

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2730/M/2023  
Assessment Year: 2018-19**

<b>M/s. Baswant Builders and Developers Private Limited,</b> Shop No.115, 116, S F S Complex, Jalna Road, Aurangabad- 431 005 <b>PAN: AACCB7464N</b>	<b>Vs.</b>	<b>Assistant Commissioner of Income Tax,</b> Circle-3(1)(1), Aayakar Bhavan, M.K. Road, Mumbai - 400 020
(Appellant)		(Respondent)

**Present for:**

*Assessee : Represented by Mr. Aakash Kumar  
{R S Khandelwal & Associates} on  
substantive dates of hearing*

*Revenue : Represented by Sh. Kailash  
C. Kanojiya Ld. CIT DR a/w Sh. Laxmi  
Kant, Ld. Sr. DR. on substantive dates  
of hearing*

Date of final hearing : 18-03-2025  
Date of Pronouncement : 02-06-2025

**ORDER**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 06.08.2024, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year (AY) 2018-19.

**2.** In this case, the Assessee during the AY under consideration declared its total income at Rs.3,44,05,550/- by filing its original return of income on dated 31.10.2018, which was selected for complete scrutiny under CASS. Consequently, during the assessment proceedings, statutory notices dated 22.09.2019 u/s 143(2) of the Act and 04.01.2021 u/s 142(1) of the Act along with questionnaire in annexure, were issued to the Assessee. The Assessee submitted its submissions. On considering the same, the Assessing Officer (AO) observed that the Assessee company during the AY under consideration, being engaged in the business of construction and maintenance of roads, bridges, tunnels, ports, harbor, runways etc. by filling its return of income, has also claimed expenditure of Rs.60,41,53,300/- towards payment made to Assessee's sister concern M/s. M.B. Patil Construction Ltd. (in short "M/s MBPCL") for executing sub-contract on behalf of the Assessee.

**3.** The AO therefore, in order to ascertain genuineness of such expenses claimed, issued various notices dated 25.03.2021, 01.04.2021 and 07.04.2021 and sought for the details of the contract agreement signed with M/s. MBPCL, details of nature of service availed from M/s. MBPCL and corresponding bank statement highlighting payments made to M/s. MBPCL.

**4.** The Assessee in response to the aforesaid queries/documents sought for, though filed its reply, however, as mentioned by the AO in para 4(i) of the assessment order, in response to notice dated 01.04.2021 u/s 142(1) of the Act, the Assessee has submitted only copy of the work-order issued to M/s. MBPCL for the period dated **01.02.2018 to 31.03.2018** for the project. The AO therefore asked the Assessee specifically, to provide contract agreement signed with M/s. MBPCL. The Assessee in response to the said query, vide reply

dated 03.04.2021 replied that Assessee is not in a position to trace out the copy of the agreements entered into with M/s. MBPCL.

**5.** The AO thus vide notice dated 07.04.2021, further asked the Assessee to provide the details of the contract agreement signed with M/s. MBPCL and corresponding bank statements highlighting payments made to M/s. MBPCL, however, of no avail, as the Assessee vide reply dated 08.04.2021 submitted that it has not entered into contract with M/s. MBPCL.

**6.** Thus, the AO by considering the aforesaid replies of the Assessee construed, that replies of the Assessee with respect to contract agreements with M/s. MBPCL, are not consistent and noted the following peculiar facts and circumstances:

*1. Though the Assessee was categorically asked to submit the agreements entered into with M/s. MBPCL and the bank statements highlighting payments made to M/s. MBPCL to ascertain the genuineness of Rs.60,41,53,300/- as business expenditure during the AY under consideration, **however**, the Assessee did not submit the required bank statement related to the payments made to the M/s. MBPCL.*

*2. M/s. MBPCL is a person specified u/s 14A(2)(b) and it is reflected as sister concern of the Assessee in Form No.3CD. The payment of Rs.60,41,53,300/- made to M/s. MBPCL and claimed as an expenditure, is a significant amount as it is **86.60%** of total revenue from operations of Assessee during AY 2018-19, which is also a large extent reasonable for low profit.*

*3. The Assessee has taken construction contract from its sister concern M/s. Patil Construction and Infrastructure Ltd. (in short "M/s. PCISL") during AY 2018-19 and given sub-contract to other sister concern M/s. MBPCL. **Contract agreements are crucial document** in such contracts involving huge risks and liabilities are narrated. Despite repeated request by Income Tax Authorities, the Assessee did not provide contract agreements of service to establish the genuineness of the transaction with M/s. MBPCL. THE Assessee only provided work-order, which cannot be a reliable document.*

*Further, the Assessee did not provide bank statements highlighting payments made to M/s. MBPCL.*

*4. As the Assessee has failed to provide substantial document, even in spite of asking specifically, therefore, the Assessee's claim of Rs.60,41,53,300/- as business expenditure, is not tenable and liable to be disallowed u/s 37 of the Act and added back to the income of the Assessee.*

**7.** The AO, consequently on the aforesaid facts and circumstances, issued the **draft assessment order** in the form of show cause notice dated **26.04.2021** and thereafter by issuing various notices provided various opportunities to the Assessee to establish its claim. However, the Assessee except filing the alleged work order issued to M/s. MBPCL for the period dated **01.02.2018 to 31.03.2018**, and return of income filed by M/s. MBPCL and ledger account of M/s. MBPCL in the books of Assessee and its own balance sheet, filed no document pertaining to main contract and sub-contract and therefore the AO by considering the peculiar facts and circumstances in totality, specific to the effects:

- (i) That in response to the queries sought the Assessee has replied on dated 01.04.2021 that it has not entered into contract with M/s. MBPCL.*
- (ii) Further, the Assessee did not submit required bank statements related to the payments made to the M/s. MBPCL.*
- (iii) The claim of the Assessee that the work order given by the Assessee, is a substitute for the return contract as claimed by the Assessee, is not tenable, because, **first**, contract agreement is a crucial document in such contracts involving huge risks, liabilities are narrated, **second**, Assessee relied on work order but aforesaid work order does not provide details regarding actual execution of work and expenditure incurred on such execution of work.*

- (iv) *Assessee submitted that M/s. MBPCL after getting work order from the Assessee, subsequently gave sub-contract of the very same work to other party and consequently the payment due on account of execution of sub-contract was directly adjusted, however, the Assessee did not submit any detail of sub-contractors to carry out third party verification during the assessment proceedings, as well as, the Assessee did not provide any documentary evidence to substantiate its claim of adjustment of payments.*
- (v) *The fact of the matter is that TDS and GST as claimed by the Assessee were duly deducted and deposited in a government account, are smaller tax liability as compared to tax impact of claim of business expenditure of Rs.60,41,53,300/- towards payment made to M/s. MBPCL during the relevant year.*
- (vi) *The Assessee placed reliance on computation of income and return of income of M/s. MBPCL during the relevant year that contract payments made by the Assessee is duly reflected in the ITR of M/s. MBPCL, however, on perusal of ITR of M/s. MBPCL for the relevant year, it is found that it is not possible to ascertain the receiving of such contract receipt by the M/s. MBPCL from the Assessee, as M/s. MBPCL is involved in multiple projects and has received multiple receipts during the relevant year.*
- (vii) *It is pertinent to mention here that M/s. MBPCL is a person specified u/s 40A(2)(b), as it is reflected as sister concern of the Assessee in Form 3CD.*
- (viii) *The payment of Rs. 60,41,53,300/- made to M/s. MBPCL and claimed as expenditure is a significant amount and it is 86.60% of total revenue from operations of Assessee during 2018-19, which is also to a large extent responsible for a low profit.*

Ultimately found that the Assessee's contentions against the proposed disallowances of Rs.60,41,53,300/- u/s 37 of the Act, as not justifiable mainly on the reason that the Assessee has failed to substantiate its claim despite giving multiple opportunities during the assessment proceedings.

**8.** The AO thus, on the aforesaid reasons and analyzations, ultimately disallowed the amount of Rs. 60,41,53,300/- as claimed u/s 37 of the Act by the Assessee and consequently made the addition of such amount and added in the income of the Assessee.

**9.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and more or less has claimed as under:

*“Your honor has proposed to disallow the expenditure of Rs.60,41,53,300/- in respect of sub-contract payments made by us to our sister concern, namely, M/s M.B. Patil Construction Ltd.*

*We have given them work order in this respect. Further, we have already submitted copy of account of M. B. Patil Constructions Ltd. for the F.Y.2017-18 relevant to the A.Y. 2018-19 as appearing in books of account. This apart TDS in this respect was also deducted and deposited in the Govt. account. We also invite your attention to Form No. 3CD furnished by us. In Para 23(2) details of sub-contract payment of Rs.60,41,53,300/- have been duly disclosed. Further, it can be seen from column 21(B) of the Audit Report that the Tax has been duly deducted from the sub-contract payments. We are also enclosing herewith copy of challans showing TDS deposit of Rs. 1,20,83,066/- in this respect. A copy of TDS Return in Form No.26 Q is also enclosed and also enclosed copy of Acknowledgement of return of income of M/s M.B. Patil Constructions Ltd. along with computation of income for the AY 2018-19.*

*In the light of this evidence, it is crystal clear that M/s M.B. Patil Construction Ltd. has duly disclosed income on the said contract receipts. In fact, the said contract receipt is a part of revenue from operations disclosed by the said M/s M.B. Patil Construction Ltd. In the light of aforesaid clinching evidence furnished by us, it is not correct to hold that the payment of Rs.60,41,53,300/- is non-genuine. The said finding is unjust and against the law in as much as the concerned amount is already offered to tax in the hands of the M.B. Patil Construction Ltd. The same is now again proposed to be taxed by your honor in our hands.”*

**10.** The Ld. Commissioner though considered the above submissions of the Assessee, however, on finding specific facts to the effects “that

during the appellate proceedings as well, the Assessee has failed to file the supporting documents, as well as confirmation from M/s. MBPCL qua payments being made and consequently failed to discharge its prima-facie onus by not submitting documents, such as agreement, bank statement, payment confirmation etc. and therefore in such a situation correctness of claim of the Assessee cannot be established” ultimately affirmed the addition under consideration, by observing and holding as under:

**“6. Finding of the CIT(A):**

6.1 I have gone through the Assessment Order and submissions of the appellant. The learned AO has carried out addition of Rs.60,41,53,300/- on account of disallowances of subcontracting charges paid to sister concern. Aggrieved by the order of learned AO the appellant has raised multiple grounds of appeal which are collectively disposed off as under.

6.2 The appellant is engaged into business of construction and maintenance of roads, bridges and other infrastructure facilities. During the year under consideration it had received contract from sister concern M/s Patil Construction, which he has sub contracted to another sister concern M/s M.B. Patil Construction Ltd. Pursuant to such subcontracting the appellant had paid sum of Rs.60.42 crores to M/s M.B. Patil Construction Ltd. In order to verify the genuineness of expenses the learned AO called for supporting documents such as contracts and bank statements. In response to the same the appellant submitted copy of work order, ledger extract of M/s M.B. Patil Construction Ltd and copy of income tax returns of M/s M.B. Patil Construction Ltd.

6.3 The learned AO did not accept the appellant's contention for non-submission of copy of contract and he also contented that he is not able to verify if M/s M.B. Patil Construction Ltd has received payment from its income tax returns because this entity had received payment from multiple vendors. The learned AO has also observed from tax audit report that M/s M.B. Patil Construction Ltd is a related party as per section 40(A)(2)(b) and the payment made to M/s M.B. Patil Construction Ltd is equivalent to 86.60% of revenue of appellant and the appellant is left with low profit. Therefore, the learned AO upheld these payments as non-genuine and added to total income of appellant.

6.4 During the appellate proceedings as well the appellant filed same supporting documents. The learned AO has treated such expenses as not genuine because the appellant did not file any

*agreement which is base for any work being allotted to someone. The work order submitted by the appellant is very brief moreover, the appellant has not submitted any confirmation from M/s M.B.Patil Construction Ltd which proves payment being made is reliable.*

*6.5 In view of the above I am of the considerate view that the appellant failed to discharge its primary onus by not submitting documents such as agreement, bank statement, payment confirmation, etc. In such situation correctness of claim of appellant cannot be established. Therefore, the addition made by learned AO for sum of Rs.60,41,53,300/- is upheld.*

*6.6 Accordingly, appeal of the appellant is **dismissed**”*

**11.** The Assessee, being aggrieved, challenged the impugned order affirming the addition and mainly claimed that the Assessee had executed one work-order with M/s. MBPCL and therefore M/s. MBPCL has carried out the work on behalf of the Assessee. The Assessee further claimed that it has also deducted the TDS and paid the GST and therefore its claim cannot be disallowed. Further, M/s. MBPCL in its return, is not supposed to show separately the details of the amounts received from the Assessee. The AO did not bring any evidence on record to show that no contract is available and amount is significant. The Assessee therefore has claimed that the addition is not sustainable.

**12.** On the contrary, the Ld. D.R. refuted the claim of the Assessee by contending and submitting as under:

**“1. Absence of Contract Agreement**

*The assessee did not submit the contract agreement neither between the M/s Patil Infrastructure and construction limited with Basant Builder nor the contract between Basant Builder to M/s MB Patil instead provided a "Work Order" and contending that no contract agreement was necessary. This work order, however, lacks essential legal specifications and does not substitute for a binding contract, important to note that the Work Order raised for the project "Digras-Dharwha-Karanja National Highway in state of maharashthra for upgradation two lanes" which shows that this is for road*

*development which under Government work so in the given case assessee had not produced any details-about the tender if any, any approvals, or any details regarding the agreement made on this project purpose which shows that the assessee lacks in substantiate the legality*

## **2. Deficiencies in Work Order Submitted**

*The work order presented (PB pg. no. 14) is insufficient in several respects:*

*It merely lists the contractor's name, GST number, a brief note on the work, item details with quantity, rate, unit, and amount.*

*Key terms such as scope of work, payment schedule, work completion timelines, and liability clauses are omitted, undermining its legal enforce-ability as a contract.*

*The designation, position, and signatures of signatories are not provided, compromising the authenticity of the work order.*

## **3. Absence of Subcontract Information**

*The work order does not indicate that M/s M. B. Patil Construction Ltd. was acting as a subcontractor on behalf of M/s Patil Construction and Infrastructure Ltd., despite the latter being the main contractor and sister concern of the assessee.*

## **4. Discrepancy in Claimed Amounts**

*The work order specifies an amount of Rs. 58,01,02,800, while the claimed subcontract amount in the assessee's ledger (PB pg. no. 12) is Rs. 60,41,53,300. This discrepancy indicates the work order may be incomplete or inaccurate. Additionally, no details on TDS, GST, or reconciliation statements are provided in support of the payment.*

## **5. TDS Discrepancy in M/s M. B. Patil Construction Ltd.'s Return**

*The TDS deduction reflected in M/s M. B. Patil Construction Ltd.'s return (PB pg. no. 11) corresponds to Rs. 60,41,53,300, conflicting with the work order amount of Rs. 58,01,02,800. This inconsistency raises questions about the accuracy of the expense claimed.*

## **6. Lack of Reconciliation of Final Bills**

*The assessee has not furnished reconciliation of final bills raised by M/s M. B. Patil Construction Ltd., and a mere narration in the ledger account (PB pg. no. 12) does not adequately support the authenticity of the transaction. Payment receipt details from M/s Patil Infrastructure Ltd. To Baswant Builders and correspondingly payment made from Baswant Builder to M/s M. B. Patil Construction Ltd. have also not been provided.*

**7. Significance of Subcontract Expenses in the Assessee's Financials**

*The assessee's financials as of 31.03.2018 (PB pg. no. 20) reveal that subcontract expenses constitute 93.96% of total expenses and account for 89.49% of revenue. The absence of substantial documentation in such a critical area raises significant concerns regarding the genuineness of the transaction.*

*Based on the points above, the assessee has not provided adequate documentation to substantiate the genuineness of the expenditure claimed towards M/s M. B. Patil Construction Ltd. Therefore, we respectfully submit that the disallowance under Section 37 be upheld, and the appeal be decided in favor of the Revenue.”*

The Ld. D.R. thus on the aforesaid reasons, has claimed that on the aforesaid reasons, it is clear that the Assessee has not provided adequate and proper documents to substantiate the genuineness of the expenditure claimed and therefore the disallowance u/s 37 of the Act, is liable to be upheld, by dismissing appeal of the Assessee.

**13.** Having perused the material available on record and given thoughtful considerations to the peculiar facts and circumstances and rival claims of the parties on various occasions. As per Assessee's case, it has got a construction contract from its sister concern M/s. PCISL and subsequently made sub-contract to its sister concern namely M/s. MBPCL, who had also given sub-contract to other entities. With regard to the sub-contract to M/s. MBPCL, the Assessee has claimed the expenditure of Rs.60,41,53,300/-, and during the assessment proceedings filed the return of income along with computation of M/s.

MBPCL and ledger account of M/s. MBPCL in the books of Assessee and its own audited balance sheet and work order on the sole basis of which the claim was lodged. For the sake of brevity and ready reference work order is reproduced herein below:

<i>Baswant Builders &amp; Developers Pvt. Ltd</i>					
<i>2nd &amp; 3rd Floor, PAPML commercial building, Opp. Income tax office, Shankar Seth road, Swargate, Pune.</i>					
<b>WORK ORDER</b>					
<i>Contractor Name : - M.B. PATIL CONSTRUCTION UMITED</i>					
<i>Company GSTIN: - 27AABCM08048122</i>					
<i>Project Name: Preparation of Detailed Project Report of Digras-Charwha-Karanja National Highway from with pevod shoulder/ Four lane figurations 0/ 000 to 74/ 351 in the state of Maharashtra for upgradation two lanes with paved shoulder/ Four lane configurations</i>					
<b>Date 01.02.2018 TO 31.03.2018</b>					
<i>Sr.No.</i>	<i>Item Description</i>	<i>Qty.</i>	<i>Rate</i>	<i>Unit</i>	<i>Amount</i>
3	<i>GSB:- Providing and laying close graded granuler sub base conforming to grade 1 Table 400.1 in specified thickness each layer not exceeding 150 mm of compacted thickness with specified graded stone and sand mixed at plant and laid with mechanical means spreading with mortor grader and compacting with vibratory roller having minimum 80-100 KN static weight to achieve, desire density of 93% of MOD including all material, labours, machinery with all leads and lifts complete.</i>	79360	2230	Cum	97612800
4	<i>WMM: Providing and laying Wet Mix Macadam with paver finisher in specified thickness each layer not exceeding 200 mm compacted thickness including promising in pug mil/plant well graded crushed stone aggregate with watering and spreading by mechanical means to required profile and compacting by vibratory roller of minimum 80-100 KN static weight to achieve desire density of 93% of MDD Including all materials, labours,</i>	30400	1250	Cum	38000000

	<i>machinery with all leads and lifts. Complete</i>				
5	<p><i>DRM: Providing and laying dense graded bituminous macadam of required thickness on prepared surface with specified graded crushed aggregates for base/binding course, premixed with bitumen of VG 30 Grade and 2% filler as cement of total weight of aggregate as per Job Mix Formula, transporting the hot mix to work site with VTS, laying with a hydrostatic paver finisher with sensor control to the required grade, level and alignment, compacting with vibratory roller having static weight 8 to 20 MT to achieve the desired compaction as per MORT&amp;H specification complete in all respect. Using 80-120</i></p> <p><i>IPH Batch type hot mix plant with SCADA, Sensor Paver, and intelligent Compactor with compaction analyser and VSAT attachment Excluding cost of tack coat)</i></p> <p><i>4) For grading II material (26.5 mm nominal size) for 50 to 75 mm thickness. Bitumen 4.50% Spec. No.: M.O.R.T.&amp; H. 2013. Section, No. 505 P. No. 174 With sensor paver finisher for grading II</i></p>	18200	8250	Cum	150150000
6	<p><i>BC-Providing and laying Bituminous Concrete of thickness 30 to 40 mm prepared surface with specified graded crushed stone aggregates premixed with Bitumen of VG 3D Grade and 2% filler as cement by total weight of aggregate as perm Job Mix. Including diversion of traffic heating bitumen and chips, mixing bitumen, chips and filler in drum mi plant, transporting the mix to the work site with VTS. laying with a hydrostatic paver finisher with sensor control to the required grade, level and alignment, compacting with vibratory roller having static weight 8 to 10 MT to achieve the desired compaction as per MORTEN specification complete in all respect Using 80-120 TPH Batch mix type hot mix plant with SCADA. Sensor Paver, Intelligent Compactor with compaction analyzer and VSAT attachment. (excluding cost of sack coat) (The rate is far Bitumen content @</i></p>	9120	9500	Cum	86540000

	5.4% by weight of total mix) Spec. No.: M.O.R.T.& H. 2013. Clause No. 507 P.No. 188				
7	DLC Construction of dry lean cement concrete Sub-base over a prepared sub-Brade with coarse and fine aggregate conforming to 15: 383, the size of coarse aggregate not exceeding 25 mm. aggregate cement ratio not to exceed 15:1, aggregate gradation after blending to be as per table 600-1. Cement content not to be less than 150 kg) cum, optimum moisture content to be determined during trial length construction, concrete strength not to be less than 10 Mpa at 7 days mixed in a batching plant, transported to site, laid with a paver with electronic sensor, compacting with 8-10 tones vibratory roller, finishing and curing	62000	3350	Cum	207700000
<i>Total Amount</i>					580102800
<i>12% GST Extra</i>					

**{Original copy submitted by the Assessee is not clearly legible and therefore typed copy is reproduced by in this order by emphasizing relevant part}**

**14.** However, it is a fact that the Assessee in spite of giving multiple opportunities by the AO, failed to file any contract agreement executed by Government with M/s. PCISL, any sub-contact by M/s. PCISL with the Assessee, any sub-contract executed by the Assessee with M/s. MBPCL, any other contract executed by M/s. MBPCL with other entities, bank statements highlighting the payments made to the M/s. MBPCL and any other document to substantiate its claim qua expenditure of Rs.60,41,53,300/- u/s 37 of the Act.

**15.** It is also a admitted fact that during the appellate proceedings before the Ld. Commissioner as well, even in spite of asking specifically and by giving proper opportunities of being heard by way of issuing notices dated 12.04.2023 and 07.06.2023 by the Ld.

Commissioner, the Assessee admittedly, except relying on work order, failed to file any documents such, contract awarded by the Govt. to M/s. PCISL which is genesis of everything in this case, sub-contract awarded/executed by M/s. PCISL in favour of Assessee which is also foundation of alleged claim qua expenditure lodged by the Assessee u/s 37 of the Act, sub-contract awarded/executed by Assessee in favour of M/s. MBPCL, bank statements highlighting the payments made to M/s. MBPCL and payments confirmations etc. and therefore, the Ld. Commissioner affirmed the aforesaid addition.

**16.** By considering aforesaid facts and circumstances, this Court for proper and just decision of the case, vide daily order dated **30-Oct-2024** and thereafter on **09-01-2024** and thereafter on **27-01-2025** { *peruse the respective orders for clarity* } specifically asked the Assessee to furnish the relevant and requisite documents pertaining to main contract and sub-contract, however the Assessee neither complied with the directions nor filed any document, even in spite of specific directions and orders by this Court and thus in the aforesaid peculiar facts and circumstances, this Court on dated 13-02-2025 considering the chronological events and facts, passed a specific order and proceeded with the case as ex-parte against the Assessee, by observing and holding as under:

**13-Feb-2025**

*Assessee represented by : None*

*Department represented by: Shri Laxmi Kant, Sr.AR.*

**Relevant chronological events of this case are as under:**

*This case was initially listed for hearing on 04.12.2023 and thereafter on 12.12.2023 and thereafter on 01.02.2024, however, the Assessee except seeking adjournments made no efforts to argue this appeal. Thereafter this case was listed for hearing on 15.02.2024. On the said date also, the Assessee*

*again sought for adjournment and therefore, one more time the case was adjourned to 26.03.2024 as last and final opportunity to the Assessee. On dated 26.03.2024, the Assessee did not appear but by filing a letter dated 26.03.2024 through email, again sought for the adjournment and, therefore, the Bench by noting the previous history of adjournments, adjourned the hearing to 10.06.2024, however, subject to payment of cost of Rs.5000/-, by passing the order dated 26.03.2024 which reads as under: -*

**26.03.2024**

*Assessee represented by : None  
Department represented by : Shri Ashok Kumar  
Ambastha- Sr.AR*

*“When these appeals were taken up for hearing, copy of letter dated 26-03-2024 seeking adjournment sent over e-mail was placed before us. As per the aforesaid letter the Ld. Authorized Representative for the appellant was filed up with the time barring assessment proceedings and was, therefore, unable to appear before the Tribunal or attend the hearing. On perusal of the order sheet we find that vide order dated 15-02-2024 last opportunity was granted to the appellant to pursue the appeals. Despite the aforesaid order, the Ld. Authorized Representative has made another request for seeking adjournment of hearing. Keeping in view the aforesaid facts, the hearing is adjourned to 10-06-2024 subject to payment to cost of INR 5,000/- to be deposited in the Prime Minister Relief Fund before the next date of hearing.*

*Sd/-  
RAHUL CHAUDHARY  
JUDICIAL MEMBER*

*Sd/-  
OM PRAKASH KANT  
ACCOUNTANT MEMBER*

*Thereafter the case was listed for hearing on 10.06.2024. On this date as well, the Assessee without depositing the cost, has again sought for adjournment. Somehow the Bench adjourned the case to 06.08.2024.*

**On 06.08.2024**, none appeared on behalf of the Assessee and therefore the Bench was constrained to adjourn the case to 9th

September, 2024. On 09.09.2024, the Assessee again sought for adjournment and consequently the bench adjourned the case to 23.10.2024.

On **23.10.2024** as well, the Assessee again sought for adjournment, which was allowed as last and final opportunity, however, subject to deposit of cost as directed by the bench on 26.03.2024.

Thereafter on **28.10.2024** the case was initially heard, however, on the verbal request of the Assessee for filing of certain documents in support of its claim, the hearing was adjourned to 30.10.2024.

On dated **30.10.2024** the case was extensively heard and the Ld. DR fled its submissions and the Assessee also filed some documents but not any pertaining to main contracts on the basis of which alleged sub contract was assigned by the Assessee, therefore, the bench in order to afford an opportunity and in the interest of substantial justice, was constrained to adjourn the case to 12.12.2024 at 2.30 PM with a direction to the Assessee to file the copy of main contracts/sub-contracts and all other relevant documents pertaining to sub-contracts, details for payment made/adjusted by the Assessee and ledger accounts of all the parties positively before the next date of hearing and with the advance copy to the ld. DR. Somehow on 12.12.2024, the bench did not function and, therefore, the case was adjourned to 09.01.2025 with intimation to both the parties.

On **09.01.2025**, none appeared on behalf of the Assessee, in spite of having knowledge about the date of hearing on 09.01.2025 and, therefore, the Bench adjourned the case to 27.01.2025 by directing the Assessee to comply with the order dated 30.10.2024 without any default and delay and to submit the documents as sought for by the bench within 15 days, while serving advance copy to the ld. DR. The Bench also clarified that in case of further default of the Assessee to comply with the orders dated 30.10.2024 and 09.01.2025, the bench would be constrained to draw adverse presumption and

*to decide the case without affording further opportunity to produce the documents.*

*On **27.01.2025**, the Assessee without complying with the order dated 09.01.2025 again sought for adjournment. Somehow the case was adjourned to 13.02.2025 as last and final opportunity with a direction that no further adjournment would be given. The date for filing the requisite document as ordered by the orders dated 30.10.2024 and 15.01.2025 was also extended upto 06.02.2025 but subject to deposit of a token cost of Rs.1100/-. It was also clarified that in case of further failure of the Assessee to file the requisite documents, the court would be constrained to draw adverse presumption under The Bharatiya Sakshya Adhinyam, 2023 and other relevant provisions of Law and without waiting further.*

*However, on **13.02.2025** the Assessee neither appeared nor made nor any compliance to the previous orders and by filling a letter, has again sought for adjournment on a ground that it wishes to engage another counsel to represent the case/appeal. The Revenue also requested for release of this case on the ground that the CIT-DR who argued the case would not be available being taken VRS w.e.f. 05.02.2025.*

*Admittedly, the case was argued initially on 28.10.2024 and extensively on 30.10.2024, on which date, the Ld. DR filed its written submissions dated 29.10.2024 and the Assessee also filed some documents but requested to afford one opportunity for filing of relevant documents pertaining to main contracts etc. and therefore in the interest of justice, the case was adjourned with a specific direction to the Assessee to file copy of main contracts/sub-contracts and all relevant documents pertaining to sub-contracts, details of payments made/adjusted by the Assessee and the ledger accounts of the parties, positively before the next date of hearing on 12.12.2024. But still, the Assessee made no compliance.*

*From the aforesaid orders/proceedings, the conduct of the Assessee is very much clear about its non-compliant attitude, as in spite of availing last and final opportunities, the Assessee on one or other pretext eventually made no-compliance and, therefore, considering the above peculiar facts and*

*circumstances in totality, we are constrained to proceed with the case against the Assessee, as ex-parte.*

*As both the parties have extensively argued the matter and submitted their respective submissions and thus no further hearing of the case is required, however in the interest of justice, the case is adjourned to 05.03.2025 at 2.30 PM, for ex-parte proceedings”.*

**17.** Thus on the aforesaid peculiar facts and circumstances, on dated 18-03-2025, the case was proceeded as ex-parte and the hearing of the case was closed and fixed for decision.

**18. We reiterate** that though, the Assessee has claimed that it has got sub-contract from M/s. PCISL, who was awarded main contract by the Government Department and therefore it has subsequently sub - contracted the said contract with its sister concern namely M/s. MBPCL who also subsequently further sub-contracted the said sub-contract, with other entities (*the Assessee has not disclosed any name*).

**19.** However, admittedly, the Assessee neither produced the main-contract awarded to M/s. PCISL which is genesis/foundation of everything in this case, nor established the terms and conditions “*as to whether M/s. PCISL has any power/authorization to make any sub-contract, such as made with the Assessee herein*”. Further, “*as to whether M/s. PCISL was empowered to execute further sub-contract and to authorize the sub-contractors to execute or delegate further sub-contracts*”. Admittedly, the Assessee has also failed to establish that for what purpose and what project and on which date and by which mode, main contract was awarded by the Government in favour of M/s. PCISL and/or the Assessee, on the basis of which it got executed the work from M/s MBPCL.

**20.** As section 104 of THE BHARATIYA SAKSHYA ADHINIYAM, 2023 **(in short "TBSA")** mandates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Further section 105 of TBSA, mandates that the burden of proof in a suit or proceeding lies on that person, who would fail if no evidence at all were given on either side. Further section 109 of TBSA mandates that when any fact is especially, within the knowledge of any person, the burden of proving that fact is upon him. And therefore, as per the facts mentioned above that the Assessee has failed to produce and prove the main-contact executed by Govt. in favour of PCISL, which is genesis of sub-contract executed by Assessee in favour of M/s MBPCL and sub-contract executed by Assessee in favour of Ms/ MBPCL and other relevant documents pertaining to such contracts, and therefore the claim of the Assessee is shrouded with various doubts, thus presumption against the assessee case is attracted.

**21.** Thus, we are in concurrence with the specific observation of the AO that contract agreement, is a crucial document as in such contract, huge risks and liabilities involved are narrated. Further, the Assessee though has relied on work order, however, the said work order does not provide details regarding actual execution of work and expenditures incurred on execution of such work. Further, though the Assessee has made the claim that M/s. MBPCL after getting sub-contract from the Assessee, gave sub-contract of the same work, to other party and consequently payment due on account of execution of sub-contract was directly adjusted, however, the Assessee did not submit any detail of sub contractors to carry out third party

verification, as well as did not provide any documentary evidence to substantiate its claim of adjustment of payments.

**22.** We are also in agreement with the observation/reasoning of the authorities below that simply deducing the TDS and charging the GST are not sufficient for claiming the huge business expenditure, without establishing its origin/genesis of the same.

**23.** We are also in concurrence with the reasoning given by the AO, in rejecting the claim of the Assessee, specific to the effect that on perusal of ITR of the relevant year of M/s. MBPCL, it is not possible to ascertain the receiving of such contract receipt from the Assessee, as M/s. MBPCL was involved in multiple projects and has received multiple receipts during the year under consideration. Admittedly, the expenditure claimed by the Assessee is a significant amount i.e. 86.60% of total revenue from operations of the Assessee during the AY under consideration, which could be a large extent responsible for low profit.

**24.** We reiterate again that from the work order, it appears that the same pertains to the period from **01.02.2018 to 31.03.2018** but not for the period pertain to **01-04-2017 to 31-03-2018** as applicable. In the work contract, nothing is mentioned as on what basis and by virtue of which contract/sub-contract, the work order has been given. Admittedly, the Assessee also failed to establish the key terms of sub contract, scope of work, payment schedule, work completion time limit and liability clauses, legally enforceable, as a contract. The designation, position and complete signatures of signatories, are not appearing which lacks the sanctity of work order. Further, the work order does not indicate that Assessee or M/s. MBPCL, was acting as-sub contractor on behalf of M/s. PCISL despite the latter being the

main-contractor and sister concern of the Assessee. Further, there is a discrepancy in the claimed amounts, as the work order specifies an amount of Rs.58,01,02,800/- while the claimed sub-contract amount in the Assessee's ledger (PB page no.12), is Rs.60,41,53,300/-. Further, the Assessee has not submitted reconciliation of final bills raised by M/s. MBPCL and a mere narration in the ledger account (PB page no.12) does not adequately support the authenticity of the transaction. Payments receipts from M/s. PCISL to the Assessee and corresponding payment made from Assessee to M/s. MBPCL, have also not been provided. The Assessee's financials as on 31.03.2018 (PB page no.2) reveals that sub-contract expenses as claimed by the Assessee constitute **93.96%** of total expenses and account for **89.49%** of the Revenue and therefore in the absence of substantial documentations in such a critical area, raises significant concerns regarding the genuineness of the transactions.

**25.** As observed above that in spite of affording various opportunities by the authorities below and by us as well, by passing various order {supra} and asking specifically and making specific directions, the Assessee neither complied with the notices/directions nor filed relevant and requisite documents and thus we have no hesitation to hold that the Assessee has substantially failed to establish basic foundation of its claim and therefore on the aforesaid peculiar facts and circumstances and analyzations and detailed and clear cut findings of the authorities below, we are of the considered view that both the authorities below have correctly passed the respective orders and therefore in the orders passed by the authorities below, specifically the impugned order which is under challenge before us there is no infirmity, impropriety and/or illegality and thus, the impugned order is liable to be affirmed by dismissing the appeal of the Assessee. Thus, the appeal of the Assessee is dismissed accordingly.

**26.** In the result, the appeal of the Assessee stands dismissed.

**Order pronounced in the open court on 02.06.2025.**

**Sd/-  
(RENU JAUHRI)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.