

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.232/Ind/2024
Assessment Year:2017-18

ACIT 4(1) Indore	<u>बनाम/</u> Vs.	Sushil Dutt Pandey, 01, Prop of Sushil Dutt Pandey, Khargone
(Revenue/Appellant)		(Assessee/Respondent)
PAN: APCPP4128D		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Venus Rawka & Ms. Eva Rawka, ARs	
Date of Hearing	08.07.2025	
Date of Pronouncement	21.07.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 22.01.2024 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 27.12.2019 passed by learned DCIT/ACIT, Khandwa ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the revenue has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-individual is engaged in the business of civil contractor. For AY 2017-18 under consideration, the assessee filed return of income on

31.10.2017 declaring a total income of Rs. 31,46,860/-. The case of assessee was selected for scrutiny under CASS and the AO issued notices u/s 143(2)/142(1) which were complied by assessee. Ultimately, the AO passed assessment-order after making an addition of Rs. 2,72,50,857/- on account of disallowance of deduction of payments to sub-contractors claimed by assessed. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) restricted/reduced disallowance to 5% of Rs. 2,72,50,857/-. Now, the revenue being aggrieved by order of CIT(A), has come in this appeal.

3. The grounds raised by revenue are as under:

"1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified to ignore the merits of the case and the fact that the contract payment to subcontractors as non-genuine in this case.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by A.O., The AO treated the contract payment of Rs. 2,72,50,857/- paid to sub-contractors as non-genuine."

4. We have heard learned Representatives of both sides at length and carefully perused the case record including the orders of lower-authorities.

5. At first, we re-produce the relevant portion of assessment-order passed by AO:

"4. In the contract account assessee has claimed Rs. 4,39,05,176/- on account of sub-contractor. The assessee was asked to submit the details of works done by sub-contractor and furnish the details TDS done and deposited in the Central Govt. a/c, regarding this assessee filed his submission and file a chart of sub-contractor's details. Perusal of the submission it is shown that the details of following subcontractor are seems to be bogus as under:-

S.No.	Name	PAN	Payment	TDS Amount
01.	Sunil Kumar	BKXPP1634F	7,67,677/-	7,677/-
02.	Shri Nath ji Avenues Pvt. Ltd.	AAUCS6303d	2,02,020/-	2,020/-
03	Sanjay Jain	ADFPJ3950L	5,20,202/-	5,202/-
04.	Praveen Gupta	AHOPP0401P	6,56,566/-	6,566/-
05.	Nashim Khan	AKBPK4746P	27,57,576/-	25,576/-
06.	Naresh Pal	ABPPP8620F	17,17,172/-	17,172/-

07.	Jayendra Pthak	BBBPP0473P	7,07,071/-	7,071/-
8.	Harish Julwane	BANPJ7621C	8,58,586/-	8,586/-
9.	Ezaz Ahmed	ABEPE3852B	5,05,051/-	5,051/-
10.	Shekhar Gole	AOPPG4466H	14,64,646/-	14,646/-
11.	Arun kumar Mishra	AUXPM2586N	44,74,753/-	44,747/-
12.	Anand Pratap Singh	BMQPS5761M	55,47,842/-	55,478/-
13.	Akhilesh Shukla	ECKPS3144H	16,66,666/-	16,666/-
14.	Arti	BKZPP1708C	54,05,050/-	54,050/-
Total				Rs. 2,72,50,857/-

5. Further the assessee was specifically asked by questionnaire dated 14.12.2019 to the details of sub contract with name & postal address, amount of sub contract given to them, details of work done by sub-contractors, copy of contract agreement with both side of stamp paper, with date of purchase and purpose of purchase of stamp paper, ledger copy of sub-contractors and copy of bank statement of sub-contractors in which bank account of subcontractor, payment of subcontract received in F.Y. 2016-17, but assessee has not field these details. Therefore, the contract payment debited in their name is not genuine. The assessee has failed to substantiate the aforesaid sub-contract expenses. Therefore, the same are held to be non-genuine. However, the genuineness of sub-contract expenses is not proved. Accordingly, the sub-contract work expenses in respect of aforesaid persons amounting to Rs. 2,72,50,857/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s 270A is hereby initiated for under reporting income.

(Addition Rs. 2,72,50,857/-)"

6. Now, we re-produce the relevant portion of impugned order of first-appeal passed by CIT(A):

"7.7 On perusal of the submissions made by the appellant, it is observed that for the purpose of carrying out the construction works, the appellant has engaged several sub-contractors. It is not a matter of dispute that the income earned from such activities has been subject to tax in the hands of the appellant. It is noted from the appellant's Contract Account and P&L Account, that the appellant has declared a Contract receipt of Rs. 8.31 Crores and claimed Sub-contractor expenses of Rs. 4.39 Crores and declared gross profit of Rs. 54,32,445/- and offered Rs. 32,92,030/- as net profit from the head "Profits/Gains from business. Also, it is observed that the AO in the assessment order did not dispute the appellant's business but only the sub-contractor expenses. Therefore, it clearly demonstrates that there were construction works executed by the appellant during the year under consideration. Furthermore, the appellant also had furnished the details of impugned sub-contractor's expenditure incurred for AY 2016-17 & 2017-18. It is noted that the some of the impugned sub-contractors were already working with the appellant and executed the sub-contract works in the previous AYs also. The copy of impugned sub-contractor's expenditure incurred for AY 2016-17 & 2017-18 is extracted below for ready reference.

Copy of Sub-Contractors Chart for AY 2016-17 & 2017-18:

Annexure-1

sub contractor Chart in A.Y. 2016-17 to 2017-18						
S.No	Name	Pan No	Sub-Contractor (A.Y. 2016-17)		Sub-Contractor (A.Y. 2017-18)	
			AMOUNT(16-17)	TDS	AMOUNT (17-18)	TDS
1	Sunil Kumar Pandey	BKXPP1634F	14920000	149200	767677	7677
2	Shri Nath ji Avenues Pvt.Ltd.	AAUCS6303D			202020	2020
3	Sanjay Jain	ADFPJ3950L			520202	5202
4	Praveen Gupta	CHOPP0401P			656566	6566
5	Nashim Khan	FKBPK4746P			2757576	25576
6	Naresh Pal	ABPPP8620F	900000	9000	1717172	17172
7	Jayendra Pthak	BBBPP0473P			707071	7071
8	Harish Julwane	BANPJ7621C	750000	15000	858586	8586
9	Ezaz Ahmed	ABEPE3852B			505051	5051
10	Shekhar Gole	AOPPG4466H			1464646	14646
11	Arun kumar Mishra	AUXPM2586N	3840000	38400	4474753	44747
12	Anand Pratap Singh	BMQPS5761M			5547842	55478
13	Akhilesh Shukla	ECKPS3144H	16055000	160550	1666666	16666
14	Arti Pandey	BKZPP1708C	28710000	287100	5405050	54050
Total			65175000	659250	27250878	270508

7.8 Further, the audit reports & ITRs filed by the appellant were examined and it was noted that the appellant has incurred Sub-contractor expenses during the course of business. In this regard, the appellant has submitted 5 year comparative chart of sub-contractor expenses incurred by him in the course of business and its ratio to the total turnover. The same is extracted below for ready reference.

Ratio of Sub-contractor expenses to total turnover for the previous 5 years:

S.No.	A.Y.Year	Turnover	Sub-contractor exp	Ratio
1.	2013-14	294686441	182276213	61.85%
2.	2014-15	310317285	193431006	62.33%
3.	2015-16	345114773	210287315	60.93%
4.	2016-17	303397662	152428000	50.24%
5.	2017-18	83143068	43905176	52.81%

7.9 Moreover, when the details of the sub-contractors like PAN, address etc. are already available on record, the AO ought to have conducted further enquiries to verify the genuineness of the sub-contractor expenses claimed by the appellant. However, the AO did not issue any notices u/s.133(6) of the

Act to the parties, instead the AO chose to disallow the whole of sub-contractor expenses claimed by the appellant.

7.10 Be that as it may, even if we go by the reasoning of the AO that the subcontractors are non-genuine, the fact remains that in respect of such expenditure, TDS was affected. By no stretch of imagination could it be said that no construction work was done to earn the income. Natural inference is that for earning such expenditure by constructions works, inevitably the appellant must have incurred some sub-contractor expenses. Further, it was also not possible for the appellant to carry out such contract works without engaging sub-contractors to carry out the same and thus, the expenditure cannot be denied in toto.

7.11 Moreover, during the year under consideration, the appellant had calculated net profit at 3.96 per cent of the total contract receipts received. Further, in case all the sub-contracting expenses were held to be non-genuine i.e., if the addition made by the AO is sustained, the GP rate of the appellant would inflate to 39.3%, which is quite abnormal, considering the appellant's past history and also the line of business the appellant is engaged in.

7.12 While the fact regarding revenue being declared from the work carried out through the engagement of sub-contractors is a strong factor which proves the genuineness of the expenditure, if the disallowance of huge expenditure towards such sub-contract payment is made, the same will result into distorted picture of Gross and net profit which is unrealistic and impossible in the line of the business of construction works in which the appellant is engaged in. And in any case, the AO has erred in disallowing the entire sub-contractors' expenses without which the work could not have been completed and income could not have been earned.

7.13 At the same time, it is to be noted that even during the course of appellate proceedings the appellant could only furnish partial information/documentary evidences of what is sought i.e., the details of sub-contracts with name & postal address, amount of sub-contract given to them, details of work done by sub-contractors, copy of contract agreement, ledger copy of sub-contractors and copy of bank statement of sub-contractors etc.

7.14 Under the circumstances, the only question that could have legitimately been raised by the AO should have been about the quantum of such expenditure but not doubting the entire expenditure, so as to disallow the same. Moreover, it would not be justifiable to disallow the entire sub-contracting expenses when the corresponding income has been subject to tax in the hands of the appellant.

7.15 In this respect, it would be useful & relevant to glance through the assessment orders of previous AYs 2012-13, 2013-14, 2014-15 passed by the department in the case of the appellant to understand the nature of work and expenses involved in the course of business the appellant is engaged in. The comparative details of additions made by the Assessing Officers in the respective AYs are tabulated below for ready reference.

	AY 2012-13	AY 2013-14	AY 2014-15
Disallowance u/s.40A(3) of the Act	Rs. 5,00,000/-	Rs. 6,00,000/-	Rs. 5,00,000/-
Source of House hold expenses	Rs. 1,00,000/-	Rs. 2,00,000/-	Rs. 2,00,000/-
Interest income	Rs. 61,077/-	--	Rs. 44,066/-

7.16 Furthermore, the appellant has also submitted a 5 year comparative chart of the details of gross profit ratio and net profit ratio declared by him. The same is extracted below ready reference.

Copy of GP & NP in previous five years:

Annexure-2

G.P. And N.P. in previous 5 A.Y.						
S.No	A.Y.	Turnover	G.P.	Ratio	N.P.	Ratio
1	2012-13	116174532	9854662	8.48	3954291	3.40
2	2013-14	294686441	30954701	10.50	19684121	6.68
3	2014-15	310317285	33005109	10.64	20149378	6.49
4	2015-16	345114773	31169334	9.03	17324764	5.02
5	2016-17	303397662	20178496	6.65	14954892	4.93
6	2017-18	83143068	5432445	6.53	3292030	3.96

7.17 On perusal of the above facts and circumstances, I find force in the contentions of the appellant and it is pertinent to note that there can be no sales or revenue from the work unless there is engagement of labour for such work and in the instant case, the income from the appellant's business itself has not been doubted, then the entire sub-contracting expenses cannot be disallowed for the simple reason that it would not have been possible for the appellant to carry out the work in absence of the necessary work being sub-contracted, which facilitated the earning of income.

7.18 Therefore, considering the observations made by the AO in assessment order regarding the nature of sub-contracting expenses and considering the totality of the facts and legal position emerging from the judicial pronouncement cited by the appellant and as discussed above, I see no

*justification on the part of the AO to make disallowance of Rs. 2,72,50,857/- being expenses in respect of payment to sub-contractors. Accordingly, keeping into consideration the profit offered to tax by the appellant, previous assessment orders & having regard to nature of expenditure and line of business of the appellant and to avoid any possibility of revenue leakage, I am of the considered opinion that it is reasonable to estimate the disallowance at 5 per cent of above alleged bogus sub-contracting expenses of Rs. 2,72,50,857/-. The AO is directed to recompute the total income accordingly. **Hence, the grounds of appeal no. 1, 2 & 3 are partly allowed.**"*

7. On perusal of above orders of lower-authorities, we find that the AO has, vide Para No. 5 of assessment-order, made 100% disallowance of expenditure treating the same as "non-genuine" because the assessee did not file the details/documents required by AO such as name & postal address of sub-contractors, details of work done by them, copies of contracts/agreements, ledgers a/cs of sub-contractors, bank statements, etc. to substantiate the genuineness of expenditure. The CIT(A) has also noted in Para 7.13 of impugned order that during appellate proceeding the assessee could only furnish partial information/documentary evidences of what was sought. Thereafter, in next Para 7.14, the CIT(A) has observed thus:

*7.14 **Under the circumstances**, the only question that could have legitimately been raised by the AO should have been about the quantum of such expenditure but not doubting the entire expenditure, so as to disallow the same. Moreover, it would not be justifiable to disallow the entire sub-contracting expenses when the corresponding income has been subject to tax in the hands of the appellant.*

[emphasis supplied]

And thereafter, in subsequent Paras 7.15 onwards, the CIT(A) has taken into account past assessments of assessee and preceding five years' comparison

of gross profit and net profit declared by assessee. Ultimately, the CIT(A) has concluded that the assessee could not generate revenue from contractorship work without engagement of labour/sub-contractors and therefore the expenditure on sub-contractorship cannot be disallowed in entirety. Finally, the CIT(A) has restricted/reduced disallowance from 100% to 5%.

8. During hearing before us, the order passed by CIT(A) was deliberated by both sides whereupon two vital infirmities have emerged in the adjudication made by CIT(A):

- (i) Ld. AR has filed two Paper-Books. Paper-Book-1 consists of 194 pages (with revised index filed subsequently at the instruction of Bench) and Paper-Book-2 consists of 99 pages. All 194 pages placed in Paper-Book-1 are claimed to have been filed before CIT(A). Further, the pages 82 to 93 of Paper-Book-2 are also claimed to have been filed before CIT(A). Ld. AR referred some of these pages to demonstrate that these papers are contemporary documents related to the payments made to sub-contractors. These documents are in the form of Ledger A/cs, Photocopies of cheques through which payments were made, Work-Orders (i.e. contracts/agreements) entered with sub-contractors, Bills of sub-contractors, etc. Ld. AR also referred the replies filed by assessee to CIT(A), copies at Pages 44-65, through which these documents are claimed to have been filed before CIT(A). Hence, the adverse finding made by CIT(A) in Para 7.13 that the assessee

furnished partial information/documentary evidences is, Ld. AR submitted, not correct. When it is so, the entire adjudication made by CIT(A) in subsequent paras, which hinges on the basis that the assessee has not filed complete documents, is also not proper.

- (ii) Ultimately, the CIT(A) has concluded to restrict/reduce disallowance to a nominal 5% of the entire amount. However, in his order, the CIT(A) has not mentioned any rationale whatsoever for adopting the quantum of "5%".

9. Therefore, finding above infirmities in the adjudication made by CIT(A), we are inclined to remand this matter back to the file of CIT(A) for adjudication afresh. Needless to mention that the CIT(A) shall give necessary opportunities to assessee and pass an appropriate order after considering the details/documents already submitted by assessee as well as any other detail/document as the assessee may choose to file. In doing so, the CIT(A) may also seek remand-report from AO as he may think fit in accordance with law.

10. We also make it clear that the CIT(A) shall pass a fair and judicious order afresh without being influenced by his earlier order in any manner and the outcome of such fresh adjudication may lead anywhere, be it deleting the disallowance partly or fully.

11. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 21/07/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 21/07/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore