

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
(HYBRID HEARING)**

**I.T.A. Nos. 292 & 293/Asr/2024
Assessment Years: 2016-17 and 2017-18**

DCIT, Circle -1, Bathinda. (Appellant)	Vs.	DMR Builders Pvt. Ltd. Civil Lines Bathinda, Punjab. [PAN:-AABCD3380L] (Respondent)
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**C.O. Nos. 01 & 02/Asr/2025
(In I.T.A. Nos. 292 & 293/Asr/2024)
Assessment Years: 2016-17 and 2017-18**

DMR Builders Pvt. Ltd. Civil Lines Bathinda, Punjab. [PAN:-AABCD3380L] (Appellant)	Vs.	DCIT, Circle -1, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, and Sh. Parshotam K. Singla, Advs.
Respondent by	Smt. Vandana Vijay Mohite, CIT. DR

Date of Hearing	22.04.2025
Date of Pronouncement	16.06.2025

ORDER

Per: Udayan Dasgupta, J.M. :

The above appeals for both the assessment years 2016-17 and 2017-18, are filed by the revenue against the orders of the Ld. CIT (A), NFAC, passed u/s 250(6)

of the Act 61, (*henceforth the Act*), dated 23/04/2024 and 24/04/2024, respectively, which has emanated from the orders of the DCIT- Circle – 1, Bhatinda , passed u/s 143(3) rws 147 of the Act , both dated 30/12/2019, and the assessee has also filed cross objections (*in form 36A*) in respect of both the years against the orders of the Ld. first appellate authority.

2. Since the facts of the case and legal aspect of the matter are identical for both the years, the appeals and the cross appeals are taken up for hearing and disposed together for the sake of convenience.

Assessment Year: 2016-17 / ITA No: 292/ ASR / 2024:

3. The grounds of appeal taken by the department in Form 36 are as follows:

“1. *The Ld. CIT(A) has erred in holding notice issued u/s 148 of the Income-tax Act, 1961 as invalid and illegal by not appreciating the fact that the assessee could not produce the copy of Letter of Intent/ copy of sub-contract agreement (the most basic and vital document) in compliance to the enquiry letter issued u/s 133(6) of the Income-tax Act, 1961 at the time of the pre- reopening of assessment proceedings and as such the AO has reasons to believe that the income chargeable to tax has escaped assessment for the relevant assessment year and as such the notice issued u/s 148 of the Income-tax Act, 1961 is valid and legal.*

2. *The Ld. CIT(A) has erred in allowing appeal of the assessee by holding that no proper inquiry has been conducted by the AO by ignoring the fact that the AO has issued enquiry letter to the assessee*

but the assessee failed to furnish the most basic and vital document like sub-contract agreement,

3. *The Ld. CIT(A) has erred in allowing appeal of the assessee by holding that there is not a single evidence to form reasons to believe, ignoring the fact that the assessee could not produce the most basic and vital document like sub-contract agreement and as such the AO had reasons to believe that the income chargeable to tax has escaped assessment for the relevant assessment year and as such the notice issued u/s 148 of the Income-tax Act, 1961 is valid and legal.*

4. *The Ld. CIT(A) has erred in holding notice issued u/s 148 of the Income-tax Act, 1961 as invalid and illegal by not appreciating the Hon'ble Apex Court's judgement in Assistant Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 291ITR 500, in which the Hon'ble Apex Court in para 17, held that-*

“In other words, if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment.” Therefore, this reopening notice cannot be challenged. This for the reason that it will be open to the Assessee during reopened proceeding to establish that seeking to tax the additional income was not warranted.”

5. *The Ld. CIT(A) has erred in holding notice issued u/s 148 of the Income-tax Act, 1961 as invalid and illegal by not appreciating the Hon'ble Apex Court's judgement in Raymond Woollen Mills Ltd. v. ITO And Others ([1999] 236 ITR 34 (SC)/[1999] 152 CTR 418 (SC)) in which the Hon'ble Apex Court held that in determining whether commencement of reassessment proceedings was valid it has only to*

be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

6. *The Appellant craves leave to add, amend, alter, vary any or all the above grounds of appeal.*

7. *It is prayed that the order passed by the Ld. CIT(A) may be set aside and that of the AO may be restored.”*

4. The brief facts emerging from records are that the assessee company is engaged in the business of execution of contract and during the year under appeal (*relating to FY 2015-16*), the gross contract receipts as declared in audited accounts and income tax return was Rs. 51.26 crores out of which an amount of Rs. 6.69 crores (Rs. 6,69,57,561/-) being the amount of sub contract receipts, from one *M/s Dinesh Chandra R Aggarwal Infracon Private Limited (in short DRAIPL), Ahmedabad*, is the subject matter of dispute in this appeal.

4.1 Regular return filed by the assessee u/s 139(1) of the Act has been duly processed accepting the returned income at Rs. 1,66,22,770/- u/s 143(1) , and thereafter, on the basis of information received by the AO , Bhatinda, (*i.e. the AO of the assessee*) , from ACIT – Central circle – 2(1) , Ahmedabad, that a search conducted u/s 132 of the Act on *DRAIPL group* at Ahmedabad, revealed that payments made to various sub-contractors, by the said searched person, were dummy entities, who are either non-existent at given address, or simply existing

without any infrastructure to undertake any contract work, and includes such entities who has not filed their respective returns, and consequently, acting upon such information, the AO in the instant case, proceeded to conduct inquiries u/s 133(6) of the Act 61, calling for various details, particulars and explanations from the assessee, requiring the assessee to prove the genuineness and authenticity of the actual work executed and payments received, by the assessee as sub-contractor of *DRAIPL group, Ahmedabad*, relating to both the Asst years 2016-17 and 2017-18.

5. In response to notices u/s 133(6), replies and explanation has been furnished by the assessee, giving the details of the projects constructed by the assessee, located at (i) *New Chandigarh area, Mullanpur at SAS Nagar*, where there was construction of fly over and development of *Medicity junction on 200 ft wide road* and (ii) *Construction of ROB in lieu of level crossing on NH-64, Bhatinda, Punjab*, supported by copies of billed amount, ledger copy print out, bank statements containing reflection of payments received, amounting to Rs.6.69 crores (*pertaining to Asst year 2016-17*) and Rs. 23.09 crores (*pertaining to Asst year 2017-18*) along with the copy of the main contract awarded by the State Government authorities to the principal contractor *DRAIPL group, Ahmedabad*, with a declaration that the signed copy of the letter of intent with *DRAIPL* was not immediately available with the assessee, because the same is retained by the principal contractor, and is available

at Ahmedabad with the searched person , and the same will be produced at a later date soon.

5.1 Not being satisfied with the explanation of the assessee, the AO proceeded to initiate reassessment proceedings by issue of notice u/s 148 dated 29th March, 2019, the recorded reasons being as follows:

“4. The reply of the assessee has duly been considered. It is observed that the assessee has failed to file copy of any agreement with M/s Dineshchandra R Agrawal Infracon Pvt Ltd on the plea that it was retained by the contractee. The plea is not acceptable. Sub contract agreement is a vital legal document, which specifies rights and obligations of both the parties and it is legally enforceable in case of any dispute. By falling to produce a copy of such agreement, the assessee has admitted that in fact there was no agreement. In the absence of such agreement, it cannot be presumed that the assessee was awarded the work of sub contract. Further, no details of work performed by the assessee have been furnished in spite of the fact that it was required specifically to furnish the same vide letter Issued u/s 133(6) of the Act. Further, the fact that M/s Dineshchandra R Agrawal Infracon Pvt Ltd was engaged in booking bogus sub contract expenses has already been established. It is observed that the assessee has shown to have received an amount of Rs 5.71.37,870/- from M/s Dineshchandra R Agrawal Infracon Pvt Ltd during the financial year 201,5-16. However, in view of the facts stated above, I am of the opinion that the no sub contract work was performed by the,

assessee and It introduced Its own unaccounted money in the books of accounts in the garb of sub contract receipts. Hence, the amount of Rs 5,71,37,870/, represents unexplained credits in the books of accounts of the assessee, and its deemed income u/s 68, of the Act for the assessment year 2016-17.

5. In view of the above facts, I have reasons to believe that amounts of Rs. 5,71,37,870/-, which was chargeable to tax in the case of the assessee for the assessment year 2016-17 has escaped assessment within the meaning of section 147 of the Act. To assess this income and also any other income chargeable to tax which comes to my notice subsequently in the course of assessment proceedings under this section, a notice u/s 148 Is Issued for the A.Y. 2016-17.

(Arvind Bansal)

Dated: 29.03.2019

Dy. Commissioner of Income Tax,

Cirde-1, Bathinda

6. On receipt of recorded reasons the assessee raised objections to initiation of proceedings u/s 147 and submitted documentary evidences and explanations praying for dropping of reassessment proceedings, along with copies of letter of intent issued on 21st September, 2015 by DRAIPL group for the fly over construction and LOI dated 17th September, 2016, for the construction of ROB , cash flow summary for the period August 2015 to March 2017, depicting progressive month wise expenditure and receipts from DRAIPL group against work executed at the both the

projects, copies of first and last bills raised, supported by copies of measurement books of Government department (*diary of record of work done*) under signature of the Sub Divisional engineer Central works Sub Division (*PWD*) (*B & R*) Bhatinda , duly authenticated by Executive engineer, CWD, Bhatinda , and in respect of work executed at ROB (*Level Crossing C-184*) memorandum of payments certified by Superintendent Engineer , Ministry of Roads and Highways, Government of India, Chandigarh, further evidenced by photographs taken at site of work during various stages of construction, in the presence of principal contractor, and representative of Government departments on inspection, along with documents relating to transport and delivery of materials being evidenced by VAT – 12 declaration at check posts , thereby proving movement of goods and delivery of materials at site of work along with other documents and papers contained in the voluminous paper book of 126 pages .

7. (The objections to recorded reasons are reproduced for ready reference):

Reasons for Issuance of notice u/s 148 of the Income Tax Act, 1961

Return of Income for the assessment year 2016-17 was filed by the assessee on 16.10.2016 declaring an income of Rs. 1,66,22,771/-. The assessee is a civil contractor.

- As per Information received ACIT, Central Circle-2(1), Ahmadabad, a search u/s 132 of the Act was conducted at the premises of DRA group of Ahmadabad. During search and post search enquiries, it was revealed that M/s Dineshchandra & Agrawal infracon Pvt Ltd, a group company was engaged in generating unaccounted money by way of booking bogus sub contract expenses as well as by booking bogus purchase expenses for material. A detailed analysis of such bogus booking of sub contract expenses was undertaken, which revealed that many of the entities to whom sub-contractor payments were shown as paid were dummy entities, which were not existing at the given addresses or did not have infrastructure to undertake such sub contract work, it was further observed that many of such entities, to whom large sub contract payments*

were not made, had not, filed their returns, of income, Hence, it was concluded that M/s Dineshchandra R Agrawal Infracon Pvt Ltd, a group company, was engaged in generating unaccounted money by way of, booking bogus sub-contractor expenses as well as by booking bogus purchase expenses for material.

3. In view of the facts, enquiry letter, No 1465 dated 14.03.2019 was Issued to the assessee u/s 133(6) of the Act after, obtaining necessary approval from the competent authority and the assessee was required to explain details of work done on behalf of M/s Dineshchandra R Agrawal Infracon Pvt Ltd, copies of sub contract, agreements, details of site and certified copies of account for the relevant period. The assessee stated in its reply that M/s Dineshchandra R Agrawal Infracon Pvt Ltd was allotted work of flyover at SAS Nagar and ROB at Bathinda City by state government authorities. Regarding sub contract agreement, the assessee stated that it signed Letter of Intent with M/s Dineshchandra R Agrawal Infracon Pvt Ltd, but the same is not available with the assessee.
4. The reply of the assessee has duly been duly considered. It is observed that the assessee has failed to file copy of any agreement with M/s Dineshchandra R Agrawal Infracon Pvt Ltd on the plea that it was retained by the contractee. The plea is not acceptable. Sub contract agreement is a vital legal document, which specifies rights and obligations of both the parties and it is legally enforceable in case of any dispute. By falling to produce a copy of such agreement, the assessee has admitted that in fact there was no agreement in the absence of such agreement, it cannot be presumed that the assessee, was awarded the work of sub contract. Further, no details of work performed by the assessee have been furnished in spite of the fact that it was required specifically to furnish the same vide letter issued u/s 133(6) of the Act. Further, the fact that M/s Dineshchandra R Agrawal Infracon Pvt Ltd was engaged in booking bogus sub contract expenses has already been established. It is observed that the assessee has shown to have received an amount of Rs 5,71,37,870/- from M/s Dineshchandra R Agrawal Infracon Pvt Ltd during the financial year 2015-16. However, In view of the facts stated above, I am of the opinion that the no sub contract work was performed by the assessee and it introduced its own unaccounted money in the books of accounts in the garb of sub contract receipts. Hence, the amount of Rs. 5,71,37,870/- represents unexplained credits in the books of accounts of the assessee, and its deemed income u/s 68 of the Act for the assessment year 2016-17.
5. In view of the above facts, I have reasons to believe that amounts of Rs. 5,71,37,870/- , which was chargeable to tax in the case of the assessee for the assessment year 2016-17 has escaped assessment within the meaning of section 147 of the Act. To assess this Income and also any other Income chargeable to tax which comes to my notice subsequently in the course of assessment proceedings under this section, a notice u/s 148 is issued for the A.Y. 2016-17.

Dated: 29.03.2019

(Arvind Bansal)
Dy. Commissioner of Income Tax,
Circle-1, Bathinda

Dated 25.11.2019

To,

The Dy. Commissioner of Income Tax,
Circle-1, Bathinda

Subject: Objections to the reasons recorded u/s 147 of the Act for the AY 17-18 and AY 16-17 in the case of M/s DMR Builders Pvt. Ltd - regarding PAN: AABCD3380L

Sir,

With reference to the copy of reasons recorded and information received from ACIT-CC2(1), Ahmedabad dated 07.02.2019 in the above noted case, it is respectfully submitted as under:

1. *In the information received from ACIT, Ahmedabad, following three points have been raised, in general, for the sub-contractor of M/s Dineshchandra R Agarwal Pvt. Ltd. (DRA):*
 - 1.1 *That subcontractor does not exist or do not have infrastructure to provide the services to DRA*
 - 1.2 *That discrepancies in the payment made to these sub-contractors.*
 - 1.3 *That some of the sub-contractors have not filed its return.*
2. *In regards to the above point, it is submitted as under point-wise:*
 - 2.1 *That firstly, the assessee company (M/s DMR Builders) is very well in the existence since 2000 and regularly filing its return the Income Tax Department. Further, being regularly assessed with the department. Secondly, the assessee company has sufficient capability to perform such projects and during the relevant year the total turnover and disputed receipts were as under:*

Description	AY 17-18	AY 16-17
Total Turnover	113,26,87,578	51,61,66,134

<i>Disputed project receipts</i>	<i>23,09,45,661</i>	<i>6,69,57,561</i>
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From the above chart, it is clear that the assessee company has performed not just the contracts of DRA but has also performed the other contracts as well of significant value. These figures demonstrate the sufficient financial capability to undertake such projects.

2.2. In the reply submitted under section 133(6) of the Act, there is no irregularity in the payments made by the DRA to the assessee company. As per practice of the industry, the payments were received from the DRA after execution of the work and after the measurement taken by the Govt department.

2.2.1 In the support, copy of the cash flow summary starting from the month of August 2015 till March 2017 covering both the projects of DRA is enclosed herewith (Pg. no. 1). From this sheet, it is clear that the assessee company has incurred the expenditures at the first place and then the payments were received from DRA. Moreover, in the nut shell, net receipts from both the projects were merely Rs. 1,05,15,048/- only i.e. after meeting out the expenditures.

2.2.2 Further, in the support of work execution, copy of the first bill and last bill raised to the DRA along with copy of measurement book (Govt. department diary of record keeping of the work done) is enclosed herewith (Pg. no. 2 to 35).

2.2.3 Furthermore, in the support of work execution, copies of the photographs clicked at both the sites are enclosed herewith (Pg. no. 36 to 48). Hoardings in these pictures covering the name of DMR and Dineshchandra R Agarwal and pictures of DMR founder Sh. Darshan Kumar along with his sons and executives of Govt Departments make clearer that the assessee company has executed these projects.

2.2.4 Further also, in the support of work execution, copies of certain material expenditures are enclosed herewith (Pg. no. 49 to 70) wherein the copy of VAT 12 is enclosed reflecting the location of the goods to be delivered which is Bathinda (one project) and Mullanpur, Near Chandigarh (second project).

2.3 Third point is outrightly not applicable of non-filing of income tax returns

3. Now coming to the reasons recorded, it has been assumed that no work has been performed based on the following three points:

3.1 Sub contract agreement has not been furnished.

3.2 No detail of work performed by the assessee furnished even specially asked for.

3.3 It is already established that DRA is involved in booking of bogus sub contracts.

4. In regards to the above points, it is respectfully submitted as under:

4.1 It was requested then also that the agreement (letter of intent copy) currently is not available with the assessee company. At that time also, request was placed with DRA to provide copy of LOI covering the required information of margins and terms and conditions. Further, no second opportunity was provided to the assessee company to furnish the same. Therefore, making such belief is not valid and against the principles of natural justices specially when all other required information ie. details of project including location and scope of work, copies of the work allocation order from the Govt department was submitted.

4.2 This is misstated facts that the assessee company has not provided the detail of work performed whereas the information called for u/s 133(6) was duly furnished vide letter dated 25.03.2019.

4.3 Since the point no. 3.1 and 3.2 are address in the reply no. 4.1 and 4.2 and information received from ACIT Ahmedabad has duly replied in the point no. 2 above. Therefore, this point is not relevant to draw conclusion in context of assessee appellant.

In view of the above facts and circumstances of the case, it is requested that the proceedings so initiated under section 147/148 may kindly be dropped as there is no valid basis for conducting assessment and reasons u/s 147 of the Act.

This is submitted as required.

*Thanking you,
Yours faithfully,*

M/s DMR Builders Pvt. Ltd.

7.1 Subsequently, in course of assessment proceedings various notices were issued u/s 142(1) , raising various queries and replies to such queries were made by the assessee, necessary directions issued by Additional CIT u/s 144A were considered, and after elaborate discussion of all material facts, the AO arrived at a conclusion that the assessee company has never executed actual construction work

as sub-contractor, allotted to them by the principal contractor DRAIPL group, Ahmedabad, and the assessee has simply introduced its unaccounted money in its books of accounts under the head sub contract receipts and consequently the assessment was completed on a total income of Rs.10,06,72,420/- by taking recourse to section 145(3) of the Act 61 , with estimation of total income @ 8% on Gross receipts of Rs. 44.71 crores (*excluding the receipts of Rs. 6.69 crores from DRAIPL group*) and the disputed *sub contract receipt* of Rs. 6.69 crores has been separately added back u/s 68 of the Act 61.

7.2 The relevant paragraph of the order is reproduced for ready reference:

“5.1 It is pertinent to note that the Add. CIT directed me u/s 144A of the Act to completely examine all the details filed by the assessee to ascertain whether the assessee had actually done the work on behalf of contractee, to examine bills, vouchers especially purchases of steel, sand stone, cement should be verified in view of low profit at 3.14% shown by the assessee, to call for stock register site wise and to call for muster roll of each site to verify whether the assessee had actually done the work on behalf of the contractee. The directions are binding upon me and hence the assessee was again required to file the requisite details vide notice u/s 142(1) dated 27.12.2019 along with the information called for vide earlier notices issued u/s 142(1) of the Act from time to time. However, the assessee failed to file the requisite information/details/evidences.

5.2 *However, the assessee uploaded some more bills on 29.12.2019 i.e. only two days before the time limitation expires. The bills are relating to various sites and are neither site wise nor in a chronological order and hence cannot be cross verified with the copies of purchase accounts submitted by the assessee earlier nor can be cross verified from the vendors in such a short span of time. It is observed that the assessee was requested to furnish such information as early as on 06.08.2019 but the assessee chose to furnish the bills on 29.12.2019 when the lime limitation to complete the assessment proceedings is just to expire. Further, the other information as detailed above has still not been furnished by the assessee.*

5.3 *In view of the above facts, the books of accounts of the assessee do not reflect true state of affairs of the assessee and true profits of the assessee cannot be deduced from the books of accounts of the assessee. Hence, the books of accounts of the assessee are rejected as provided u/s 145(3) of the Act. Taxable income of the assessee is being worked out on the basis of material available on record.*

6. *The assessee has disclosed work done at two site at Chandigarh and Bathinda on behalf of DRA at Rs. 6,69,57,561/- during the year. However, the assesses failed to prove that the projects were sub contracted to it and the work was actually executed by it as discussed in details above. Hence, the amount of Rs. 6,69,57,561/- is held to be unexplained credit in the books of accounts of the assesses and its deemed income u/s 68 of the*

Act. Penalty proceedings u/s 271 (1)(c) of the Act for concealing particulars of income are simultaneously initiated.”

8. The matter was carried in appeal before the first appellate authority and the Ld. CIT (A), has considered all materials on record and has arrived at the conclusion that in absence of any material brought on record there is not even a single evidence to form reasons to believe before the reopening of the case, and has held the notice u/s 148 of the Act to be invalid.

8.1 The relevant portion of the Ld. CIT (A) order is reproduced for ready reference:

“The AO has also rejected the objections filed by the Appellant by stating that no relevant evidence has been placed on record. However, it is observed that the Appellant had vide its objections to the reasons recorded filed on 25-11-2019 furnished photographs showing execution of the work, bills signed by the representative of the Appellant on the bills of measurement prepared by DRAIPL and Countersigned by the Government Agencies and submitted to the Government. As per the Letter of Intent, the Salary of the representative of the Company looking after the work has to be given by the Appellant. The AO himself has admitted to the filing of such information at para 2.6 of page 9 and 10 of the assessment order.

In view of the above, it can be concluded that the Appellant has satisfactorily discharged its responsibility by providing all the necessary details as called for by the AO along with all

supporting evidences during enquiry u/s 133(6) and while-filing objection to the notice u/s 148. The mere fact that the copy of sub-contract agreement was not submitted cannot form the sole reason for reopening an assessment. Not only did the AO fail to provide another opportunity to the Appellant, he also did not exercise his authority u/s 133(6) to obtain the copy directly from DRAIPL. He also ignored all the other supporting documents provided in this respect as discussed supra. The information received from the ACIT, Central Circle-2(1), Ahmedabad itself is not that there is any escaped assessment but rather to make further inquiries in respect of Certain sub-contractors who are non-existent, not capable, not disclosed of payments received and not filing Returns of Income. The Appellant does not fall under any of these Categories and this was fully clarified by the Appellant at the enquiry stage itself. The case has been reopened merely on presumption and surmises by misstating the facts and without any material in the possession of the AO. No proper verification of facts on the file has been done by the AO. No proper inquiry has been conducted by the AO. Merely issuing 133(6) to the Appellant cannot be considered as conduct of enquiry. It is the application of mind which is more important Reason to suspect cannot override reason to believe and there is not even a single evidence to form reason to believe before the reopening of this case. In view of the above, the notice issued u/s 148 of the Act is invalid and illegal and the subsequent assessment framed in response to such notice is void ab initio. These grounds are allowed.”

9. Now, the revenue is in appeal before the tribunal on the grounds contained in the memorandum of appeal and all the grounds relates to a single issue regarding legal validity of the notice issued u/s 148 of the Act 61.

10. The Ld. DR relied on the arguments contained in the assessment order and submitted that the first appellate authority was not legally justified in holding the notice u/s 148 to be illegal and invalid because in course of inquiry u/s 133(6) , the assessee was not able to produce the *copies of letter of intent* issued by the principal contractor DRAIPL group, Ahmedabad, and has not been able to produce *any sub contract agreement* which should have been issued by the principal contractor to the assessee (*sub-contractor*).

11. The Ld. DR further relied upon the judgment of the *Hon'ble Apex court in the case of ACIT vs Rajesh Jhaveri Stock Brokers P Ltd 291 ITR 500* to submit that if the AO for whatever reasons has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment.

11.1 He further relied upon the *Hon'ble Apex court judgment in the case of Raymond Woollen Mills Limited vs ITO and others [1999]236 ITR 34 (SC)* and submitted that to determine whether reassessment proceedings was valid it has only to be seen whether there was *prima facie* some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

11.2 Relying on the aforesaid two decisions , and drawing our attention to the letter dated 7th February, 2019 (*received on 18th Feb 2019*) issued by the ACIT Central Circle, Ahmedabad, addressed to the DCIT- Bhatinda, the Ld. DR submitted, that in the instant case information has been received ,from Ahmedabad AO - office, regarding search operation conducted u/s 132 at the premises of the searched person, and seized materials indicates , booking of bogus expenses through bogus sub-contractors relating to bogus payments, made by the searched person to various parties and the assessee is one such party in the list, and since the assessee could not produce *the sub contract agreement or the LOI , in course of inquiry u/s 133(6)* by the AO , to prove the genuineness of the work executed , the AO has rightly arrived at a reason to believe that income has escaped assessment and was fully justified in initiating proceedings vide notice u/s 148 dated 29th March, 2019.

11.3 The Ld. DR concluded his arguments praying for upholding the legal validity of the notice issued u/s 148 of the Act and for restoration of the assessment order.

11.4 Before the Tribunal, the assessee has filed written submissions along with a paper book containing 171 (*One hundred seventy one*) pages consisting of audited accounts, audit report, copies of ITR for both the assessment years, inquiry letters issued u/s 133(6) and assessee replies, along with documentary evidences, including bills copies, measurement details, records of work execution diary, containing signature of various Government department officials, copies of recorded reasons,

notice u/s 148, assessee objections, copies of letter of intent, submissions filed before Ld. CIT(A) and various other documents connected with the case.

12. The Ld. AR of the assessee, at the very onset submitted that from the information received from ACIT- Circle, Ahmedabad and relied upon by the AO, three specific category of sub - contractors has been pointed out, and the assessee does not fall under any category at all.

He further explained that as per the information relied upon by the Assessing officer, which is placed at *(page 46-48 of the Paper book)*, the followings were the points regarding such sub-contractor which has come to fore:

Relevant part of assessee written submission (Reproduced)

a. *In the pre search investigation, it was found by the investigation wing that many of these entities either do not exist at the given address or do not have the infrastructure to provide service on such large scale for the infrastructure projects undertaken by Dineshchandra R Aggarwal Infracon Pvt Ltd.*

b. *There is a huge discrepancy in the payments made to these subcontractors by Dineshchandra R Aggarwal Infracon Pvt Ltd in various financial years and their ROI turnover of their respective assessment years.*

c. *Many of the subcontractors have not filed returns even though they have received huge payments from Dineshchandra R Aggarwal Infracon Pvt Ltd.*

Submission of the assessee on such information relied upon by the AO without any enquiry is being reproduced :

It is submitted before your goodself that, the information relied upon in the case of the assessee as per information letter dated 18.02.2019 does not commensurate with the facts placed on record before the AO and Ld. CIT(A) as per facts as follows:

a) *The assessee reputed company is engaged business of civil contractor since 20.08.2000 and the total turnover declared by the assessee in AY 2016-17 was of Rs. 51,61,66,134/- and in AY 2017-18 was of Rs. 113,26,87,578/-. Therefore, the existence of the assessee company cannot be doubted.*

b) *Details of payments made by the DRAI Group to assessee have been filed before the Ld. AO in response to the notice issued u/s 133(6) and the same was made through proper banking channels and even project wise copy of account of work done as a Sub-Contractor and also proper linkage of the payments received by the assessee is enclosed as (per page 125 to 126 of the PB) and no defects have been pointed out by the AO as well as CIT(A). Therefore, the allegation of discrepancy in payments is not proved.*

c) *The assessee company is regularly filing its return of income from past many years and for the year under consideration the assessee had declared income of Rs. 1,66,22,770/- for AY 2016-17 and amount of Rs. 6,00,82,031/- in AY 2017-18 and paid taxed accordingly. Therefore, the allegation of returns not being filed by the sub-contractors are not applicable on assessee.*

From perusal of above, your good-self will appreciate the fact the information relied upon by the assessee is not applicable on assessee, as per facts and evidences filed, placed on record and the Ld. CIT(A) had appreciated the above said facts.

Thus, allegation of accommodation entry in this case is not sustainable compared with the audited return.

6. *The findings given by the Ld. CIT(A) is as under: -*

<i>Issue against which findings given by Ld. CIT(A)</i>	<i>AY 2016-17 (relevant pages)</i>	<i>AY 2017-18(relevant pages)</i>
<i>Observation on information received from ACIT, Central circle-2(1) vide letter dated 07.02.2019</i>	<i>Page 24 para 3.10 below in the order of CIT(A) 24.04.2024</i>	<i>Page 20 para 3.10 below in the order of CIT(A) passed dated 24.04.2024</i>

Thus, it can be clearly said that in the order passed by the CIT(A) that “The AO did not provide a second opportunity to the appellant to produce the copy of agreement which was a gross violation of the principal of natural Justice specially when all other required information like details of projects including location, scope of work, copy of contract awarded by the Government authority to DRAIPL amount of Contract receipts received from DRAIPL Project-wise were furnished to the AO” in order and CIT(A) has rightly quashed the notice u/s 148.

7. *Also, it is submitted that, the Ld. AO had not placed any evidence on record to make case of valid reasons to believe for reopening in the*

case of the assessee, therefore the escapement of income , cannot be confirmed in anyway.

Thus, the addition made by Ld. AO was rightly deleted by the Worthy CIT(A) on legal issue, after considering the fact that no reasonable opportunity was given to assessee, and the case of the assessee was selected merely on the basis of suspicion without making adequate enquiry, therefore, it cannot be treated as valid reason to believe for reopening.

Moreover, the Worthy CIT(A) has accepted the fact that the sub-contract work performed by the assessee belongs to Government allocated project, and Officials of Government Authorities verify the fact of completion of project, then, make payments accordingly as per Work done and further, findings has been given about the work undertaken by the assessee as sub-contractor as per Page 25 of the order of CIT(A), which is being reproduced as under:

*“The AO did not provide a second opportunity to the appellant to produce the copy of agreement which was a gross violation of the principal of natural Justice specially when all other required information like details of projects including location, scope of work, copy of contract awarded by the Government authority to DRAIPL amount of Contract receipts received from DRAIPL Project-wise were furnished to the AO”
Thus, the Sub-contract work done by the assessee cannot be doubted.*

g. Copy of photograph clicked during execution of both the projects. (Placed at page 99-110)

h. Brief facts of the case for both the years AY 2016-17, 2017-18 filed before CIT (A) (Placed at page 169-171).”

12.1 Thereafter , the Ld. AR relied upon various decisions to submit that in the instant case there has not been any proper application of mind by the AO to materials and documentary evidences submitted by the assessee in response to notices issued u/s 133(6) of the Act , and brushing aside all relevant evidences , he proceeded to initiate proceedings u/s 148 , for absence of inconsequential documents , like absence of letter of intent in favour of the assessee , when the same could have been easily obtained from the searched person and for all practical purposes the same was a part of seized documents (*considering the fact that the assessee name has been incorporated in the list of sub-contractors*).

13. The judgments relied upon by the Ld. AR of the assessee in support of his arguments are as follows:

- i. ITO vs. Sunbarg Tradelink (P.) Ltd as reported in [2016]74 taxmann.com 16 (Gujarat HC)*
- ii. ITO vs. KMV Collegiate Sr. Sec. School as reported in [2017] 163 ITD 653 (Asr.)*
- iii. ITO vs. Sukhvir Singh as reported in [2024]165 taxmann.com 197 (Amritsar)*
- iv. Smt. Monika Rani vs ITO as reported in ITA no. 582/CHD/2019 (CHD.)*
- v. DCIT Tax vs. Fortune Metaliks Limited as reported in ITA No. 1090/CHD/2019 (CHD)*

vi. *ITO vs. Baba Kartar Singh Dukki Educational Trust as reported in (2016) 158 ITD 965 (CHD)*

vii. *DCIT vs. Kissan Fats Limited, Hazi Rattan Link Road, Bathinda as reported in ITA No. 407/CHD/2023 (CHD).*

14. As such the Ld. AR prays that the initiation of the proceedings by issue of notice u/s 148, itself is legally invalid because of absence of any materials before the AO regarding escaped income and the entire proceeding has been commenced on the basis of suspicion for carrying out further investigation and enquiries, which is not legally permissible and he prays that the order of the Ld. CIT (A) holding the notice u/s 148 as legally unsustainable, may please be upheld.

15. We have heard the rival submissions and considered the materials on record and the contents of the paper book filed before us. We find that the information has been passed on from the ACIT- Central circle, Ahmedabad, (which has been gathered in course of search u/s 132 from the premises of the principal contractor DRAIPL (DRA – Group) ,to the DCIT , Bhatinda (the AO of the assessee) regarding booking of *bogus sub contractors* leading to *bogus payments* , resulting in bogus expenditures (*or inflation of expenditure*) for the purpose of reducing taxable income. It was further informed that (i) some of the so called sub contractors do not exist at all, and even if existing do not have the infrastructure to provide services ,

(ii) there is huge discrepancy of payments made to these sub contractors by the principal contractor (*searched person*) in various financial years *vis a vis* their return of income, (iii) sub contractors might have not even filed their returns even after receiving huge payments.

On the face of these three specific information provided or forwarded by the ACIT – Circle, Ahmedabad, inquiries were conducted u/s 133(6) by the AO (*DCIT – Bhatinda*), where the assessee was found to be very much existing since the year 2000, engaged in the business of execution of contract and has been filing its return regularly. It has been further established that regular return has been filed in respect of the assessment years 2016-17 and also for the Asst year 2017-18, within due dates, along with audited accounts and TAR uploaded as per provisions of law, and it is also seen that the gross turnover for the Asst year 2016-17, and Asst year 2017-18, as disclosed by the assessee in regular returns and audited financials was **Rs. 51. 61 crores and Rs. 113.26 crores, respectively**, and the alleged figure relating to sub contract receipts from *DRAIPL (DRA – Group) Ahmedabad*, which is the subject matter of dispute in this case, is *only a meagre amount* of *Rs. 6.69 crores for Asst year 2016-17 and Rs.23.09 crores for Asst year 2017-18*, when compared to the whole. The sub contract receipts from *DRAIPL (DRA – Group)* are included in the whole and it proves beyond doubt the capacity and capability of the assessee, of having sufficient infrastructure and finance, of carrying out large scale work.

Regarding the issue of discrepancy in figures, as per intimation of AC - Central Circle, the figures for the Asst year 2016-17 was *Rs. 5.71 crores (against actual figures disclosed by assessee Rs. 6.69 crores)* and for Asst year 2017-18 informed figure was *Rs. 17.07 crores (against disclosed figure of Rs.23.09 crores)* .As such on this count also there is non application of mind of the AO , while recording of reasons post enquiry , when the entire facts of the case and actual figures were laid bare before him by the assessee (*supported by audited accounts*) in its reply to notice u/s 133(6) of the Act 61 and the third issue regarding non filing of the return by sub contractors (*as alleged in the information letter dated 07/02/2019*) does not arise in this case, because returns filed are all on record.

16. It is also observed by us that in spite of having the details of execution of contract work at both the projects , supported by copy of contract of the principal contractor being available , further supported by bill copies drawn by the assessee along with copies of bank statements and ledger accounts , where payments are reflected to have been received through bank channel after execution of work at site post measurement by Government authorities , the AO has disbelieved the very physical execution of the entire contract , on an irrelevant issue , for failure on the part of the assessee to produce the *letter of intent* , which the assessee has categorically submitted in their response to 133(6), that the same has been signed

and are retained by the principal contractor, then the same could have been easily obtained by the AO from the principal contractor .

17. In the instant case the main enquiry revolved around the question of actual physical execution of the contract work claimed to have been executed by the assessee (*as a sub contractor*) at the two projects, (i) *Mullahanpur Flyover and development of Medicity junction*, and (ii) *construction of ROB in lieu of Level Crossing No C 184 / NH – 64, Bhatinda*, which the assessee has been able to substantiate with elaborate documentary evidences, including evidences of measurements of actual work done at relevant site, signed by Executive Engineers of Public Works Department , apart from documentary evidences of VAT – 12 as proof of physical movement of raw materials at site and supporting photographs.

18. As such considering all factual aspect of the matter, we are in agreement with the opinion of the Ld. CIT (A), that in the instant case the AO has initiated the reassessment proceedings without any proper application of mind to the materials on record and without bringing any evidence on record and without any reason to believe that income has escaped assessment. The reasons recorded for issue of notice u/s 148, for reassessment, are based on mere suspicion flowing from assumption and presumptions , that actual execution of construction work has not been done by the assessee (*as sub-contractor*), without making any effort to disprove the elaborate documentary evidences produced by the assessee in response to notice u/s 133(6)

supported by all relevant materials and documentary evidences, included financials contained in regular returns filed, in support of execution of work. The AO has not even made any attempt to verify the genuineness or authenticity of the documentary evidences submitted by the assessee, neither from the Government authorities issuing the contract nor from the principal contractor.

18.1 Moreover, the reasons recorded by the AO are also based on factually incorrect figures of Gross Receipts received on intimation vis a vis disclosure in audited accounts, returns and bank statements (*already discussed in earlier paragraphs*) and as such relying on the decision of the coordinate bench in the case of *KMV Collegiate Senior Secondary School vs ITO [2017] 163/ ITD 653 (ASR)* and also on the decision in the case of *Sukhvir Singh vs ITO [2024] 165 taxmann.com197 (ASR)* we hold that there has been non application of mind by the AO to the facts and materials on record and since the reopening is based on factual errors the notice issued u/s 148 is legally not sustainable.

18.2 Moreover, there is nothing in the intimation forwarded by the ACIT – Central Circle, Ahmedabad, to suggest escapement of income, in fact the three parameters laid out in the letter was for causing an enquiry based on the parameters from different angles, and in the instant case the assessee has been found to be absolutely clear on all parameters from various angles, which has established actual execution of contract work.

19. As such we are also in agreement with the conclusion of the Ld. CIT (A) on this matter and we uphold the order of the Ld. first appellate authority.

20. In the result the appeal of the revenue is dismissed being devoid of merits.

Asst year : 2017-18 (ITA No : 293 / ASR / 2024)

21. The facts of this appeal filed by the revenue and the grounds contained in the memorandum in form 36 are identical and our observation in *ITA No: 292/ASR/2024*, for the Asst year 2016-17, are applicable *mutatis mutandis* to this appeal as well.

22. In the result the appeal of the revenue is dismissed being devoid of merits.

CO / 1 / ASR / 2025 Asst Year : 2016-17

And

CO / 2/ ASR / 2025 Asst Year : 2017-18

23. These two cross objections are filed by the assessee in form 36A, against the order of the Ld. CIT (A) NFAC dated 23/04/2024 and 24/04/2024, for the Asst years 2016-17 and 2017-18, respectively.

24. Grounds numbers 7 to 11 of the Memo of Cross Objections are on merits of the case and factual issues contained in the body of the assessment order. Since we have already decided on the legal aspect of the matter in favour of the assessee and held the reassessment notice u/s 148 to be null and void, we refrain from adjudication

on merits on factual issues, because the same is also not adjudicated upon by the Ld. first appellate authority.

25. The remaining grounds from 1 to 6, are legal grounds on section 148, which is by way of support to the decision of the first appellate authority, which we have upheld and these grounds needs no further adjudication.

26. The CO of the assessee for both the years are dismissed as infructuous.

Order pronounced on 16.06.2025 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

Sd/-

(MANOJ KUMAR AGGARWAL)
Accountant Member

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order