing Officer further held that the assessee during survey proceedings disclose additional income of ₹ 2,03,00,000 but the assessee filed return of income under section 148 of the Act declaring total income at ₹ 6,63,44,360 and in the opinion of the Assessing Officer, the assessee should have shown the said surrendered income over and above ₹ 4,81,11,724 instead of ₹ 4,60,44,360 and consequently made the addition of ₹ 20,67,364 in the hands of the assessee. The addition thus emanates from comparing the surrendered income with the income assessed under section 143(3) of the Act.

17. On appeal, the learned CIT(A) has deleted the said addition by holding that the addition so made under section 143(3) of the Act have already been deleted by the learned CIT(A), vide impugned order under section 250 dated 28/05/2021 wherein the learned CIT(A) directed to delete the addition of ₹ 20,67,364. Considering this finding of the learned CIT(A), there remains absolutely no basis for the Assessing Officer to make the addition of ₹ 20,67,364 and consequently we find absolutely no fault on the findings of the learned CIT(A) and confirm the deletion of ₹ 20,67,364, as made by the Assessing Officer. We thus uphold the impugned order passed by the learned CIT(A).

18. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on 10/02/2025

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|---|---|
| **Sd/-** | **Sd/-** |
| **K.M. ROY** | **V. DURGA RAO** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

**NAGPUR, DATED: 10/02/2025**

*Copy of the order forwarded to:*

*(1) The Assessee;*

*(2) The Revenue;*

*(3) The PCIT / CIT (Judicial);*

*(4) The DR, ITAT, Nagpur; and*

*(5) Guard file.*

True Copy
By Order

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

Sr. Private Secretary
ITAT, Nagpur