

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4677/Mum/2024  
(Assessment Year :2019-20)**

**ITA No.4678/Mum/2024  
(Assessment Year :2017-18)**

**ITA No.4679/Mum/2024  
(Assessment Year :2022-2023)**

**ITA No.4680/Mum/2024  
(Assessment Year :2021-22)**

**&**

**ITA No.4681/Mum/2024  
(Assessment Year :2018-19)**

CEC-ITD CEM TPL Joint Venture 9 <sup>th</sup> Floor, Prima Bay Tower-B, Gate No.5 Saki Vihar Road Powai, Mumbai Maharashtra-400072	Vs.	DCIT, Central Circle 5(1) R.No.426, 4 <sup>th</sup> Floor Kautilya Bhawan Bandra Kurla Complex Bandra East, Mumbai Maharashtra- 400051
<b>PAN/GIR No.AACAC6162G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.5223/Mum/2024  
(Assessment Year :2022-23)**

**ITA No.5224/Mum/2024  
(Assessment Year :2021-22)**

**ITA No.5225/Mum/2024  
(Assessment Year :2019-20)**

**ITA No.5226/Mum/2024**  
**(Assessment Year :2018-19)**  
**&**

**ITA No.5227/Mum/2024**  
**(Assessment Year :2017-18)**

DCIT, Central Circle 5(1) R.No.429, 4 <sup>th</sup> Floor Kautilya Bhawan Bandra Kurla Complex Bandra East, Mumbai Maharashtra- 400051	Vs.	CEC-ITD CEM TPL Joint Venture 9 <sup>th</sup> Floor, Prima Bay Tower-B, Gate No.5 Saki Vihar Road Powai, Mumbai Maharashtra-400072
<b>PAN/GIR No.AACAC6162G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vijay Mehta a/w. Ms. Sneha Padhiar & Shri Jignesh Shah
Revenue by	Shri R.A. Dhyani, CIT DR & Shri Krishna Kumar, Sr. DR
<b>Date of Hearing</b>	<b>23/01/2025</b>
<b>Date of Pronouncement</b>	<b>10/03/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid cross appeals have been filed by the assessee as well as by the Revenue against separate impugned order passed by Id. CIT(A)-53 of even date 26/07/2024 for the aforesaid assessment years.

2. In various grounds of appeal, the quantum of addition challenged both by the department as well as by the assessee, which are summarized hereunder:-

<b>AY</b>	<b>Assessee's Appeal</b>		<b>Department's Appeal</b>	
	<b>Contingency Expenses</b>	<b>Contingency Expenses</b>	<b>Fees for technical services</b>	
	<b>5% of expense confirmed by CIT(A)</b>	<b>95% of expense deleted by CIT(A)</b>		
2017-18	15,31,812	2,91,04,429		
2018-19	2,68,18,992	50,95,60,851	44,71,31,287	
2019-20	1,46,79,717	27,89,14,615	33,79,21,470	
2021-22	15,58,309	2,96,07,876	68,83,36,085	
2022-23	5,40,000	1,02,60,000	3,98,28,090	
<b>Total</b>	<b>4.51,28,830</b>	<b>85,74,47,771</b>	<b>1,51,32,62,996</b>	

3. In so far as assessee's appeal for the A.Y.2017-18, 2018-19 and 2019-20, the assessee has also challenged the validity of reopening u/s.147 on various grounds. For the sake of ready reference the legal issues raised in the appeal for the A.Y.2017-18 is being taken up first.

4. The brief facts qua the issue of validity of proceedings u/s.147 and notice u/s.148A are that the ld. AO had issued a notice u/s. 148A (b) of the Act on 22/08/2022, which was for

providing opportunity to the assessee before issuance of notice u/s.148A. The content of the notice reads as under:-

*“1. A survey proceedings u/s 133A was carried out in the case of ITD Cementation India Ltd. and its group entities on 26. 10.2021 by the DDIT(Inv.)-7 (4), Mumbai. On perusal of survey report, it is found that the assessee has claimed expenses under the head Project Contingencies' amounting to Rs. 97 11 Lac*

*2. During the course of survey u/s 133A and in post survey enquiries, it is found that the assessee group is involved in inflation of expenditure by booking non genuine purchase and sub contract expenses, in generating unaccounted cash and the ultimate utilization of the unaccounted cash*

*3 During the year under consideration, the assessee has claimed expenses under the head "Project Contingencies On examination of CTC report and books of account of the assessee, it found that the total cost figure in CTC report matches with total cost figure in books of account. However, the total expenditure claimed by the assessee in CTC report does not matches with total expenditure in books of accounts. The assessee has claimed expenditure in the CTC report under the head "Contingency Expenses which includes Site Contingency, Project Contingency, Special contingency and Additional Contingency. As per sec 37(1) of IT Act that any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head Profits & gains of business or profession. Hence, the same is required to be disallowed.*

*4. In view of the above findings, it is concluded that the claim of assessee M/S CEC-ITD Cem TPL JV under the head "Project Contingency amounting to Rs. 97.11 Lac is non genuine and the same is taxable in the hands of the assessee for the AY 2017-18.*

*Hence Income amounting to Rs. 97.11 lac has escaped assessment in the hands of the assessee.*

*5 Therefore, on the basis of information which suggests that income chargeable to tax has escaped assessment in your case for A.Y. 2017-18, you are requested to show cause as to why a notice u/s 148 of the Act, should not be issued in your case. In this regard, you are requested to file your reply on or before 01.09.2022.*

5. It has been pointed out by the Id. Counsel for the assessee that the amount of Rs.97.11 lakhs which has been mentioned in the notice is without any basis and is incorrect figure. In response to the said notice, assessee had specifically in its reply dated 30/08/2022 has mentioned that it does not have any break-up of the referred sum of Rs.97.11 lakhs and therefore, assessee could not comment on the quantum of the expense. The copy of detail reply filed by the assessee in response to notice u/s. 148A(b) is appearing at pages 3-12 of the paper book. In the reply assessee had specifically stated that it does not have a detailed break-up of the amount and also had given detailed submissions with regard to nature of various expenses. However, the Id. AO in his order passed u/s. 148A(d) dated 30/08/2022 without providing any break-up has passed the order. The important contentions which has been raised are that the order u/s.148A(d) has been passed, *firstly*, without considering the submissions of the assessee; *secondly*- the order makes reference to various statements recorded during the course of survey and other details which had no mention in the notice issued

u/s.148A(b) of the Act; and *lastly*, order also mentions some other issues like SOP has not been followed while booking expenses in relation to certain parties which was not part of the show-cause notice. Based on the aforesaid infirmities and the order passed u/s.148A(d), following propositions have been made before us by the Id. Counsel which was argued and also reiterated in the written submission filed before us which are as under:-

**II. Proposition 1. Notice issued u/s. 148A(b) of the Act is without any supporting material or correct information:**

6. Notice issued u/s. 148A (b) of the Act mentioned sum of Rs. 97.11 Lakhs towards Contingency expenses. However, the assessee was not supplied with the information in the possession of the Id.AO in relation to the sum of Rs. 97.11 Lakhs. Further, the said information of Rs. 97.11 Lakhs of the Id.AO was without any material as same is an incorrect figure. Admittedly such material in the form of seized CTC report do exists, albeit containing different figures, which could have been supplied to the assessee.

7. Thus, it has been argued that such notice issued u/s. 148A (b) of the Act wherein information/material is not provided to the assessee is invalid and bad in law. In support reliance was placed on the judgement of Hon'ble Supreme Court in case of **UOI & Ors. v. Rajeev Bansal (Civil Appeal No. 8629 of 2024)**. Further, the Ld. AR has relied on the judgement of **Hon'ble**

**Bombay High Court in the case of Anurag Gupta v. ITO and Ors (454 ITR 326).**

8. Thus, it was pointed out that in the case of the assessee no material was provided along with notice issued u/s. 148A(b) of the Act and in fact the information in relation to sum of Rs. 97.11 Lacs provided in the referred notice was incorrect.

**III. Proposition 2: Submission filed by the assessee in response to notice u/s, 148A(b) of the Act was not considered while passing order u/s. 148A(d) of the Act**

9. The Ld. AR submitted that the assessee in its submission filed in response to notice u/s 148A(b) of the Act had stated that it does not have a detailed breakup of the amount under consideration (i.e., Rs. 97.11 Lacs). However, the order was passed u/s 148A(d) of the Act without providing the assessee with the required break up in order to enable assessee to provide its rebuttal Section 148A(c) of the Act requires the ld.AO to consider the submission of the assessee before proceeding to pass order u/s 148A(d) of the Act. The relevant extract of the section is reproduced below for ready reference

*"148A. The Assessing Officer shall, before issuing any notice under section 148,-*

*(a).....*

*(b).....*

*(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);"*

10. It was thus submitted that such order passed u/s. 148A(d) of the Act in case of an assessee without considering submission made by the assessee is bad in law. The Ld. AR relied upon the judgement of the **Hon'ble Jharkhand High Court in the case of Ratan Bej v. PCIT (467 ITR 288)** wherein it was held that non-consideration of the reply or objection furnished by the assessee not only amounts to violation of principles of natural justice but is also contravention of mandatory modalities which are to be followed during the course of enquiry proceedings under Section 148A of the Act (Para 8 and 8.1 of the referred order). Also, the assessing officer ought to have considered the objections raised by the petitioner and should have disposed of the same in terms of the judgement rendered by the Hon'ble SC in case of GKN Driveshafts (India) Ltd. V. ITO [2003] 259 ITR 19 (SC) wherein the Hon'ble SC has laid down an elaborate procedure as to the manner of dealing with objections raised against a notice under Section 148 of the Act (Para 8.3 of the referred order). Further, the Hon'ble Jharkhand HC has also pointed out that Section 148 and 148A of the Act which were introduced by way of Finance Act, 2021 has been codified following the judgement rendered by Hon'ble SC in case of GKN Driveshafts (India) Ltd. V ITO (Para 9 of the referred order).

11. The Ld. AR has also placed reliance on the instructions issued by **CBDT vide letter F. No. 299/10/2022-Dir(Inv.III)/647 dated 22.08.2022** which emphasized that:

- i. Personal hearing, if requested by the assessee, may be dealt with following the principle of natural justice by giving a

reasonable period for compliance of notice specifying date of hearing. **(point (viii))**

ii. the ld. AO has to consider the reply of the assessee furnished, if any in response to the show cause notice referred to in Section 148A(b) of the Act before passing the order u/s 148A(d) of the Act **(point (xi))**.

12. Therefore, the order passed u/s. 148A (d) of the Act in case of an assessee is bad in law and deserves to be quashed.

**IV. Proposition 3. The AO has raised fresh issues and referred to new material in the order passed u/s 148A(d) of the Act.**

13. Before us, it has been pointed out that the ld. AO has raised fresh issues at the time passing order u/s 148A(d) of the Act which were not stated by the ld. AO in its show cause notice issued u/s. 148A(b) of the Act for assessee to furnish its rebutted. The fresh issues raised by the ld.AO in the order passed u/s. 148A (d) of the Act are tabulated as below:

Sr. No.	Para No.	Page No of The PB	Page No of the Order	Contents as per Order
1	4.1 (4 <sup>th</sup> line)	24	12	Evidence found in the survey discovered the term "Contingency" used to denote those expenses which are not recorded in the books of account and are spend in cash for non-business purpose.

2	5.1	24	12	The SOP is explained by two employees of the Organisation- Shri Dyandeep Bhandare' (AGM Commercial) and Shri Madhusoodanan (DGM Commercial)
3	5.4	26	14	When the assessee has been asked to give the breakup of contingency expenses during the survey and post survey proceeding, there was no forthright answer given by any of the employees in the JV entity. The assessee has only informed that no such breakup is maintained and that each expense and voucher has to be individually examined to find out if it was under the category of a "contingency" expense.
4	5.5	26	14	Very obvious anomalies were noticed in the tendering process with respect to expenses claimed in the head contingency expenses, while the tender was awarded to one of the parties, the other parties who had applied for the tender ironically belonged to the same group – for example, in a case where M/s. Sancheet Construction was offered the tender, the competing bids were placed by M/s. Sheth Infrastructure. However, fact is that both Sancheet Construction and Sheth Infrastructure were both shell entities that belonged to the same Tushar Munoat group of entities.
5		27	15	Statement of Sandeep Acharya
	5.7	29	17	Statement of Vivek Agarwal

6	Below table	41	29	Hence, the total of the payments under "Looser" and "Contingency" heads is Rs. 9654.36 Lakhs.
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14. In support, of the contention that if AO brings out new issues or material which was not part of the show cause notice issued u/s 148A (b), then notice issued u/s 148A is bad in law, ld. AR relied upon the Judgement of the Hon'ble Delhi High Court in case of **Tosca Master v. DCIT in W.P.(C) 10507/2023 & CM App. 40707/2023** wherein it has been held that the noticee or the assessee should not be prejudiced or taken by surprise. Further, the Hon'ble Delhi High Court has also relied on its own judgment in case of **Banyan Real Estate Fund Mauritius Vs. ACIT W.P.(C) 10485/2023**, wherein it was held that the decision to reopen or reassess cannot be based or sought to be justified either on additional reasons or those which may be supplied subsequently while disposing of objections preferred by an assessee. Accordingly, Hon'ble High Court has held that the foundational material alone would be relevant for the purpose of evaluating whether reassessment is justified. Department cannot take fresh ground while passing order u/s. 148A (d) of the Act.

15. Accordingly, it has been submitted before us that order the passed u/s: 148A (d) of the Act is bad in law as it is based on new issues for which the assessee was not allowed opportunity to file its rebuttal

**V. Proposition 4: Non-application of mind by AO while passing order u/s. 148A(d) of the Act**

15. The Ld. AR further argued that the ld.AO has not applied his mind while passing order u/s. 148A (d) of the Act as if he would have applied his mind he would have noticed that:

i. As per para 4.1 of the said order, the ld.AO has stated that *"Evidence found in the survey discovered the term "Contingency used to denote those expenses which are not recorded in the books of account and are spend in cash for non-business purpose"* However, in same para the ld.AO has made a contradictory statement stating that the figure of *"Total Costs" incurred as per the CTC report matches the "total cost" figure as per the books of account* (also prepared for each project). Both these sentences are in absolute contradiction to each other wherein at one place ld.AO has mentioned that these expenses are not recorded in the books of accounts and at other place he has mentioned that total figure of CTC report matches with the total cost figure of the books of accounts.

ii. In para 5.4, it is stated that when the assessee has been asked to give breakup of contingency during the survey and post survey proceeding no forthright answer was given by any of the employees of the Assessee. However, the same is not the fact in case of the Assessee as the party wise breakup has been submitted by the employees in their statement recorded on oath during the survey proceedings.

iii. Also, in the notices issued u/s 148A(b) of the Act, the ld. AO has alleged that the income amounting to Rs. 97.11 Lakhs chargeable to tax, which is represented in the form of entries in the books of account has escaped assessment. However, no breakup of Rs. 97.11 Lakhs or supporting material was provided by the ld.AO to the assessee. Subsequently, the AO passed an order u/s 148A (d) of the Act wherein breakup of Rs. 96.54 Crores for all the assessment years under consideration was provided by the ld.AO. However, no reference is drawn/reconciliation is provided by the ld.AO with the breakup of Rs. 96.54 Crores towards the alleged income amounting to Rs. 97.11 Lakhs which has escaped assessment.

16. On the other hand ld. DR submitted that in the first show-cause notice, ld. AO has mentioned about the survey and post survey enquiries wherein it was found that assessee group was involved in debiting bogus expenditure by taking non-genuine purchases and sub-contract expenses. Further CTC reports and books of accounts were also examined which did not match with the total expenditure shown in the CTS report and the books of accounts. It was in response to the explanation given by the assessee, ld. AO in his order u/s. 148A (d) has explained the details and the findings of the survey including various statements of the employees to draw adverse inference thus, there is no infirmity in the order passed u/s.148A(d). Further, all these aspects have been dealt by the ld. CIT (A) from para 6.

17. We have heard both the parties and also perused the relevant material referred to at the time of hearing on the issue of notice u/s. 148A (b) and order u/s.148A (d). As noted above in the initial show-cause notice issued u/s. 148A (b), the ld. AO has referred to certain claim of expenses under the head “project contingencies” amounting to Rs.97.11 lakhs. However, nowhere the ld. AO has mentioned what was the basis and the material behind this figure of Rs.97.11 lakhs. In paragraph 3 of show-cause notice, he has mentioned that on examination of CTC reports and books of accounts it is found that total cost figure in CTC report matches with the total cost figure in the books of accounts and yet in another line he mentions that the total expenditure claimed where the assessee in CTC report does not match with the total expenditure in the books of accounts and again he has held that amount of Rs.97.11 lakhs has escaped assessment. In response to the show-cause notice, assessee has filed its detail submissions. Copy of which is appearing from pages 3-12 wherein assessee has categorically stated that assessee does not have a detailed break-up of the amount under consideration and to provide the details of this break-up of Rs.97.11 lakhs as arrived in the notice. Since no further material or information was provided by the ld. AO in his show-cause notice the assessee had explained the nature of contingency expenses in response to the show-cause notice issued u/s.148A(b) in the following manner:-

*“2.1 We humbly submit that the construction of project is a long-term continuous activity, which typically runs over several years. Further, given the nature of activities, envisioning of prospective*

*risk is very important and so is the mitigation. Any mitigation needs provisioning of additional cost to the project estimate in such a way that losses arising from unforeseen probable risk can be managed with help of such additional cost provision and at the same time, the project cost remains competitive while bidding for the tender. However, in spite of all the possible estimations and precautions the Assessee at times is required to incur certain project execution related additional costs to mitigate unforeseen circumstances under the contract which obviously could not be budgeted at the time of bidding for a particular infrastructure project or at times even exceed the contingency cost estimated at the time of bidding for a particular project.*

*2.2. To address such non-budgeted uncertainties involved, it is a standard industry practice in public and private sectors to make provision for some amount in the bidding cost estimate towards "Contingency or Contingency Expenses" to cover for any additional efforts or additional expenses that may be necessary to complete such projects arising on account of non-budgeted uncertainties. At the same time, it is also possible that such amount provided towards "Contingency or Contingency Expenses" is not incurred at all as per estimates as no such unpredicted events happen during the course of the project. Further, in order to be competitive, the Assessee cannot overestimate contingency at the bidding stage.*

*2.3. As stated, it is a common and standard practice to make a provision for the contingency cost in the project cost estimate and following illustrations will further explain that most of the tender granting authorities including Central Government agencies/authorities also understand that such provisions would be a necessary part of the project cost estimate."*

18. Assessee has further given manual of CPWD and the SOP described under CPWD Works Manual 2019 wherein there is a specific guideline and method for provisioning that contingencies and its utilization alongwith various Appendix and various illustrations. Based on that it was contended as under:-

*“2.4. Based on the above illustrations, it is submitted that a provision for contingency expenses in a project cost estimate allows for items, conditions, or events for which the state, occurrence, and/or effect are uncertain and project specific and that, in the contractor's experience, will likely result in additional costs. It is a very common practice in this industry of 'construction and maintenance of infrastructure facility and therefore, bidder or contractor would require to make adequate provisioning for such unforeseen cost in its estimate and monitoring Management Information System ('MIS') to avoid loss of margin during execution. Further, keeping such cost provision in the estimate either in 'Final Tender Summary (FTS)' at initial bidding stage or 'cost to complete estimate (CTC) at running stage of the project is not just a common norm or practice but also a necessity so as to incorporate such unforeseen future cost in contingency cost provision of estimate (FTS/CTC) to maintain estimated site margin.*

*2.5. Nature of contingency expenses in the projects handled by the Assessee.*

*2.5.1. It is important and essential to understand that some of the unexpected events and unforeseen circumstances that has resulted in incurring such additional expenses, which largely form part of contingency expenses. These expenses are not in the nature of regular project expenses:*

- a) Divergence in site conditions like site access road, boundary, uneven or inadequate area for site establishment, subsoil condition etc. from what was expected / envisaged during the bidding process of the tender.*
- b) Local issues related to labour, site office etc., which were not envisaged at the time of bidding for the tender*
- c) Engineering issues and additional quantum of work*
- d) Delay in completion of work due to various reasons like delay in approval, delay in availing site access and area hand over, design changes and increase in quantum of work thereof, delay due to authorities, accidental damage, force majeure event like pandemic, AOG, war, hostilities etc.*

2.5.2. The above contingencies are further bifurcated into different types of contingency expenses largely on a subjective basis purely for internal classification and analysis perspective (which differs from project to project based on the understanding of the facts by projects management for internal MIS) with a broad periphery that unforeseen cost of the project to be reported under contingency provision for FTS and CTC analysis. However, a brief explanation of various nature of contingency expenses is given below from a broad level perspective and it is for the purpose of general understanding only:

2.5.2.1. Risk Cost-It is estimated cost assessed/projected by the Bid Team for managing the specific risks envisaged. Some of the examples of such cost are as under:

- a) Delay due to likely agitation by the local populace (like local fishermen communities in marine sites, habitants in remote location or vicinity of site) against the development of the project
- b) In case of remote area and hilly terrain, there may be risk associated with transportation, access, and approach road, setting up of establishment in uneven surface etc.
- c) In case of work in congested area /city area, there is risk associated with the land acquisition, utility diversion etc.
- d) Chances of overrun of project duration and therefore penalty, liquidated damages.
- e) Risk associated with thefts, hindrance by un-social elements, influence by local politicians/representatives of various local organizations, etc.,
- f) Risk associated to certain key plant and machineries, staging, and enabling items etc. not available in rental during actual execution.

2.5.2.2. Project Contingencies-This type of contingencies is broadly 'technical' in nature. However, once execution of the project is commenced then such bifurcation is subsumed with other non-technical nature of unforeseen events in many cases to avoid fall in margin in CTC MIS analysis, Le, unforeseen cost is compared with overall contingency provision of FTS for internal analysis. Few examples of such cases are as under:

- a) *Substantial divergence of site data/information from those provided in the tender.*
- b) *Delay in execution due to technical difficulties, frequent revisions of design drawings, change of priorities/sequence of work by the Client (End-User).*
- c) *Unforeseeable ground conditions.*
- d) *Risk related with unwanted pollution and penalty thereof.*
- e) *Defects in permanent works.*
- f) *Quantity Variation where the Contract is of 'Lump Sum' or 'EPC turnkey nature.*
- g) *In case of reclamation and filling work, risk of excess mud-generation and wave formation.*
- h) *Change in technical specification within the ambit of provision of contract.*

*2.5.2.3. Additional / Site Contingencies-This type of contingency is mostly Site-Specific and is projected after the Site-Visit. Few examples of such contingencies are as under:*

- a) *Unforeseen underwater obstructions*
- b) *Unforeseen adverse geological condition inside tunnels, hilly trenches*
- c) *Unforeseen constraints at site during construction of super structures*
- d) *Adverse rock condition, uneven site area*
- e) *Buried vessels/machinery*
- f) *Unexpected site administrative costs-local issues, hindrances*
- g) *Additional costs on account of events such as landslides, earthquakes etc.*
- h) *Anything relating to site, which could not be anticipated at bidding stage*

*2.5.2.4. Special Contingencies-This type of contingency is projected by the top management of the Assessee after*

*considering the nature of the project to be undertaken. Few examples of such contingencies are as under:*

- a) Additional costs arising from or in connection with the Contract*
- b) Indemnification of Client*
- c) Costs of sanctioning authority*
- d) Protection for loss or damage to construction equipment*
- e) Legal risk that could have a negative impact on Assessee or asset's value.*
- f) Risk of subsequent legislation*
- g) Risk of abnormal escalation etc.*

*2.6. It is noted that the above list is not exhaustive in nature meaning there are many other types of risks that are perceived on case-to-case basis as when they are encountered.*

*2.7. During the course of execution of a project, the risks and contingencies are revisited, evaluated, and reported in CTC MIS (Le, increased, decreased, re-allocated, etc.,) based on the amount and nature of the actual risks and contingent events / circumstances faced by the project. The actual costs incurred by the project as at the date of evaluation (at 'PTD-Project to Date' levels) are grouped under the respective risk and contingency head partially or fully in MIS. However, such incurred costs are accounted for under regular heads of accounts' while preparing books of account.*

*2.8. As mentioned above, further classification of contingencies into its various sub-categories is purely subjective and is purely for management MIS. Also, the same is done at the time of bidding, MIS preparation and cost & margin analysis with respect to bid estimate based on inputs from various project sites. However, no detailed record of the same is maintained as this bifurcation is purely for internal analysis.*

*2.9. As stated above key emphasis is only on evaluating adequacy of the overall contingency expenses amount to avoid any fall of margin with respect to FTS or CTC margin, as much as possible,*

due to incurring of such unforeseen cost at the time of execution. Please note that the MIS is solely for internal review of the management and has no bearing on the books of account prepared by the Assessee. Further, the said summary is prepared by and the categorization of said expenses (rather than utilization of contingency expense) under the head contingency' is given by the project managers who are generally engineers and may not be aware of the nomenclature being used for "contingency" in accounting parlance.

## 2.10. Standard practice and accepted method for adjusting contingency provisions

2.10.1. There are various methods to adjust the contingency provision considered in the estimate (Le, CTC) which is broadly described as follows

- a) Estimate the future contingency cost and allocate such cost to the respective head in CTC followed by adjusting balance contingency expenses directly from the margin.
- b) Estimate the future contingency cost and allocate such cost to the respective head in CTC followed by adjusting balance contingency in the various cost heads where the cost has increased as a result of said contingencies events to be computed as on the date of revised estimate (CTC).
- c) Allocate the incurred actual cost in contingency heads those where were not specifically quantified/considered during the tender time and adjust balance contingency cost with the total provision.

2.10.2 At times it is difficult to clearly identify and allocate the cost increase on account of various contingencies events as on the date of revised estimate amongst the various cost and expense heads in the management reporting numbers. Thus, the same is then adjusted under a single cost head known as contingency expenses in order to keep the total cost incurred and accounted for in books and in the management reporting intact.

2.10.3 In this context, it is further essential to understand that the CTC is an estimate document being generated over the period for the purpose of arriving at the margin earned by the Assessee and for the purpose of considering the same for comparison with the budgeted numbers, which also act as a reference during estimation of bid on similar/identical projects or eventualities for future bidding and tendering.

2.10.4 For the year under consideration, the total alleged contingency expenditure of INR 97.11 Lacs incurred is towards provisions of expenses incurred due to unforeseen expenses resulting from the deviation in the project conditions or additional subcontracting or labour expenses etc

2.10.5. It is that the contingency expenses are nothing, but cost overruns or unforeseen expenses incurred due to deviation in the project conditions from what was envisaged earlier or additional subcontracting or labour expenses etc. Further, these expenses are recorded in the books of accounts under the respective heads. However, some of the actual costs incurred by the project as at the date of evaluation are grouped under the respective risk and contingency head partially or fully in MIS for reporting and analysis purpose

## **2.11. Concluding remarks**

2.11.1 As explained above, impact of damage to life and property could have been far greater than what actually was, but for such contingency expenses incurred. Further, such events cannot be anticipated and have to be taken care of on a war footing sometimes incurring higher than normal cost.

2.11.2. As explained above, the varied nature of contingencies can occur, which at times appear to be simple on face of it in MIS but very complex when actually dealt with. It is difficult to find the details of each project in the books of account to match with the contingency expenses as reported in MIS as the same is largely an internal subjective classification and it is a broad analysis of unforeseen cost at a particular point in time as analyzed by the project head based on their understanding on eventuality of the cost with respect to bid consideration. It would take months in

*finding such analytical details by interacting with numerous site personnel in this regard.*

*2.11.3 Further, as narrated above, the actual expenses have been recorded in the books of accounts under the appropriate heads for finalizing of accounts as per accounting standards, reporting to the authorities whereas classification of terming certain expense into contingencies is purely for MIS purpose to broadly understand the impact of unforeseen cost in the contract with respect to bid consideration and balance cost to estimate future site margin at any point of time which is a purely administrative exercise, not having any impact on the books of accounts.*

*2.11.4 Further, It is requested that aforesaid expenses are incurred wholly and exclusively for the business and hence, the same cannot be disallowed under Section 37(1) of the Act.*

*2.11.5. In view of the above, It is requested that the contingency expenses are genuine unforeseen expenses incurred by the Assessee and hence, there is no income which has escaped assessment.”*

29. From the perusal of the show-cause notice u/s. 148A (b) it is seen that first of all, no information or material was provided to the assessee which is a condition precedent before issuing any notice u/s.148A(b) and passing of order u/s.148A(d); and secondly, whatever was asked and raised in the show cause notice assessee has given its explanation for the contingency expense, its nature and why it is classified as contingency expense. As per the new law with effect from 1.04.2021, it is mandatory for the AO to provide all the information and material at the time of issue of notice u/s 148A (b) and this has been clearly spelt by the Hon'ble Supreme Court in the case of **Union**

**of India vs. Rajeev Bansal at para 101 and 106 (supra)**  
wherein it was held as under:-

*101. Under section 148A(b), the assessing officer has to comply with two requirements: (1) issuance of a show cause notice, and (ii) supply of all the relevant information which forms the basis of the show cause notice. The supply of the relevant material and information allows the assessee to respond to the show cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessee was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice*

*106..... A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer After the supply of relevant material and information to the assessee, time begins to run for the assessee to respond to the show cause notices*

21. Further, this principle has been further reiterated by the **Hon'ble Bombay High Court** in the case of **Anurag Gupta v. ITO and Ors (454 ITR 326)** wherein it has been held as under:-

*“It was urged that the procedure as prescribed under section 148A (b) of the Act as also the principles of natural justice had been violated, in as-much as while the petitioner was given the information in terms of section 148A(b) of the Act, the material which ought to have been provided to the petitioner was not so furnished, in the*

**absence whereof the petitioner was precluded from filing an effective reply to the show-cause notice.”**

*“In the present case admittedly, no material had been supplied to the petitioner, notwithstanding the fact that there was material available with the Assessing Officer as can be seen from the order passed by the Assessing Officer under section 148A (d) of the Act.”*

**“It goes without saying that providing information to the petitioner, without furnishing the material based upon which the information is provided, would render an assessee handicapped in submitting an effective reply to the show-cause notice, thereby rendering the purpose and spirit of Section 148A(b) of the Act totally illusive and ephemeral. The fact that the material also was required to be supplied can very well be gauged from the clear directions issued by the Supreme Court in the case of Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC).”**

*“Be that as it may, we hold that the reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under section 148A(b) of the Act on account of failure of the Assessing Officer to provide the requisite material which ought to have been supplied along with the information in terms of the said section.”*

Thus, the Courts have held that that without providing the information to the assessee and without furnishing the material based upon which the information is provided, the assessee cannot make effective reply and thereby the whole purpose and spirit of Section 148A( b) gets defeated and on this ground alone the entire re-assessment proceedings was held to be invalid and unsustainable.

22. Here in this case also as is evident from the show-cause notice, no such material was provided and even the ld. AO did not provide the information and the working of expenses of Rs.97.11 lakhs which was the basis for reopening the assessment. If the AO has not provided the information and material in his notice under Section 148A( b) which forms his basis for reopening, then entire proceedings and notice u/s 148A gets vitiated.

23. As incorporated above, the assessee has filed the detailed reply in response to show-cause notice which was without any material or information as what led to formation of belief for reopening the assessment, has been rejected by the ld. AO. This rejection is based on certain new information and statements recorded during the course of survey which was even confronted to the assessee if assessee was not provided while issuing notice u/s 148A (b) which are contained in the order u/s.148A(d), there was no way assessee could have responded or given its rebuttal. As pointed out before us and also noticed from the order passed u/s. 148A (d), the ld. AO has raised certain fresh issues which were not part of the show-cause notice u/s. 148A(b). It is incumbent for the ld. AO to provide all necessary information and material in his show-cause notice to seek assessee's rebuttal and explanation. He cannot raise some different issues and different material in his order u/s.148A(d) which was not part of the notices issued earlier u/s148A(b) which has been pointed out by the ld. Counsel in the manner noted above. From the bare perusal of the order u/s. 148A(d), it is seen that the ld. AO has

referred to various statements recorded during the course of survey to show that these expenses were non-genuine. If ld. AO had these evidences / material before the issuance of show-cause notice u/s. 148A(d) then same should have been confronted and sought assessee's explanation. Once the legislature has provided the mechanism that ld. AO will issue a show-cause notice confronting all the material and information and if there is any violation of the procedure prescribed, the same amounts to violation of that procedure which is not merely a formality but a condition precedent to acquire jurisdiction to issue notice u/s.148A. **The Hon'ble Delhi High Court in the case of Tosca Master v. DCIT (supra)** has clearly held that assessee should not be prejudiced or taken by surprise in the order passed u/s.148A(d) when no such information or material was given to the assessee at the time of show-cause notice. **The Hon'ble Delhi High Court has referred and relied upon the decision of Banyan Real Estate Fund Mauritius vs. ACIT (supra)** wherein the Hon'ble High Court had made following observations:-

*"28. Before concluding, and in our considered opinion, the impugned action is liable to be faulted since it clearly suffers from the following foundational illegality. As was rightly contended by Mr. Singh, the reasons which weigh upon an Assessing Officer proposing to reopen an assessment and form the bedrock of a notice under [Section 148A\(b\)](#) of the Act alone are germane for the purposes of evaluating the validity of that action. It is those set of reasons and which form the basis for the Assessing Officer forming an opinion that income liable to tax has escaped assessment alone which would merit examination and evaluation. A decision to reopen or reassess cannot be based or sought to be justified either on additional reasons or those which may be*

supplied subsequently while disposing of objections preferred by an assessee. The statutory scheme of reassessment neither sanctions vacillation nor can a decision to trigger reassessment be sustained based upon an attempted supplementation aimed at bolstering or buttressing the original opinion. The reasons on the basis of which a reassessment is proposed to be initiated is not a field of shifting sand and which authorises the AO to continually alter the basis on which the action is sought to be initiated.

29. These fundamental precepts assume added significance when viewed in light of the right to object which stands statutorily conferred upon an assessee. If the ultimate decision to justify initiation of reassessment be based on entirely new or previously undisclosed material or reasoning, it would clearly result in deprivation of a right to effectively object to the proposed action. It is these aspects which constrain us to come to the conclusion that the impugned action is rendered wholly unsustainable.

30. The aforementioned imperatives were duly highlighted by us in our recent decision in *ATS Infrastructure Limited Vs. Assistant Commissioner of Income Tax Circle 1(1) Delhi & Ors.*<sup>10</sup> and where we had an occasion to deal with a similar challenge. While ruling on these aspects, we in *ATS Infrastructure Limited* had observed as follows:-

"6. Our Court in *Commissioner of Income Tax-II Vs. Living Media India Ltd.* had pertinently observed that additional reasons cannot be provided or recorded by the Assessing Officer<sup>4</sup> subsequent to the issuance of a notice under *Section 148* of the Act. We deem it apposite to quote the following passage from that decision:-

"13. With regard to the additional reasons which were recorded subsequent to the issuance of notice under *section 148* of the said Act, we have already observed that this could not have been done by the Assessing Officer. The validity of the proceedings initiated upon a notice under *section 148* of the said Act would have to be judged from the stand point of the reasons which existed at the point of time when the *section 148* notice was issued. The additional reasons cannot be provided or recorded subsequent to the issuance of notice under *section 148*. It is,

*of course, open to the Assessing Officer, if some other information comes within his knowledge to issue another notice under [section 148](#) for different reasons. But that is not the case here. On the basis of the very same notice issued under [section 148](#), the Assessing Officer has recorded additional reasons subsequent to the issuance of notice and this is impermissible in law."*

*7. It becomes pertinent to observe that the validity of the proceedings initiated upon a notice under [Section 148](#) of the Act would have to be adjudged from the stand point of the reasons which formed the basis for the formation of opinion with respect to escapement of income. That opinion cannot be one of changing hues or sought to be shored upon fresh reasoning or a felt need to make further enquiries or undertake an exercise of verification. Ultimately, the Court would be primarily concerned with whether the reasons which formed the bedrock for formation of the requisite opinion are tenable and sufficient to warrant invocation of [Section 148](#) of the Act.*

24. Thus, if we follow the aforesaid principle laid down by the Hon'ble Delhi High Court, it becomes manifest that foundational material alone would be relevant for the purpose of evaluating whether re-assessment powers were justifiably invoked. The Id. AO cannot take fresh ground while passing the order u/s. 148A(d). Thus, on this ground alone, the notices issued u/s.148 by the Id. AO deserves to be quashed. Accordingly, on the aforesaid grounds, the entire proceedings u/s.148A is quashed on the ground that *firstly*, no material or information was supplied to the assessee alongwith the notices u/s.148A(b) and there was no break-up given as to how the expenses of Rs.97.11 lakhs was alleged to be escaping assessment; and *secondly*, the order u/s.148A(d) has made reference to various other information /material in the form of statement which was never confronted to the assessee at the time of issuance of show-cause

notice and has come up for the first time if the order passed u/s.148A(d). Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court and in the aforesaid judgments of the Hon'ble High Court notice u/s.148 is held to be invalid.

25. In A.Y.2018-19 also in the show-cause notice u/s.148A(b) is reference to sum of Rs.5516.78 lakhs and again the said figure and information is without any material and was incorrect figure. In response to the show-cause notice assessee had stated similarly that he does not have any detailed break-up of the said amount under consideration and requested the ld. AO to provide the said information. However, the ld. AO in his order passed u/s. 148A(d) without providing the break-up so as to enable the assessee to provide this rebuttal has passed the order. Apart from that it is seen that ld. AO has raised fresh issues and referred to a new material in his order passed u/s.148(d) which is exactly similar to the order passed in A.Y.2017-18. Here also notice u/s.148A(b) is similarly worded except for the figure mentioned was Rs.5516.78 Lakhs and FTS expenses of Rs.4471.31 Lakhs which again no detailed break-up was given nor it has been stated how this figure has been raised based on any particular material or information. It is in the order u/s. 148A(d), ld. AO has referred to some statements of various persons recorded during the survey which was not part of the show-cause notice. Thus, our finding given in A.Y.2017-18 will apply in this year also. Accordingly, in view of our reasoning given in the aforesaid appeal, the notice u/s.148 for the A.Y.2018-19 is also quashed.

26. In A.Y.2019-20 also ld. AO has issued exactly the same show-cause notice except in the change of figure of the amount which is Rs.2854.47 lakhs and FTS expenses of Rs.3077.81 lakhs. In this show-cause notice, no details of these expenses have been given and from where this figure has been arrived when assessee has specifically challenged the figure that same is incorrect. Again here in this year also ld. AO in his order u/s. 148A(d) has referred to altogether a different material including the same statement and the order passed u/s.148A(d) is *pari-materia* with the order passed u/s.148A(d) for the A.Y.2017-18 and 2018-19. Accordingly, in view of our finding given for the A.Y.2017-18, the notice u/s.148 for the A.Y.2019-20 is also quashed.

27. The assessee has also raised other grounds on account of non-mentioning of DIN and challenging the approval u/s.151. The same is not adjudicated as we have already quashed notices u/s.148 on the aforementioned reasons.

28. In so far as merits of the additions are concerned, it is seen that in all the assessment years i.e. A.Y.2017-18, 2018-19, 2019-20, 2020-21 and 2022-23, they are exactly same wherein department has challenged the deletion of 95% of the expenses under the head 'contingency expenses' and assessee has challenged sustaining of 5% of expenses confirmed by the ld. CIT (A). Apart from that in Revenue's appeal, the department has challenged the deletion of amount of fees for technical services. The quantum of addition challenged by the assessee as well as

by the department has already been quantified in the earlier part of the order.

29. In ground no. 2 of the grounds of appeal for A.Y. 2017-18, the assessee has challenged confirmation of disallowance by the ld. CIT (A) on account of contingency expenses of Rs. 15,31,812/- which is 5% of the total expenditure claimed. As against that, the Department has contended, vide Gr. no. 1 of their appeal, that the entire contingency expenses disallowed by the ld. A.O. amounting to Rs. 3,06,36,241/- should have been upheld by the ld. CIT(A).

30. The A.O. has disallowed the entire contingency expenses in all the years under consideration i.e. A.Ys. 2017-18, 2018-19, 2019-20, 2021-22 and 2022-23. The amount of the contingency expenses disallowed by the A.O. for the above assessment years are as under:

<b>Sr. No.</b>	<b>A.Y.</b>	<b>Amount of disallowance (Rs.)</b>
1.	2017-18	3,06,36,241
2.	2018-19	53,63,79,843
3.	2019-20	29,35,94,332
4.	2021-22	3,11,66,185
5.	2022-23	1,08,00,000
Total		90,25,76,601

31. The assessee had challenged the above disallowance before the CIT (A), who has considered the entire facts of the case and reduced the disallowance to 5% of the total expenditure claimed by the assessee. Both the parties are in appeal before the Tribunal against the order of the CIT (A).

32. As the issue is common for all the years, the facts of the case for A.Y.2017-18 has been discussed here under which would apply *mutatis mutandis* to all other assessment years.

33. The brief facts are that the assessee is a Joint Venture consisting of three JV partners, namely, Continental Engineering Corporation, ITD Cementation India Limited and Tata Projects Limited. The assessee is engaged in the business of development of infrastructure projects. During the years under consideration, the assessee has carried out the construction of package 4 of Mumbai Metro Line 3 (Colaba-Bandra-SEEPZ) project known as Contract MM3-CBS-UGC-04 which was awarded to assessee JV by the Mumbai Metro Rail Corporation Limited.

34. The business premise of the assessee was surveyed u/s 133A of the Income Tax Act on 26.10.2021. During the course of the survey, the Department found certain records stored in the laptop of Shri Madhusoodanan, Deputy General Manager, Commercial, which were in respect of infrastructure project of Mumbai Metro Railway Project being carried out by the assessee. The relevant document which has been retrieved from the laptop of Shri Madhusoodanan and which has been relied upon by the Assessing Officer has been placed on page nos. 69 to 74 of

the paper book for A.Y. 2017-18. The said paper, more particularly page no. 70 and 71 of the paper book, contains the budgeted cost estimated at the inception of the project, actual expenditure incurred till date and estimated cost to be incurred on the above project in future. The details of expenditure are recorded under different heads of expenditure. One of head of expenditure is 'contingency and design risk' containing the figure of Rs. 31,544.66 lacs incurred till date.

35. The ld. AO has noted that during the course of the survey operation, it is found that the assessee is using a unique method of accounting and the same is followed by the assessee group entities to record unaccounted "cash" expenses which are deployed to secure work contracts from the contractee organizations. Evidence found in the survey discovered the term "Contingency used to denote those expenses which are not recorded in the books of account and are spent in cash for non-business purposes. The assessee prepares CTC reports which stand for Cost to Completion (CTC). The CTC reports provide a pen picture of the actual costs incurred for the project under each expense head both Estimated costs (under the FTS column) and also the actual costs (under the "PTD" column, which is the "Paid Till Date figure). The figure of "Total Costs" incurred as per the CTC report matches the "total cost" figure as per the books of account (also prepared for each project). The contingency expenses are part of the "Contingency & Design Risk portion of the Cost to Completion (CTC) Report.

36. AO further observed that, although the total cost figure in the CTC report matches the total cost figure of the books of account, the cost booked under each head is different in the CTC report and the books of account. The reason for this was that there is a head of expense by the name "contingency expenses (Contingency & Design Risk and such other names) shown in the CTC report which are not present in the books of account. The contingency expenses shown in the Cost to Completion (CTC) reports are adjusted in various costing heads of the books of account by passing "adjustment" entries. Adjustment entries are of two types 1) booking of artificial expenditure from shell entities; & 2) booking of over-invoiced expenditure from regular vendors. Under the Contingency and Design Risk' heading of the Cost to Completion Reports.

37. Further, on examination of the information available, ld. AO informed that, the assessee has booked various bogus expenses in order to generate cash for meeting 'contingency' expenses. The evidences in relation to one of the sister concern of the assessee i.e. CEC ITD CEM TPL JV were found in possession of Sri Madhusoodanan PM, DGM, Commercial of CEC ITD CEM TPL JV. As per the details found with the Sri Madhusoodanan PM, it was observed that for the contingency expenses SOP for issuing WO and PO was not followed. This leads to conclusion that contingency expenses are bogus expenses and generated through taking entries from various vendors.

38. Further, ld. AO incorporated statement of Sri Madhusoodanan who was DGM, Commercial and statement of Sri Jayanta Basu wherein from certain answers to the questions, the ld. AO deduced that contingency expenses are not recorded in the books of accounts and these are application of unaccounted cash generated from the books / non-bogus orders and purchase orders ld. AO has also further noted that these statements were later on retracted. Thus, according to ld. AO, the said amount of Rs. 31,544.66 lacs of contingency and design risk is nothing but the expenditure incurred outside the books of account. The A.O. has concluded that the assessee has incurred bogus expenditure which has been booked in the regular books of account. By booking this bogus expenditure in the books of account, the assessee has generated cash which has been spent by the assessee outside the books of account and the same is not allowable. Accordingly, the A.O. has made disallowance of expenditure based on the chart prepared at the time of survey wherein the above figures have been bifurcated assessment year-wise. This chart is to be found on page no. 86 of the paper book. However, while disallowing the expenditure, the Assessing Officer has excluded following expenditure as the same has not been considered as bogus expenditure by the Assessing Officer.

Particulars	Amount (in Lakhs)
Total contingency expenditure	31,544.66
Less: Expenses allowed by the A.O. himself in the assessment proceedings	2,465.71

<b>Amount disallowed by the A.O.</b>	<b>29,078.95</b>
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39. The party wise break-up of the above expenditure was provided by the assessee according to which the above expenditure consists of; (i) purchase of material and sub-contract charges paid to outside parties; and (ii) fees for technical services paid to JV partners and related entities. The Assessing Officer has held the above expenses to be bogus and disallowed purchases and sub-contract charges under the head contingency expenses and disallowed fees for technical services under the head FTS expenses.

40. The detailed reasons given by the A.O. for disallowance of contingency expenses are as follows. The A.O. has relied upon the statement of Shri Madhusoodanan, Deputy General Manager, Commercial, dated 27.10.2021. Shri Madhusoodanan was not able to properly explain the nature of expenditure reflected under the head 'contingency expenses'. The A.O. has also relied upon another statement of Shri Madhusoodanan dated 28.10.2021. AO has stated that during the survey and post-survey proceedings the assessee could not submit the break-up of the contingency expenses. The A.O. has also discussed the retraction of Shri Madhusoodanan and he was of the view that the retraction is not tenable and he has accordingly rejected it. The A.O. has also relied upon the statement of Shri Jayanta Basu recorded during the course of survey.

41. Thereafter, the A.O. has tabulated the names of parties whose bills were debited in the regular books of account of the assessee and which formed part of the contingency expenses recorded in the seized material. He issued notice u/s. 133(6) of the Act to each of the parties and noted that the parties have not replied to the notice u/s. 133(6) of the Act. He issued the notice to the assessee informing the assessee about such non-compliance and also asked the assessee the reason for not following the Standard Operating Procedure in respect of the purchases made/sub-contracts given to the alleged non-genuine parties. Based on the above reasoning, the A.O. has issued final show cause notice to the assessee on 24.03.2022 which has been reproduced from page nos. 12 to 34 of his order. The A.O. also considered the detailed reply by the assessee and reproduced the same on page nos. 34 to 43 of his order. In the final analysis, the A.O. has rejected the explanation of the assessee and held as under:-

*"5.6 The submission filed by the assessee has been considered but not found tenable due to following reasons:*

*a) The assessee has not followed the SOP for issuing PO/WO in the case of SNB Infrastructure Pvt. Ltd., Vishwanath Industries and V-Care, which was followed in issuing PO/WO in other expenses. The assessee has submitted that SOP has not been followed in some instances before issuing PO/WO due to exigencies of work. The reason given by assessee is not acceptable because SOP has been followed in other cases other than these bogus transactions. Also, assessee failed to provide any reason for such exigencies to divert the regular procedure followed to issue the PO/WO. Further, it is noticed that the amount involved is very high and in standard practice expenditure and exigencies get proper approval from concerned authorities. The*

*assessee failed to submit any documentary evidence to support the claim of assessee that SOP has been diverted in issuing PO/WO for the above referred expenses due to exigencies like nature of nature of exigencies, prior or post approval for such exigencies, any standard practice followed for expenses due to exigencies. It is pertinent to mentioned here that Shri Madhusoodanan PM and Shri Sandip Acharya has admitted in their statement recorded on oath during survey proceeding that SOP has not been followed in issuing WO/PO for various expenses. Further, in case of purchases "store/site purchase indent" (SPI) has not been followed in various purchases and same has been accepted by Shri. Vivek Agarwal in his statement recorded on oath during survey proceeding.*

*b) The assessee has not submitted any documentary evidence in respect of communication with Vendor, hence its sanctity is not genuine.*

*c) The assessee has failed to submit the Books of account, wherein contingency expenses has been maintained and stated that contingency expenses is not separately identified in the books of account.*

*d) During the course of assessment proceedings, Shri Madhusoodanan PM has filed retraction against the statement given by him during the course of survey/post survey proceedings. His statement has been recorded during the course of assessment proceedings, but he has failed to substantiate the claim of contingency expenses.*

*e) During the course of assessment proceedings, to verify the genuineness of contingency expenses, notices u/s 133(6) were issued to concerned parties. However, they have not complied with the same. The assessee has also failed to submit the ITR, P&L A/c, Balance sheet of the said concerned parties."*

42. With these observations, the Assessing Officer disallowed the contingency expenditure.

43. Before the Id. CIT (A) the assessee has submitted the detailed background of the assessee JV and also the credentials of the JV partners. It was submitted that Continental Engineering Corporation is a Taiwan based multinational construction company. ITD Cementation India is part of Italian Taiwan Development Public Co. Ltd. Taiwan which is one of the largest civil engineering contractors in Southeast Asia. Tata Project Limited is one of India's leading EPC Co. and part of Tata group. It was submitted that the assessee has not booked any bogus expenditure nor generated any cash. It was further submitted that the seized document is merely an estimate of cost to be incurred on the project. Merely because an amount has been stated against contingency or contingency expenses, it does not mean that the same is bogus. The assessee vehemently argued that provision of contingency expenses is the norm and in any such infrastructure project, the contingency expenditure has to be provided.

44. In support of genuineness of expenses the assessee has submitted exhaustive documents like invoice, measurement sheet, work completion certificate, employee details, ledger account, running account bills etc. before the Assessing Officer. It was pointed out that the Assessing Officer has not found any fault with such documents. As regards non compliance to the notice issued by the Assessing Officer u/s 133(6) of the Act, it was submitted that few of the parties have in fact replied to the Assessing Officer and has given complete particulars and documents in support of genuineness of the transactions. The

copies of such replies were also furnished with the Id. CIT (A). As regards balance parties, it was submitted that all relevant and necessary documents were submitted by the assessee and non-compliance on account of such parties cannot be held against assessee in light of documents submitted.

45. As regards not following the Standard Operating Procedure (SOP) in respect of some of the purchases/sub-contracts, it was submitted that there could be various reasons for not following SOP. The SOP may not have been followed where the work is of an urgent nature and the immediate decision is required to be taken. Further, in case of temporary work, no vendor approval is required and, hence, SOP may not be followed. In any case, the assessee has all the details like PAN, details of statutory registration etc. and, hence, it cannot be said that SOP has not been followed. The assessee submitted complete details of the expenditure which has been disallowed by the Id. A.O. and such details included measurement sheet, work completion certificate, employee details, ledger account, running account bills etc. It was submitted that all the payments have been made through cheque and the accounts are audited by the reputed Chartered Accountant firm. The assessee has also made a detailed submission in respect of the retraction made by the employees.

46. The Id. CIT (A) has considered the assessment order and the detailed submissions made by the assessee. According to the Id. CIT (A), the assessee has not fully explained the genuineness of the expenditure. The CIT (A) has also found certain shortcomings

in the documents of the purchase/sub contract parties furnished by the assessee. According to the CIT (A), the complete documents of the parties have not been filed. The CIT (A), therefore, was unable to agree with the contention of the assessee that the entire expenses were genuine. However, he has also not agreed with the stand of the A.O. that the entire expenses are to be disallowed. According to the CIT (A), some of the expenses still passed the test of business expediency. The extent of disallowance would depend on the nature and quantum of evidence in each case. Considering these facts, the CIT (A) held that the disallowance of 5% would suffice as against 100% made by the A.O.

47. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as material referred to before us. Here in this case, the expenses have been held to be bogus by the ld. AO for the reason that same has been classified under the nomenclature “contingency and design risk” in the seized report. Before us it has been argued that merely because the figure of Rs. 31,544.66 lacs is written against the contingency and design risk in the seized report, it would not be correct to hold it to be bogus expenditure. Ld. AR submitted that as per the same seized report, Rs. 37,951.64 lacs were budgeted by the assessee at the beginning of the project. Ostensibly, such non-genuine or bogus expenditure could not have been budgeted at the beginning of the project. Further, Rs. 1,437.34 lacs has been mentioned in the seized material as contingency expenditure to be incurred in future.

However, this is improbable to be bogus as bogus expenditure could not have been planned for future.

48. Before us reliance was placed upon the answer given by Shri Madhusoodanan. In answer to Q. no. 18 wherein, Shri Madhusoodanan had stated that the contingency expenses are essential expenses that could not have been foreseen when filing the tender bid. He further stated that these expenses like buying technical knowhow about the technical issue that have not been foreseen etc. are booked under this head.

49. It has been further submitted that the contingency expenses also include fees for technical services which have been paid to JV member or their related party. It was also pointed out that in the CTC report there is column named FTS (Final Tender Summary) which contains expenses budgeted at the beginning of the project on 18.07.2016. Contingency & Design expenses are also estimated at the beginning of the project. The contracts for technical services were awarded on 19.05.2017, 02.12.2019 and 04.12.2019 which are subsequent to the date of preparation of FTS column.

50. On the other hand ld. DR stated that once there was statement wherein under the head 'contingency expenses' certain bogus expenses are also booked which were also found during the course of survey as there was mismatch between CTC report and expenses booked in the books of accounts. The ld. AO has correctly inferred that the expenses under the head 'contingency

expenses are bogus. Finally, he strongly relied upon the order of the ld. AO.

51. On perusal of the facts and material brought on record, we find merits in the contention raised by the ld. Counsel for the assessee, because here in this case as per the seized report substantial amount of Rs.379.52 Crores were budgeted by the assessee at the beginning of the project and amount of Rs.14.37 Crores have been mentioned as contingency expenditure to be incurred in future. Any contingency expenses which is likely to be incurred in future or if budget is prepared for a particular project for which any contingency expenses are estimated at the beginning of the project, same cannot be held to be a bogus expenditure already incurred. Even from the statement of Shri Madhusoodanan which has been heavily relied upon by the ld. AO, he has categorically stated that these contingency expenses are essential expenses that could not have been foreseen while filing the tender bid because there are certain expenses which come at the time of implementing the project. In the CTC report there is a column of filing tender summary which contains expenses budgeted at the beginning of the project and contingency and design expenses are also estimated at beginning of the project. The ld. AR has also pointed out that contract for technical services were awarded on different dates which are subsequent to the date of furnishing of final tender summary column.

52. Another important fact is that ld. AO himself has not doubted the entire Rs.31,544.66 lacs as bogus expenditure. He has also held that out of said expenditure, amount of Rs.2465.71 lakhs is genuine expenses out of the above amount and this amount has been allowed by the ld. AO as it represents the payment made to JV partners / related entities, therefore, the entire premise that amount mentioned as contingency expenses as bogus is self-contradictory.

53. It has been further brought on record that the statement of employees which had been heavily relied upon by the AO were retracted. The ld. AO had called these employees for cross examination and has re-examined these employees during the course of the assessment proceedings. Ld. AO himself has noted that during the course of such cross examination / re-examination, when employees have stood by their retraction, but thereafter, no further questions have been asked during or after the re-examination. All these retractions were made immediately after the date of statements and submitted that the statement of Shri Montra was recorded on 27/10/2021 and 28/10/2021. A copy of the statement was requested on 02/11/2021 which was provided on 08/11/2021. The retraction was made immediately thereafter on 12/11/2021. These dates have been made available to the A.O. also during the course of re-examination of Shri Montra on 15/12/2022. The facts in respect of the retraction of Shri Madhusoodanan are also similar. Thus, once the statements which have been retracted cannot be used against the assessee.

54. Here the entire substratum of the addition built by the ld. AO stands on the statement given by the employees which has been retracted, therefore, same cannot be used against assessee and is no longer remains the basis for drawing any adverse inference. The reason being ld. AO himself has cross examined / re-examined these employees after retraction and nothing adverse has been brought on record by the ld. AO. Accordingly, he cannot rely upon original submission which stands retracted and further re-examined by the ld. AO.

55. Before the authorities below and also before us various evidences have been produced by the assessee in support of genuineness of the expenditure which are being in several volumes before us in the paper book. These documents are in support of the purchase/sub-contract includes quotation received from the party, comparison of quotations, work order, approval note, invoice along with summary of work done etc., Further, it is also a matter of record that some of the parties have replied to the notice issued by the ld. AO u/s. 133(6) and the copies of said replies were also placed in the paper book on which our attention was drawn.

56. From the perusal of these replies it has been stated that they have confirmed about the work done and also the amount paid. As regards non compliance by the other parties to the notice issued by the Assessing Officer u/s 133(6) of the Act, the same cannot be held against assessee when assessee has submitted complete details in connection with such parties.

57. Ld. Counsel had also submitted that one of the allegation that SOP has not been followed in case of some expenses, the same has been stated to be on account of various reasons because at times the nature of work demands immediate decision which leads to such non-compliance. We agree with such contention because looking to the nature of the project and huge contract work, certain urgent expenses are incurred on immediate basis for which there could be the cases where SOP may not be or could not be followed. Further, as far as temporary work is concerned, SOP is not required to be followed as vendor approval is not required in such cases. The assessee has duly maintained details like PAN, statutory registration etc. in all cases which was submitted to ld. AO also. Non-compliance of SOP is merely an internal procedure to ensure internal controls and the same cannot be held against assessee by concluding that such expenses are non-genuine in nature. Therefore, conclusion drawn by the ld. AO on the basis of his observation of not following the SOP with respect to certain expenses cannot be upheld.

58. Another important thing which has to be kept in mind that all these expenses and the payments and the details are subject to audit by Chartered Accountant firms and no discrepancies have been pointed out by the Auditors. Further all these payments have been incurred through account payee cheques and not a single payment has been made in cash or by way of any other mode of payment.

59. Apart from that, ld. AO has not pointed out any discrepancy or objection against various documents submitted by the assessee during the course of assessment proceedings and certain objection raised by the ld. CIT(A) that certain documents are missing which create some doubt however, there is absolutely no positive evidence to suggest that expenses are bogus and non-genuine and as submitted by the ld. Counsel the missing documents are only due to the reason of passage of time which could not be located. Once there is no positive evidence that any cash has been generated out of such expenses so as to treat it as bogus and there is no other corroborative evidence from the third parties that assessee has opined any such bogus bills, the addition made by the AO cannot be sustained. The documents found during the survey only captures estimate of cost to be incurred on the project and actual cost incurred under the various heads of expenditure to check if the project has offered in its cost or not? The documents found was merely internal MIS documents prepared for internal review purpose. Merely because an amount has been stated against contingency or contingency expenses, does not mean same is bogus or non-genuine, more so when such estimation is made at the inception of project. The provision of contingency expenses while budgeting the cost of the project is a norm in any infrastructure project and therefore, it cannot be given any other meaning.

60. Another important fact which has been stated before us that the impugned expenses are integral part of the project and no expenses in relation to these items are booked in the P & L A/c by the assessee other than from these parties. In other words, if the alleged bogus expenditure is in respect of a particular sub-contract work, the same is essential for the overall work of the assessee and there is no other expenditure booked in the books of account for carrying out the said work. Before us an affidavit has been filed in support of these submissions before us and it has been stated that said affidavit is merely the reiteration of the stand taken by the assessee before the lower authorities. The reasons given by the ld. AO to treat expenses debited under the head 'contingency' expenses are to be bogus cannot be sustained. Although ld. CIT (A) has deleted 95% of expenses disallowed by the ld. AO, however, there is no basis for adhoc estimation of 5% of expenses to be treated as bogus. Accordingly, the entire addition made by the ld. AO is deleted and consequently, the grounds raised by the assessee are allowed and the grounds raised by the Revenue are dismissed.

61. Since this issue of disallowance of contingency expenses is permeating in all the assessment years impugned before us therefore, our finding given hereinabove will apply *mutatis mutandis*.

62. Another issue which has been raised in a.Y.2018-19, 2019-20, 2021-22 and 2022-23 relates to disallowance and fee for technical services by the ld. AO u/s.37(1). For the sake of ready

reference we are taking up the appeal for A.Y.2018-19 and our finding given therein will apply in all the years.

63. In Ground No.3 in the grounds of appeal in A.Y.2018-19, the Revenue has challenged the deletion by the ld. CIT(A) of disallowance of Rs.44,71,31,287/- being fee for technical services made by the ld. AO.

64. The brief background of the facts in respect of seized material and recording of contingency expenses has been discussed in the earlier part of the order. The break-up of contingency and design risk amounting to Rs.31,54,466/- has been given by Annexure-C to the statement of Shri Madhusoodanan P.M. recorded on 27/10/2021 which is as under:-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Reference</b>	<b>Amount in Lakhs</b>
1	Amount paid to JV partners or related entities	First 3 and last 2 items of the table	21,890.29
2	Contingency expenses	Rest of the items of the table	9,654.37
	<b>Total</b>		<b>31,544.66</b>

65. And the break-up of above referred amount of Rs.21,890.29 lakhs is as under:-

Sr. No	Nature of expenses	Amount (in Lakhs)	Remarks
1.	Fees for Technical Services as per contract	19,424.58 (Note)	Disallowed by the AO in the assessment proceedings.
2.	Partner Fee - ITD	1905.71	Allowed by the AO himself in the assessment proceedings.
3.	Partner Fee - TPL	560.00	
<b>Total</b>		<b>21,890.29</b>	

Quantum of Fees for Technical Services as per seized material Rs. 194,24,57,853 (Rs. 19,424.58 Lakhs) and additionally Rs. 2,68,98,620/- (pertaining to post seized material period) has been added by AO in A.Y. 2022-23, aggregating to **total disallowance of Rs. 196,93,56,473/-**.

66. The break-up of disallowance made by the ld. AO in AY 2018-19, 2019-20, 2021-22 and 2022-23 are as under:

<b>AY</b>	<b>Fees for technical services</b>
2018-19	44,71,31,287
2019-20	33,79,21,470
2021-22	68,83,36,085

2022-23	3,98,28,090
<b>Total</b>	<b>1,51,32,62,996</b>

67. The Id. CIT(A) had decided this issue in favour of the assessee in all the years and has deleted the entire disallowance made by the Id. AO and accordingly, Revenue has preferred an appeal against the order of the Id. CIT(A).

68. The brief facts qua the issue are that the assessee was awarded metro project by MMRCL for a contract value of Rs. 2,830 10 crores. As per the MMRCL contract, the life of the civil engineering structure of the project should be 120 years. The contract is the first underground metro line in Mumbai connecting the business district of Cuffe Parade in the extreme south to SEEPZ in the north central. This railway line connects key locations like Nariman Point, CSMT, Dadar, Worli and domestic and international terminal of Airport. The contract was of sizeable magnitude which required specialised technical expertise related to designing, drawing, tunneling work, architectural work, station construction, mechanical, electrical and plumbing work (MEP), quality assurance, methodology and other related work. The assessee was awarded Mumbai Metro Line 3 package 4, running through the neighbourhood of Siddhi Vinayak temple, Dadar station and Mahim.

69. In order to ensure that the structure do not impact or damage the existing buildings, existing structures, etc. which if it were to happen would lead to loss of lives and dent on the

goodwill or reputation of the assessee and its JV partners, the assessee recognize the need to entail additional expertise advice for the purpose of executing the project in a timely and efficient manner. Accordingly, the assessee entered into technical service agreement/work contracts with its JV partners and its related entities as they had relevant expertise viz i) Continental Engineering Corporation, ii) Tata Projects Limited iii) ITD Cem India Joint Venture, iv) ITD ITD Cem Joint Venture and v) CCECC-TPL JV. The assessee paid fees for technical services to them, the details of which are given at page no. 86 of the paper book for AY 2017-18.

70. The ld. AO based on the statement of Mr. Arbind Kumar Rai, has alleged that the Assessee has entered into various internal arrangements termed as 'Technical Service Agreements' with its JV partners to divert its own profit, although supposedly no technical services of any kind were rendered to the assessee JV. Based on the same, the AO has alleged that the Assessee has entered into a technical service agreement with Continental Engineering Corporation ('CEC) which has retired from the active partnership of the Assessee JV and amount paid to CEC by way of Technical Service Fees are claimed as allowable revenue expenses by the Assessee.

71. Further, the ld. AO has relied upon the statement of Shri Madhusoodanan P.M, Deputy General Manager, Commercial, recorded on 28.10.2021, wherein he has stated that although employees of the organisation prepares the work orders and he

signs these work orders in the "checked by" category but he is not aware about the nature of services being provided by the JV partners or related entities. The Id.AO has relied on statement of Shri Montra Ngamsa Ngar dated 27/10/2021 and 28.10.2021 wherein he has stated that he is unaware about the services rendered by the CEC.

72. The Id.AO has also relied on the statement of Shri Arbind Kumar Rai recorded on 28/10/2021 wherein Shri Arbind Kumar Rai has claimed that the "Technical Services" were provided by CEC as part of their interaction during the quarterly board meeting and has also submitted a copy of the minutes of the said board meetings. However, the AO has observed that the issues discussed in the said minutes of the board meetings were mostly around financial matters, tax and GST, approval of financial statements etc. The Id. AO has also alleged that the RA bill is not signed or checked by any member of the design team.

73. The Id. AO has therefore concluded that the payments for FTS are nothing but mere diversion of income. The Id.AO has stated in the assessment order that the Assessee has failed to produce the following details:

*"6.7 The submission filed by the assessee has been considered but not found tenable due to following reasons*

*(a). The assessee has not submitted documentary evidence of communication in respect of technical services. The communication details filed by the assessee is related to general work.*

(b). *The assessee has not submitted documentary evidence in respect of actual services taken and actual delivery of work related to technical services*

(c). *The assessee has failed to produce communication between him and vendors of technical services through which nature of actual technical work allotted to above referred parties can be ascertained. Also, the assessee failed to provide communications between assessee and parties of technical services, to ascertain the actual delivery of work.*

(d). *The assessee failed to submit the details to ascertain the actual manpower involved in performing services and nature of services provided by them.*

(e). *The assessee has not provided any details about the personnel of the assessee with whom service providers have interacted for providing services and vice-versa.*

*Further, the parties to which Fee for Technical Services has been made have failed to provide the details to substantiate the genuineness of the transaction with assessee in response to notice u/s 133(6) of the Act.*

6.9 *It is also important to mention here that for the claim of expenses in the form of services taken, the delivery of services and communication with regards to services requested and received must be there. Mere submission of copy of agreement and invoices by the assessee for the expenses claimed for various services taken cannot be considered as proof of services being rendered. The same has been elaborated by Hon'ble Supreme Court in the case of Lachminarayan Madan Lal vs. Commissioner of Income-tax, West Bengal. The relevant extract of the case law are as follows:*

*"The mere existence of an agreement between the assessee and its selling agents or payment of certain amounts as commission assuming there was such payment, does not bind the Income tax Officer to hold that the payment was made exclusively and wholly for the purpose of the assessee's business Although there might be such an, agreement in existence and the payments might have*

*been made, it is still open to the Income-tax Officer to consider the relevant factors and determine for himself himself whether the commission said to have been paid to the selling agents or any part thereof is properly deductible under s. 37 of the Act."*

*Thus, as the facts of the present case has been squarely covered in the above case law, the submission of the assessee is not tenable without details of communications between vendors and assessee for the expenses related to Fee for Technical Services.*

*6.10 In view of the above, it is found that the assessee has failed to substantiate its claim in respect of fee for technical services; hence, the same is required to be disallowed. Thus, the claim of expenses towards fee for technical services amounting to **Rs. 44,71,31,287/-** is hereby disallowed u/s 37(1) of the I.T. Act, 1961 and added to the total income of the assessee. Penalty proceeding u/s 270A is initiated separately for under reporting of income in consequences of mis reporting of income."*

74. The ld.AO has further stated that notices u/s 133(6) were issued to parties to which payments for FTS has been made and the parties have replied. The ld. AO has pointed out that certain details were not submitted by these parties in their replies. The ld. AO has also disregarded the retraction filed by Shri Madhusoodanan P.M and Shri Montra Ngamsa Ngar.

75. The final show cause notice was issued by ld.AO on 24.03.2022 which was duly replied by the Assessee submitting all the necessary documents and details relating to FTS payments.

76. In his conclusion paragraph, he has reiterated that the Assessee has not submitted the necessary documents and details related to FTS payment and that the complete details are

not submitted by the parties in response to notices issued u/s 133(6) of the Act Accordingly, he has disallowed the entire expenses claimed towards fees for technical services.

77. Before the Id. CIT (A) assessee submitted that all the necessary documents and details relating to FTS expenses were submitted before the AO during assessment proceedings and also before Id. CIT (A). Reference was made, to the following details and documents:

- i. Service agreement between Assessee and Technical Service providers;
- ii. Summary of bills for FTS,
- iii. Work Orders;
- iv. Invoice copies on sample basis;
- v. Scope of service with each Technical Service providers;
- vi. Name of key persons involved;
- vii. Minutes of meetings and correspondence between Assessee and Technical Service Providers;
- viii. Detailed summary of design which were reviewed and approved by the Technical Service Providers;
- ix. Affidavit of persons of each entity stating work done by them and role played on behalf of Technical Service Providers.

78. It was also submitted before the Ld. CIT(A) that all the technical service providers have responded to the notice issued u/s 133(6) to them. Further, the discrepancies pointed out by

the ld.AO in the show cause notice were incorrect with regards to non-submission of details as the parties have submitted all the details. Most of these details were also submitted by the assessee in its reply during the assessment proceeding dated 14/12/2022.

79. It was also submitted to the CIT (A) that work orders were issued to each of the parties and they executed work in accordance with the scope defined in the respective agreement and further detailed in the work order. Bills were raised on a regular basis in accordance with the work order. Every tax invoice raised is accompanied by the supporting, demonstrating services rendered by each of them, which are all part of impounded documents found during survey proceedings. Each technical service provider is a leading expert, and its personnel have knowledge which is highly specialised and not otherwise available with the Assessee. Technical consultancy is important at every level and more so, at design level, thereby resulting in minimum review points/rejections by the relevant approving authority. This also ensures timely execution of project.

80. After considering submission made by the assessee and observations made by the assessing officer in the assessment order, the CIT(A) has decided the issue in favour of the assessee offering following reasoning:

i. Mr. Montra in his statement has clearly delineated role of each JV partner in answer to question no 10. In his replies to question no. 16 to 23 dated 27/10/2021, he has professed ignorance

about the presence of documents or other evidences, but has not made any averment that the services were not rendered at all.

ii. The assessee has been awarded Mumbai Metro Line 3 package 4, running through the neighbourhood of Siddhivinayak temple, Dadar station and Mahim under a competitive bidding process by the Mumbai Metro Rail Corporation Limited for contract value of Rs 2,830 crores. A huge infrastructure project is being executed by the assessee for which 3 reputed entities have come together to form a Joint Venture. It is evident that they have pooled in their expertise for execution of this project.

iii. The assessee has also furnished exhaustive documentation including 1) agreements ii) process flow of design i) summary of bills iv) work orders v) sample invoices vi) sample minutes of meeting with each of these parties and vii) correspondences exchanged with the technical service providers on sample basis

iv. The assessee has therefore furnished adequate evidences in support of payments to its own joint venture parties and the balance of convenience therefore lies in favour of the assessee for allowability of these expenses.

Accordingly, entire expenses claimed towards FTS payment is allowed by the CIT (A).

81. Before us Id. Counsel submitted that all the necessary documentary evidences in support of fees for technical services paid to JV Partners and related entities were submitted both before the Id. AO and Id. CIT(A) and also before us in the paper book Volume 2,3 & 4 for A.Y.2018-19. From the perusal of these

documents it can be seen that these are evidences relating to; (i) service agreement between assessee and technical service provider (ii) details of fees paid (iii) work order on sample basis (iv) invoices along with RA bills (v) affidavits of employees (vi) correspondence with CEC on sample basis (vii) minutes of the meetings held between representatives of the assessee and technical service provider (viii) extracts of designs reviewed by the technical service provider on sample basis (ix) Form 3CEB filed wherein assessee has reported international transaction (FTS payment) carried out with CEC for which no T. P. adjustment has been made and (x) responses filed by the technical service provider along with all supporting documents in response to notice issued u/s. 133(6) of the Act.

82. In so far as allegation raised by the ld. AO in the assessment order, the ld. Counsel submitted that same are incorrect and he has given his point wise rebuttal to various allegations made by the ld. AO which are as under:-

**i. The allegation of AO:** Statement of Mr. Arbind Kumar Rai relied upon by the AO stating that FTS payment is made only for diversion of income.

**ii. Rebuttal:** Mr. Arbind Kumar Rai's statement relied upon by the Ld AO is infact in favour of appellant wherein he has confirmed the role of all parties to whom fees are paid. The Ld. AO has misconstrued the statement.

**iii. The allegation of AO:** The R.A bill raised for "Professional fees for Technical Services" for MM3-CBS-UGC-04 was not signed or checked by any member of the design team.

**iv. Rebuttal:** The AO has failed to appreciate the fact that the technical team is not responsible for preparing and checking the R.A bills and none of R A bills are signed by technical team members.

**iii. The allegation of AO:** Failed to provide supporting documents for actual services taken and delivery of services pertaining to the said professional services.

**Rebuttal:** All documentary evidence were submitted before the Ld. AO during the assessment proceedings.

**iv. The allegation of AO:** The communication filed by the assessee is related to general work.

**Rebuttal:** The communications submitted by Appellant pertains specifically to design and are not generic in nature.

**v. The allegation of AO:** Non-submission of documentary evidence in respect of actual services taken and actual delivery of work related to technical services.

**Rebuttal:** Details such as drawings, communication containing inputs, discussion in minutes of meetings etc were duly submitted to the Ld AO.

**vi. The allegation of AO:** The assessee has failed to produce any communication between assessee and parties of technical services to ascertain the actual delivery of work

**Rebuttal:** Correspondence and minutes of the meetings were submitted. The Ld. AO has not found out any defect documents submitted but has only stated that documents are not submitted which is incorrect.

**vii. The allegation of AO:** Non-submission of details to ascertain the actual manpower involved in performing services and nature of services provided by them.

**Rebuttal:** Details of manpower and affidavits of key employees were duly submitted to the AO.

**viii. The allegation of AO:** Non-submissions of details about the personnel of the assessee with whom they have interacted for providing services.

**Rebuttal:** Minutes of the meeting contains all details of representatives from the side of appellant as well as technical service provider.

83. As regards various shortcomings pointed out by the ld. AO in the reply to notice u/s. 133(6) filed by the parties to whom fees for technical services have been paid by the assessee, ld. Counsel submitted that these so called short comings pointed out by the ld. AO are non-existing looking to the overall documentary evidences submitted by the parties.

84. On the other hand ld. DR after referring to the various observations of the ld. AO as noted above strongly relied upon his various findings and reasoning given in the impugned order.

85. We have heard rival submissions and also perused the relevant finding given in the impugned orders. One of the basis for drawing adverse inference by the ld. AO is based on statement of Shri Arbind Kumar Rai, wherein the ld. AO has alleged that assessee has entered into various internal arrangements termed as technical service agreements with its JV partners to divert its own profit and in fact no technical services of any kind were rendered to the assessee JV. First of all from the perusal of the statements it is seen that, in fact it supports the case of the assessee, because he has confirmed the role of all the parties to whom these are paid. In the kind of project undertaken by the assessee, the technical services are very much essential for the purpose of execution of the Metro Railway project. It cannot be presumed as done by the ld. AO that assessee has not availed such technical services and the assessee has not incurred any expenditure. While incurring the expenditure, assessee has also paid substantial service tax @15% and GST @18% on the invoice amount. Ld.AO cannot ignore this fact.

86. Apart from that, ld. AO has also held that the RA bill raised for professional fees for technical services for a particular project was not signed or checked by any member of the design team which has been explained by the ld. Counsel that technical team is not responsible for preparing and checking the RA bills and none of the RA bills are signed by the technical team members. In fact assessee had filed voluminous documents in support of rendering of the technical services like service agreement

between assessee and technical service providers; summary of bills for FTS; work orders executed; invoice copies on central basis, scope of service for each technical service providers alongwith name of the key persons involved; Minutes of Meeting and correspondence between assessee and technical service providers; detailed summary of business which were resumed and approved by the technical service provider. All these documents and evidences goes to prove rendering of technical services and payment thereof cannot be brushed aside. In so far as various allegations, same has been rebutted with proper explanation backed with documentary evidences and therefore, the allegations of the ld. AO cannot be sustained because none of these allegations has any substance in line of the documents and other evidences which have been filed. If assessee has undertaken huge project of Mumbai Metro lines for the contract value of Rs.2830 Crores and if such huge project is being executed by the assessee for which three reputed entities have come together to form a joint venture only to pull their expertise for the execution of this project, then it cannot be held that no FTS might have been paid at all as held by the AO. Thus, the payment to the JV projects on account of technical services cannot be disallowed merely on the grounds stated by the ld. AO. Once the assessee has furnished exhaustive documents as noted above, which has been duly noted and appreciated by the ld. CIT (A) based on which he has deleted the addition, the same cannot be tinkered with. Thus, we uphold the order of the ld CIT (A) in deleting the addition of the expenditure on account of fees for

technical services and accordingly, the grounds raised by the Revenue are dismissed.

87. Since in other years addition is made on exactly similar reasons given by the ld. AO and ld. CIT(A) has also deleted the addition in all the years on identical finding based on appreciation of some documentary evidences, therefore, our finding given above will apply *mutatis mutandis* in all the years. Accordingly, all the grounds raised by the Revenue on the issue of disallowance FTS are dismissed.

**88. In the result, all the appeals filed by the assessee are allowed and Revenue's appeals are dismissed.**

Order pronounced on 10<sup>th</sup> March, 2025.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 10/03/2025  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**