

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos. 310 & 311/Bang/2025
Assessment Year : 2017-18 & 2018-19

Shri Chokkanahalli Gundappa Chandrappa No.4 AC-402, CGC Complex Kammanahalli Main Road Bangalore 560 043 PAN NO :ACBPC1500A	Vs.	DCIT Central Circle 1(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Sandeep C., A.R.
Respondent by	:	Sri N. Balusamy, D.R.

Date of Hearing	:	11.08.2025
Date of Pronouncement	:	07.11.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of the assessee are directed against the consolidated order of the Id. CIT(A)-11, Bengaluru dated 27.12.2024 vide DIN & Order No.ITBA/APL/M/250/2024-25/1071618895(1) for the assessment year 2017-18 and vide DIN & Order No.ITBA/APL/M/250/2024-25/1071618990(1) for the assessment year 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

Since the facts of the case as well as the issue in both these appeals are identical except change in figures and both arises out of the survey conducted in the business premises of the assessee on 27/02/2019, these are clubbed together, heard together & disposed of by this common order for the sake of convenience & brevity.

2. The assessee has raised the following grounds of appeal in ITA No.310/Bang/2025 for the Assessment year 2017-18:-

1. That the order of the learned lower authorities in so far it is prejudicial to the interests of the appellant, is bad and erroneous to the facts and circumstances of the case.
2. That the learned lower authorities erred in law and facts in not considering the revised reply filed on 04.04.2019 for the statements recorded during the survey proceedings u/s 133A of the Act.
3. That the learned lower authorities of Income tax erred in law in dismissing the consideration of revised reply in the predetermined manner without bringing any valid materials on record.
4. That the learned lower authorities erred in law and on facts in making an addition of Rs.4,65,00,000/- u/s 37 of the Act.
5. That the learned lower authorities erred in law and on facts by making the disallowance of Rs.4,65,00,000 u/s. 37 of the Act, stating no evidence were produced, even though bank statements, ledger extracts, and TDS certificates were provided during the course of assessment proceedings.
6. That the learned lower authorities failed to appreciate the facts that business of contracting involves huge labour expenses which was the main reason for cash withdrawals in sub-contractors account.

7. That the learned lower authorities erred in law and on facts in making a disallowance u/s 37 merely on the presumption that employees cannot be sub-contractors as well.
8. That the Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the order of learned Assessing Officer merely on a mechanical satisfaction without any material evidence.
9. That the learned lower authorities erred in law and on facts in making a disallowance merely based on the original statements given by the parties even though such statement have been retracted by the parties. Also, no incriminating material were found during the course of survey.
10. That the learned assessing officer erred in law in making a disallowance of Rs.4,65,00,000/- even though the proposed disallowance of sub-contractors expense in the show-cause notice was only Rs.4,60,35,000/-.
11. Without prejudice to the above grounds, the learned lower authorities ought to have appreciated the nature of business of the appellant and estimated the profits based on past year records instead of disallowing major portion of sub-contractor expenses resulting to huge profit which can never be earned in appellant's business.

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.

3. The assessee has raised the following grounds of appeal in ITA No.311/Bang/2025 for the Assessment year 2018-19:-

1. That the order of the learned lower authorities in so far it is prejudicial to the interests of the appellant, is bad and erroneous to the facts and circumstances of the case.
2. That the learned lower authorities erred in law and facts in not considering the revised reply filed on 04.04.2019 for the statements recorded during the survey proceedings u/s 133A of the Act.
3. That the learned lower authorities of Income tax erred in law in dismissing the consideration of revised reply in the predetermined manner without bringing any valid materials on record.
4. That the learned lower authorities erred in law and on facts in making an addition of Rs.1,94,62,591/- u/s 37 of the Act.
5. That the learned lower authorities erred in law and on facts by making the disallowance of Rs.1,94,62,591/- u/s. 37 of the Act, stating no evidence were produced, even though bank statements, ledger extracts, and TDS certificates were provided during the course of assessment proceedings.
6. That the learned lower authorities failed to appreciate the facts that business of contracting involves huge labour expenses which was the main reason for cash withdrawals in sub-contractors account.

7. That the learned lower authorities erred in law and on facts in making a disallowance u/s 37 merely on the presumption that employees cannot be sub-contractors as well.
8. That the Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the order of learned Assessing Officer merely on a mechanical satisfaction without any material evidence.
9. That the learned lower authorities erred in law and on facts in making a disallowance merely based on the original statements given by the parties even though such statement have been retracted by the parties. Also, no incriminating material were found during the course of survey.
10. Without prejudice to the above grounds, the learned lower authorities ought to have appreciated the nature of business of the appellant and estimated the profits based on past year records instead of disallowing major portion of sub-contractor expenses resulting to huge profit which can never be earned in appellant's business.

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.

4. The brief facts of the case are that the assessee being an individual is a civil contractor for BBMP and undertakes the construction of roads, minor irrigation projects and other works for the Government of Karnataka. The assessee filed his return of income for assessment of 2017-18 on 29.10.2017 by declaring total income of Rs. 3,64,16,090/-. Subsequently, the case was taken up for complete scrutiny under CASS and accordingly notices u/s 143(2) as well as 142(1) of the Act were issued. The assessee filed the submissions through e-proceedings facility & the same had been examined by the AO.

Similarly, for assessment year 2018-19, the assessee filed his return of income on 18.10.2018 by declaring total income of Rs. 3,70,72,170/-. The case was selected for scrutiny and accordingly notices u/s 143(2) as well as 142(1) of the Act was issued from time to time. The assessee filed the submissions through e-proceedings facility & the same had been examined by the AO.

4.1 It was noticed by the AO that the assessee had incurred an expenditure of Rs.17,82,73,363/- towards the sub-contract payments for the A.Y.2017-18. In the meantime a survey was conducted in the business premises of the assessee under section 133A of the Act on **27.02.2019** i.e. during the course of assessment proceedings for the assessment year 2017-18. During the course of survey, the assessee was asked to furnish the documentary evidences with respect to the work done by the sub-contractors along with Bills/Vouchers raised & proof of payment done towards the sub-contractors. The assessee submitted the list of sub-contractors along with the PAN. Upon verification, it was found that the sub-contractors included employees and relatives of the assessee. The details of the persons who were claimed to be sub-contractors but were employees of the assessee are-

Name of the parties	AY 2017-18	AY 2018-19
Jayanth Kumar	75,50,000/-	27,11,600/-
Mahantesh Walikar	74,50,000/-	29,49,173/-
Naganath	73,00,000/-	38,19,896/-
Ramesh S	85,50,000/-	35,18,218/-
Ranganathan	75,00,000/-	26,51,420/-
Saravanan K	81,50,000/-	38,12,284/-
Total	4,65,00,000/-	1,94,62,591

4.2 During the course of survey proceedings, the revenue found a register titled “Workers and Drivers payment book” as well as the ledger extracts. The statements of Shri. Ramesh S & Shri. Manjunath were recorded. The statement of the assessee was also recorded on 01.03.2019 which was done post survey as the assessee was not present in town at the time of survey proceedings. The statements of the assessee, Shri. Ramesh S and Shri. Manjunath were claimed to be received by the assessee on 30.03.2019 and certain errors were noticed by the above parties caused due to pressure & stress during the survey proceedings.

Therefore, the assessee along with the other two persons immediately filed the revised replies on **04.04.2019** by retracting their earlier statements.

4.3 During the course of assessment proceedings, the assessee also filed affidavits by sub-contractors who stated that they performed sub-contracting work. The bank statements of all the people claiming to be sub-contractors were also provided. The assessee was issued a show cause notice on 28/11/2019 asking him as to why the payments of Rs.4,60,35,000/- should not be disallowed as they were made to employees. In response to the same, the assessee replied stating that he has deducted TDS on all the payments made to the sub-contractors, however no documentary evidences such as agreements, bills and vouchers, invoices were furnished in order to substantiate the genuineness of the transaction.

4.4 In order to verify the claims of the assessee, summons was issued U/s 131 of the Act to two persons from the list of sub-contractors namely Shri Jayanth Kumar and Shri Ranganathan S. In response of the summons issued, only Shri Jayanth Kumar appeared and his statement was recorded on 13/12/2019. In response to details of business/profession carried on, he stated to be a labour contractor and provide labours in construction business. He stated to be in business since 2014-15 & get labours from Andhra Pradesh and Tamil Nadu and provides manpower as per the requirement of the contractors. He also admitted to have provided labours to the assessee for civil works, Roads, drainages, GSB, WMM etc.

Summons were also issued to Shri B. Nagraj u/s 131 of the Act. The AO noted that he also performs sub-contracting work for

the assessee and has been regular filer of Income tax returns. Shri B. Nagraj is also a labour contractor who pays the labour in cash.

4.5 Thus, the AO relied on the following grounds to prove that the transaction is not genuine-

- Lack of documentary evidences such as quotations, agreements, bills, vouchers.
- The evidence found in the premises such as the employees register where the names of the persons in question are found.
- The statements recorded of the employee, son-in law and the assessee himself where they stated that persons in question are only employees.
- Statement recorded of one of the persons in question during the scrutiny proceedings, where he states that he does not remember any work done at all.
- The bank statements of all the persons in question, where the pattern of withdrawals is similar. The statement of Shri Ramesh S is referred here, where he states that he withdraws the money & gives it back to the assessee.
- Circumstances where, these persons in question have filed returns only in AY 2018-19 and not before that even after having taxable income.

The AO also considers that mere deduction of TDS cannot be a ground to claim that the expenditure incurred is genuine in the absence of any other supporting documentary evidences.

4.6 Further, during the course of the scrutiny proceedings, the assessee through the letter dated 25/12/2019 had requested the directions of the Additional Commissioner of Income Tax, Range-1(2), Bengaluru u/s 144A of the Act in his own case. The Additional Commissioner of Income Tax, Range-1(2) had issued a show cause

notice to the assessee asking him to explain as to why the sub-contract payments made to employees should not be disallowed. The assessee filed the reply on 27/12/2019. After considering the reply of the assessee, the Additional Commissioner of Income Tax, Range-1(2) by relying on the case laws had held that the retraction filed by the assessee on 04/04/2019 is to be ignored and directed to add Rs.4,65,00,000/- u/s 37 of the Act treating the same as not incurred for the business purpose of the assessee. The assessee had failed to substantiate the purpose for which these expenses were incurred by him. Hence, directed the AO to disallow u/s 37 of the Act as the same had not been incurred wholly and exclusively for the purpose of business of the assessee.

4.7 The AO based on the directions given u/s 144A of the Act disallowed the expenditure of Rs. 4,65,00,000 and Rs. 1,94,62,591 for assessment 2017-18 and 2018-19 respectively and concluded the assessment proceedings by passing the Order u/s 143(3) of the Act.

5. Aggrieved by the order of the AO passed u/s 143(3) of the Act, the assessee preferred an appeal before the Id. CIT(A).

6. The Id. CIT(A)-11, Bengaluru dismissed the appeal of the assessee by holding that the persons who were claimed to be sub-contractors were employees of the assessee and the assessee during both the assessment and Appellate proceedings did not controvert the same by providing any evidence to the contrary. Thus the Id. CIT(A) also confirms all the findings of the AO in the assessment order & dismiss the appeal for both the assessment years.

7. Again, being aggrieved by the order of Id. CIT(A)-11, Bengaluru the assessee has filed the present appeals before this

Tribunal. The assessee has also filed 2 paper books for both the assessment years 2017-18 and 2018-19 along with the case laws compilation in support of his case. In addition to the above, the assessee has also filed the payment registers containing the details of the labour employed in the projects handled by the above 6 parties in different sites which were also found during the survey proceedings.

8. Before us, the ld. AR of the assessee vehemently submitted that both the Authorities below completely misunderstood the statements of Shri Ramesh, Shri Manjunath and the assessee recorded during survey proceedings. The AR of the assessee submitted that Shri Ramesh S is a worker and not an employee. The book found during the survey proceedings is also named or titled as “Workers and Drivers register”. However, during the recording of statement, it was mentioned as employees which the parties did not intended to. Due to the confusion in the nomenclature, the revenue authorities misunderstood those workers as employees. Further Shri. Manjunath also confirmed that other 5 parties are also workers and this was interpreted as employees by the revenue authorities. Apart from the above statements, no document was brought on record to prove that Shri. Ramesh or other 5 parties are employees of the assessee. Further the Authorities below stated that Shri Ramesh has not carried out any sub-contract work for the assessee and this was confirmed by Shri Manjunath and the assessee in their respective statements. Therefore, it was concluded that the subcontract work carried out by the 6 parties are bogus.

8.1 Pointing out to these, the ld. AR of the assessee firstly submitted that the statements recorded during the survey proceedings alone should not be taken into consideration for

arriving at the conclusion. The affidavits of all 6 parties along with the assessee enclosed with their income tax returns, bank statements, Form 16A, retractions filed by the assessee, Shri Ramesh, Shri Manjunath also to be considered. The ld. AR also submitted that the reason for statement alone should not be considered for arriving at the conclusion is that the persons will be virtually put under pressure and is denied of access to external advice or opportunity to think independently. A battalion of officers will pounce on the assessee or the person from whom the statement has to be recorded and make him frightening. Therefore, a statement alone without any corroborative evidence cannot be relied upon. If on the other hand the statement is retracted, the authorities have to establish their own case and cannot be merely brush aside such retraction.

8.2 The ld. AR further submitted that the above 6 parties are labour contractors and not sub-contractors. Therefore, during the proceedings of survey, though those parties have admitted that they have not carried out any subcontract work because they are labour contractors and supervise them in the sites. Hence, they have not accepted that they are sub-contractors and they have admitted that they supervise in the site for which additional small payment is received on recurring basis. The assessee relied upon the statements recorded during the survey proceedings to support the above submissions.

8.3 Lastly, the AR of the assessee submitted that the business of the assessee is construction and in this kind of business, no person will be ready to enter into any agreement for supply of labour in a consistent and efficient manner. Therefore, no such agreement or MOU will be entered into between the developers / owners with the labour contractors. However, the AR submitted that the assessee

produced the payment registers which were also available in the premises of the assessee during the survey proceedings which were also verified by the revenue authorities who had come for survey but denied to rely upon such registers for allowing the labour expenses. The revenue authorities were completely ignoring the submissions of the assessee but dwelling upon the bills, vouchers, agreements etc without understanding the nature of business and transactions of the assessee. The AR of the assessee further submitted that the payments were made to the above parties through banking channels and TDS was deducted accordingly. If they have not filed the return of income, it is not the responsibility of the assessee to comply with those requirements and the transactions in the books of the assessee cannot be doubted. Therefore, the deduction claimed cannot be disallowed on the above grounds.

8.4 Without prejudice to the above submissions, the AR of the assessee also submitted that the statement of Shri Ramesh was alone recorded but the disallowance has been made with respect to expenditure incurred towards other 5 parties also without any basis. However, Shri Ramesh has retracted the statement given during the survey proceedings, showed the return of income filed for financial year 2014-15 to 2017-18 where the current assessment years also covered and brought payment registers on record to support the submissions of the assessee.

9. The Id. DR on the other hand vehemently submitted that the Authorities below have correctly disallowed the expenses claimed under section 37 of the Act in respect of sub-contract expenses paid to the above 6 parties who were employees & relatives of the assessee. Further, the Id. DR submitted that the assessee could not furnish any documentary evidence with respect to work done by the

sub-contractors such as contract agreements, MOUs, nature of work done, bills/vouchers etc. A written submissions was also filed before this Tribunal placing high reliance on the findings of the lower authorities and specifically submitting that the deduction of tax at source is not credible evidence to prove the transaction as genuine in terms of receiving the services and accordingly, prayed to uphold the orders of the lower authorities and dismiss the appeals of the assessee.

10. We have heard the rival submissions and perused the materials available on record. The assessee is a civil contractor for BBMP and undertakes the construction of roads, minor irrigation projects and other works for the Government of Karnataka. During the course of the assessment proceedings for the assessment year 2017-18, a survey u/s 133A of the Act was conducted on the business premises of the assessee on **27/02/2019**. However, notice u/s 143(2) of the Act for the assessment year 2018-19 was issued much after the date on which the survey conducted. The assessee for both these assessment years has only challenged the disallowance of Sub-contract expenses amounting to Rs. 4,65,00,000 and Rs. 1,94,62,591 for assessment 2017-18 and 2018-19 respectively. On going through the assessment order, we take note of the fact that the sole basis for the disallowance of sub-contract expenses for the assessment year 2017-18 & 2018-19 are on the basis of statement recorded during the survey proceedings which were later on retracted by all the parties. We take note of the fact that the statements of the assessee as well as Shri. Ramesh S and Shri. Manjunath were claimed to be received by the assessee on 30.03.2019 and certain errors were noticed by the above parties caused due to pressure & stress during the survey proceedings. Therefore, the assessee along with the other two persons immediately filed the revised replies on **04.04.2019** by retracting

their earlier statements i.e. just within 4 days from the date of the receipt of the copy of the statement recorded which in our opinion is quite reasonable.

10.1 We are of the considered opinion that under section 133A of the Act the revenue is authorised to conduct survey of business premises, and the Officer can record statement of a person under section 133A(3)(iii) of the Act. Section 133A(3)(iii) of the Act authorises the authority to record statement of any person which may be useful for or relevant to any proceedings under the Act. However, the Officer is not authorised to record statement on oath and hence, statement taken during the course of the survey has no evidentiary value. It is simply an information which **can be used for corroboration purpose** for deciding any issue in favour or against the assessee. Whatever statement is recorded under section 133A of the Act, is not given any evidentiary value obviously for the reason that the Officer cannot administer any oath and to take any sworn statement which alone has an evidentiary value as contemplated in law. The Apex Court in the case of Pullangode Rubber Produce Co. Ltd. V. State of Kerala (1973) 91 ITR 18 (SC), held that an admission is extremely an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect. Further, Hon'ble Madras High Court in the case of CIT v. S Khader Khan Son (2008) 300 ITR 157 (Mad) observed as follows-

“A power to examine a person on oath is specifically conferred on the authorities only under section 132(4) of the act in the course of any search or seizure. Thus, the Income Tax Act, whenever it thought fit and necessary to confer such power to examine a person on oath, has expressly provided for it, whereas section 133A does not empower any income tax officer to examine any person on oath. Thus, in contradistinction to the power under section 133A, section 132 (4) of the income tax act enables the authorised

Officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the income tax act. On the other hand, whatever statement recorded under section 133A of the act is not given an evidentiary value, I the decision of the Kerala High Court in Paul Matthews & Sons v. CIT (2003) 263 ITR 101 (Ker).”

Thus, respectfully following the above decision we are of the opinion that during the course of survey the Officer can record the statement of a person under sub-section (3)(iii) of section 133A of the Act however, without any material evidence the statement given in survey proceeding cannot be made the sole basis for the addition of income.

10.2 Further, the High Court of Delhi in the case of CIT v. Dhingra Metal Works [2011] 196 Taxman 488 (Delhi) has held that the word **“May”** used in section 133A(3)(iii) of the Act clarifies beyond doubt that the material collected and the statement recorded during the survey is not a conclusive piece of evidence by itself. Reliance is also placed on the decision of Hon’ble High Court of Gujarat in the case of Commissioner of Income-tax Rajkot -III v M.P. Scrap Traders [2015] 60 taxmann.com 205 (Gujarat). The relevant extract is reproduced below for ease of reference –

“6. In view of the aforesaid factual aspect, more particularly, when the Assessing Officer had no other material and/or corroborative material to justify the aforesaid additions except the confessional statement of Shri Kishorebhai Mohanlal Karia recorded on January 4, 2007, which was subsequently retracted within a period 19 days and the same came to be explained with respect to aforesaid additions, we are in complete agreement with the view taken by the learned Tribunal. We see no reasons to interfere with the impugned judgment and order passed by the learned Tribunal deleting the aforesaid additions. Under the circumstances, the proposed question of law are answered against the Revenue. Consequently, both the appeals deserve to be dismissed and are accordingly dismissed. “

10.3 In the present case of the assessee, the books of Accounts were audited by the Chartered Accountant. No defects in the

accounts of the assessee are either pointed out by the auditor or by the AO. Further, the books of Account of the assessee were also not rejected by the AO u/s 145(3) of the Act. During the course of assessment proceedings, the assessee produced/furnished the labour register along with the labour payment register. Further, during the course of survey a register titled "Workers and Drivers payment book" & not the "Employees Register" were found. The ledger were also found by the survey team. The AO also did not point out any mistakes in the said book/extracts.

We are of the opinion that the AO had not brought any material on record to demonstrate that the payment of sub-contractor expenses that too after the deduction of TDS were bogus for these assessment years. The revenue had also not pointed out any defects in the Affidavits along with the income tax returns, bank statements & Form-16A filed in respect of six parties.

10.4 We completely agree with the contentions of the AR of the assessee that as the business of the assessee is a Civil construction work & in this kind of business practically no body enters into an MOU/agreements for supply of labour. It is also not hidden from any one that the labour payments are made always on cash. They will neither accept any Cheque or DD & nor they will give any vouchers or bills. In the present case, the labour contractors had given the bills for the supply of labours. The assessee had also produced the payment registers which were also available in the business premises of the assessee during the survey proceedings & verified by the revenue Authorities. No defects had been pointed out by the revenue in the said Register. The payments were made by the assessee through the banking channels after due deduction of Tax at source. We are of the opinion that the Revenue Authorities by completely ignoring the submissions of the assessee & heavily relied on the statements & dwelling upon the bills, vouchers MOU

etc without understanding the nature of business. Further, during the course of hearing, this Bench desired to get clarification whether the AO directed to the Id. AR to produce the said sub-contractors for verification or issued summons/s 131 of the Act to them for their appearance before the AO for any clarification. The Id. DR by way of written submission stated that the AO had not requested the AR during the course of the assessment proceedings to produce the sub-contractors for any clarification with regard to the claim of bogus sub-contract expenditures. Thus, the revenue's reliance solely on the statements of the parties without any corroborative evidence is not at all acceptable.

10.5 Further, we also observe that during the course of assessment proceedings, the statement made by the assessee as well as two other parties during the course of survey were also retracted. The retraction / revised replies filed by the assessee as well as Shri Ramesh and Shri Manjunath were not considered by the lower authorities during the assessment and Appellate proceedings. The lower authorities have held that the retractions have not been filed immediately after the survey proceedings and the submissions made in such retraction are mere afterthought. We are of the opinion that such retraction should be considered for the purpose of concluding the assessment especially when it was made within 5 days from the date of the receipt of the statement copy. We have observed that the statements of Shri Ramesh and Shri Manjunath were recorded during the survey proceedings under section 133A of the Act conducted at the assessee's premises on 27.02.2019. The statement of the assessee was recorded on 01.03.2019. The copies of the statements were obtained by the assessee on 30.03.2019. The retractions were filed by all the 3 persons on 04.04.2019. Therefore, the retractions were filed within a very short period of 5 days from the date of obtaining the copy of

the statements recorded. We are of the opinion that when the retraction has been made within a short span then such explanation has to be reasonably given effect to in concluding the assessments. Reliance is placed on the decision of the co-ordinate Bench of the ITAT Chandigarh in case of Lachhman Dass Bansal v. Deputy Commissioner of Income-tax [2024] 162 taxmann.com 599 which held as under-

*“41. In this regard, we find that firstly the retraction letter has been filed within a short span of two weeks from conclusion of the survey proceedings duly supported by an affidavit of the assessee which has been filed before the AO as well as copy thereof has been filed before the senior authority i.e; Addl. CIT, Sangrur. As far as the intervening period is concerned, the assessee duly explained that being a senior citizen, he was under great shock and mental agony and once he was able to recover from the shock of the survey proceedings, he has written the letter to the AO retracting from the surrender so made. Therefore as far as period within which the retraction has been made, we find that the same has been made within a reasonable period of two weeks of close of the survey proceedings and therefore it is not a case where the assessee has filed the return of income retracting from the surrender so made and/or waited for issuance of the show cause by the AO and thereafter, he has retracted from the surrender so made. We are therefore unable to subscribe to the view of the ld CIT(A) where he says that where the retraction is not made on an immediate basis, the same loses its relevance after a course of time and appear to be an afterthought to evade the due taxes. The decision of the Hon'ble Delhi High Court in case of Avinash Satia (supra) doesn't support the case of the Revenue as in that case, the retraction was made after a gap of two years. Similarly, the decision of Hon'ble Madras High Court in case of MAC Public Charitable Trust (supra) doesn't support the case of the Revenue as in that case, the retraction was made after a period of eight months. **In our considered view, given the fact that the retraction has been made within a short period of two weeks of conclusion of the survey proceedings and even for intervening period of two weeks, the assessee has provided the necessary explanation which we find reasonable given the facts and circumstances of the present case, the retraction so made doesn't lose its significance and clearly cannot be held as an afterthought.**”*

10.6 We also rely on decision of co-ordinate Bench of ITAT Indore in case of Saaras Agro Industries v. Assistant Commissioner of Income-tax [2022] 143 taxmann.com 319 (Indore - Trib.). The relevant extract is reproduced below for ease of reference:

“After careful reading of the judgment cited above, it is found that statement recorded under section 133A of the Act has not given any evidentiary value. Furthermore, addition made solely on the basis of statement without corroborative evidence is not permissible under the law. Time and again such view has been

*taken by the different High Courts as it appears from the judgment as relied by the assessee. Moreso, it is a settled principle of law that the Revenue has to prove undisclosed income beyond doubt. So far as the document or loose paper or the diary as relied upon by the AO, while making addition is concerned, it is a well settled principle of law that the Revenue has to prove the undisclosed income without any room for doubt. The document relied upon should be a speaking one and should contain narration in respect of various figures noted therein. Unless the document contains full details about the dates and the contents thereof are supported by any corroborative material, cannot be relied upon for making addition. **Thus, it is an admitted position, in the case in hand, firstly the basis of making addition is nothing but the statement given by the assessee during survey which has already been dealt with by us hereinabove and considering the order passed by different High Courts and the Hon'ble Apex Court, we find that the statement which has already been claimed to have been retracted by the assessee though the same has not been taken into consideration by the Revenue, even otherwise cannot be relied upon since the same was recorded under section 133A of the Act having no evidentiary value in the eye of law.***

Respectfully, following the above decisions of the co-ordinate benches of the Tribunal, we have no hesitation to consider the retractions as filed by the assessee and other two parties to arrive at the conclusion.

10.8 We also take note of the fact that the assessee had categorically in his statement dated 01/03/2019 had stated that the purchase of raw materials are made through the Cheque whereas the payments towards the labour are dine in cash. Further, Sri Manjunath in his statement recorded on 27.02.2019 (Placed at Page Nos. 8 to 16 of PB) had answered to question number 15 which is an explanation of the nature of work carried out by the assessee. The same is reproduced for ready reference;

Q. No.15. Please explain the payments made to sub-contractors in detail.

Ans: Shri. Chandrappa is a Class I Contractor and has eligibility of bagging Govt. of Karnataka tenders. Some tenders bagged by Shri. C G Chandrappa are given in entirety to other sub-contractors. They raise GST bills for the work done by them and we pay them in cheque after deducting 1% TDS. In case of works undertaken by Chandrappa himself, most of the work is carried out by him with partial work given to subcontractors.

16	No bills are raised for partial work taken undertaken by the sub-contract in case of works undertaken by Shri. Chandrappa himself. Hence we do not have proof of the same.	Sub-contractor charges contain 2 types of expenses. 1. Work is allocated to sub-contractors for complete execution using their own resources. List of these type of contractors are given in Annexure A for last 3 years 2. Subcontractor supplies labourers to C G Chandrappa and C G Chandrappa does weekly payments after deduction of taxes wherever required. List of these types of contractors is given in Annexure B for last 3 years.
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10.9 Mr Manjunath had explained that the assessee based on the result of the tenders, gets the work from government of Karnataka and some of which allotted to sub-contractors for carrying out the entire work which includes purchase of materials, execution of work as per the requirements of the assessee. This type of work given is in the nature of sub-contracting work. Apart from the above, he also explained that the assessee also undertakes works himself with the help of labour contractors where it is the responsibility of the assessee himself to purchase the raw materials and execute the work with the labours hired through the labour contractors as per the requirements of the project. He further explained in his retraction dated 04.04.2019 (placed at Page Nos. 107 to 112) that where work is allocated to sub-contractors for complete execution using their own resources is one type of work and the other type where the assessee executed the work himself with the help of labour contractors etc. Hence Shri. Ramesh and Shri Manjunath clearly stated that they were not sub-contractors and they have not carried out any sub-contract work because they were labour contractors and during the recording of statement also they have confirmed to have not carried out any sub-contract work

because they were not subcontractors. We also take note that in Q. No. 12 and Q.No. 15 of the retractions provided by Shri Ramesh and Shri Manjunath confirmed that they were not sub-contractors but the labour contractors. The explanation of Shri Ramesh S and Shri Manjunath in the retractions filed seems to be reasonable for the reason that the nature of work was explained during the statement recorded and cannot be believed to be after thought. Further, the Ramesh S and Manjunath not being well versed with the English language had stated the same in their statements recorded.

10.10 With regard to the contentions of the Id. lower authorities that no documents were produced supporting the expenditure incurred we have already held that there will be no agreements or MOU for supplying the labour consistently and efficiently in the construction field. Further, due to number of workers or labourers are more in each and every project site and being illiterate there will not be any bills or vouchers with signature from those respective labourers. However, the AR of the assessee drew our attention to the statements of assessee and Shri Manjunath wherein when the same question was asked by the revenue authorities during the survey proceedings, they have produced the payment registers covering payments incurred towards labour charges. The relevant portion of statements are reproduced below;

Do you have bills and vouchers supporting these expenses? If so, please provide the same.


11/3/19


01-3-19

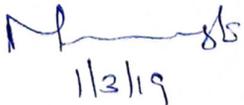
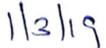

Ans: I have 'Payment register' covering only a part of the payments incurred as 'Labor Charges Paid'. I do not have any documentary proof of the bills raised or expenses incurred in respect of these entries.

Q. No.33.I am showing you the Cash Book for the month of March 2017. The entry against the date 31.07.2017 shows 'Labour charges Paid of Rs.2,18,12,400' as a single entry. Please substantiate the same with bills raised and proof of payment made.

Ans:I have 'Payment register' covering part of the payments incurred as 'Labor Charges Paid'. I do not have any documentary proof of the bills raised or expenses incurred in respect of these entries.

10.11 Further, this Bench sought for the reasoning that the said registers were never brought on record to prove the expenses. The AR of the assessee submitted that right from the beginning of the survey proceedings, the payment registers were on record and it is not a new evidence. The AR of the assessee drew our attention to the statements of the assessee and Shri. Manjunath to show that the payment registers were always on record. However, the lower authorities denied to accept the above payment register to justify the payments made to labour contractors and were insisting only upon the bills, vouchers, agreements and MOUs which was not possible for the labour payments. The relevant portion of the statements are reproduced below;

Do you have bills and vouchers supporting these expenses? If so, please provide the same.



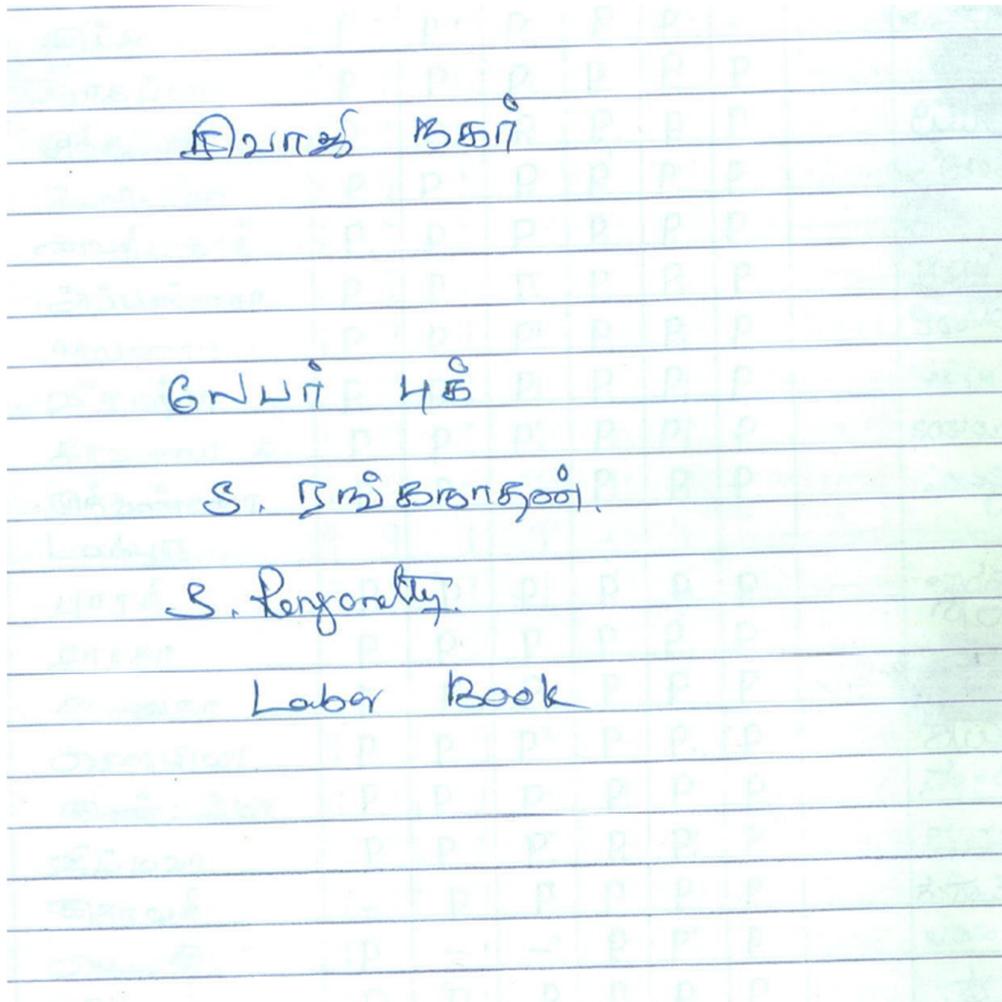

Ans: I have 'Payment register' covering only a part of the payments incurred as 'Labor Charges Paid'. I do not have any documentary proof of the bills raised or expenses incurred in respect of these entries.

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Ans:I have 'Payment register' covering part of the payments incurred as 'Labor Charges Paid'. I do not have any documentary proof of the bills raised or expenses incurred in respect of these entries.

10.12 During the course of hearing before us, the AR of the assessee was asked to bring such payment registers on record to

justify the payments made to the labour contractors. On such directions, the Id. AR produced all the 6 registers maintained by each of the labour contractor for their individual projects and submitted that the registers were showing the details of the labours present on each day in the project and at the end of the week, the signature would be made to prove their work. Further, each project's work order was enclosed at page nos. 21, 90, 151, 209, 266 and 309 showing the details of the project site, allotment date etc. to prove the existence of actual project, work carried out by the labour. The screenshots of labour register and work order of Mr. Ranganath and Saravanan are provided below;



Sl. No	Name	17-10-2016	18-10-2016	19-10-2016	20-10-2016	21-10-2016	22-10-2016	3	an. 2
	பெயர்								
1.	சஞ்சீவ்	P	P	P	P	P	P		Sanjiva
2.	சங்கரமணி	P	P	P	P	P	P		சங்கர
3.	இளம்	P	P	P	P	P	P		kumar
4.	நவீகநாத்	-	P	P	P	P	P		
5.	அவ்வயர்	P	P	P	P	P	P		அவ்வயர்
6.	சேகரிபா	P	P	P	P	P	P		
7.	சுந்தர்	P	P	P	P	P	-		சுந்தர்
8.	நாகபிபா	P	P	P	P	P	P		
9.	சுந்தரிபா	P	P	P	P	P	P		சுந்தரி
10.	அவ்வயர்	P	P	P	P	P	P		அவ்வயர்
11.	அவ்வயர்நாத்	P	P	P	P	P	P		
12.	செய்யலிபா	P	P	P	P	P	P		செய்யலி
13.	அவ்வயர்	P	P	P	P	P	P		Saravanan
14.	அவ்வயர்	-	P	P	P	P	P		Vera bethra
15.	செய்யலி A.	P	P	P	P	P	P		saravanna A
16.	சுந்தரிபா	P	P	P	P	P	P		சுந்தரி
17.	Lady's	P	P	P	P	P	P		

Sl. No	Name	17-10-2016	18-10-2016	19-10-2016	20-10-2016	21-10-2016	22-10-2016	3	an. 2
	பெயர்								
1.	பாரதி	P	P	P	P	P	P		பாரதி
2.	சாரதி	P	P	P	P	P	P		சாரதி
3.	செய்யலி	P	P	P	P	P	P		செய்யலி
4.	அவ்வயர்	P	P	P	P	P	P		அவ்வயர்
5.	இளம்	P	P	P	P	P	P		இளம்
6.	செய்யலி	-	P	P	P	P	P		செய்யலி
7.	சுந்தர்	-	P	P	P	P	P		சுந்தர்
8.	அவ்வயர்	P	-	-	P	P	P		அவ்வயர்
9.	செய்யலி	P	P	P	P	P	P		செய்யலி
10.	பாரதி	P	P	P	P	P	P		Parvathi

BRUHAT BANGALORE MAHANAGARA PALIKE

No. BE/SJN/AE/VO/187 /2017-18 Office of the Executive Engineer,
 Shivaji Nagar Division, BBMP Buildings,
 Queens Road, Bangalore -560 052, Dated 12/1/17

WORK ORDER

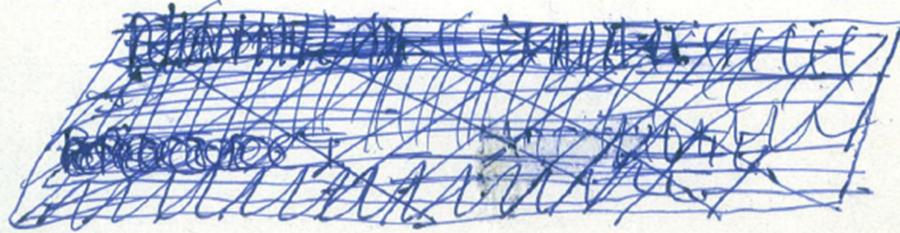
To,
 Sri. C.G. Chandrappa,
 No. 1C, 301, Maruthi Nilaya,
 3rd Main, 3rd Block, HRBR Layout,
 Kalyana Nagar, Bangalore-560 043.

Pursuant to signing of the contract agreement No. BE/SJN/AG/187 /17-18 dated: 12/1/17 for the below mentioned work, you are hereby instructed to contact AEE (Shivaji Nagar) and proceed with the execution of the said works in accordance with the contract documents.

Name of work	COMPREHENSIVE DEVELOPMENT OF ROADS AND DRAINS IN WARD NO. 90, 91 AND 92 IN SHIVAJI NAGAR SUB-DIVISION (Package -2) (6 Works)
Estimate Cost of work	Rs 1300.00 Lakhs
Job Number, Date and approved Amt	090-17-000022
Head of Account	P-3158 SIP infrastructure Project Works (GOK 2016-17 & 2017-18 Nagarothanna)
Estimate Number	EE/SJN/AE/EST/16-17
Administrative Sanction No :	ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ನಆಇ/199/ಎನ್.ಎಚ್.ಎ2016 ಬೆಂಗಳೂರು ದಿನಾಂಕ: 21/06/2016
Technical Sanction No:	No. CE(E)TS/12/16-17 dated: 28/01/2017
Tender Notification No & Date	EE/SJN/TEND/08/16-17 dated: 24/01/2017
Tender Approved No:	ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ನಆಇ/299/ಎನ್.ಎಚ್.ಎ2017 ಬೆಂಗಳೂರು ದಿನಾಂಕ: 14/06/2017
Amount Put to Tender	Rs. 12,58,90,465.12
Approved Tender Price	Rs. 12,94,12,912.63

SITE NAME

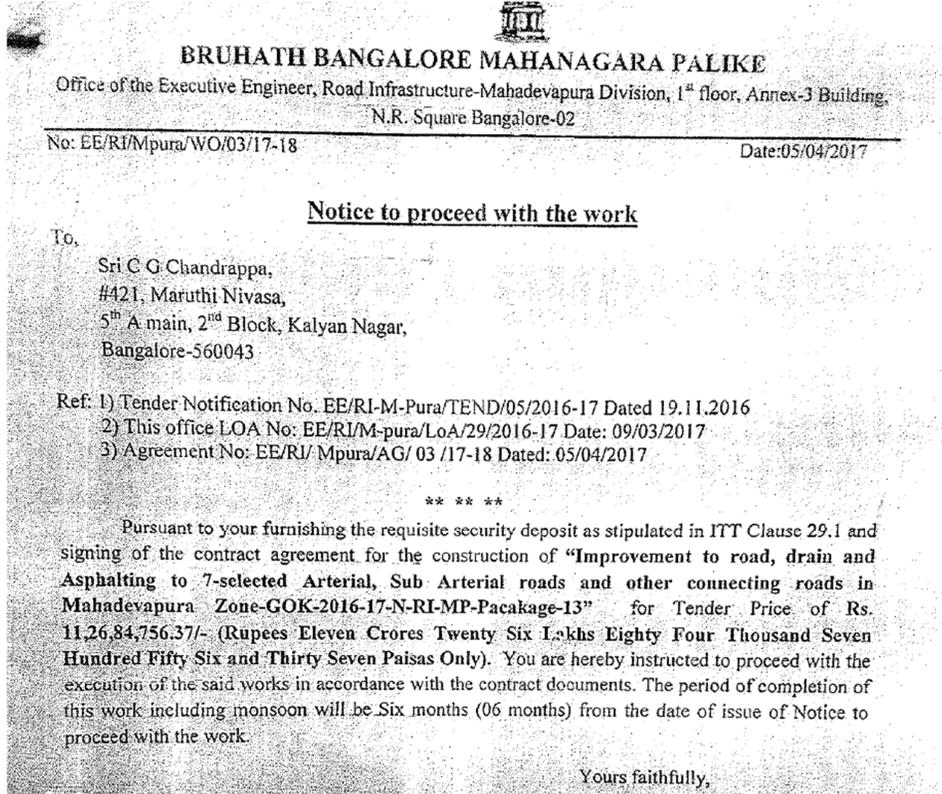
MAHADEVAPURA



LABOUR REGISTER BY

SARAVAMAN

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10.13 Based on the registers maintained by the labour contractors, the details of the labours engaged along with the number of days of work and the nature of work carried out by bar benders for steel work, masons and helpers for concrete / masonry work, hamalis for shifting materials, skilful labours for centering for roof etc. were available. Further it is seen that based on the number of days of their presence in the site, the payments were calculated, negotiated and paid. Hence, it is submitted that the payments or settlement will not be regular or periodical but the details of such labours and their work were well maintained and monitored.

10.14 Further, we also observed that the statement of Shri Jayanth Kumar was recorded during the assessment proceedings on 13.12.2019 and he had provided lot of details like the location of the projects where he had carried out the work, number of labourers he employed in each project, the nature of the work

carried out in such sites, the period of the project carried out, length of the road work carried out, vehicles hired for the work. Hence, all the details are available on record and relying merely on the selected portion of the statement of such labour contractor to disallow the entire payments made to such party is not appropriate. Further, we are of the opinion that merely non filing of the return can't be a ground to reject that Shri Jayanth Kumar was not a labour contractor especially when no other adverse material was brought on record by the AO.

10.15 The lower authorities have recorded the statement of Shri. Ramesh only who is one of the labour contractors and the same had been retracted. The Revenue could not brought any adverse material on record except relying on his statement. Further, the statement of Shri. Jayanth is also recorded which provides lot of details and information supported by the evidences brought on record by the assessee. However, the statements of remaining four of them were never recorded and no details were collected regarding such contractors. Hence, without bringing any material on record regarding the remaining four of them and merely based on selected portion of the statements of the above two parties, the disallowance of entire labour expenses cannot be made.

10.16 The allegation of the AO that the amount credited in the bank account were immediately withdrawn by cash by the labour contractors also proved that the amounts withdrawn were utilized for the payments to the Labours once the payment were received from the assessee. Based on the above findings, this bench also sought for the statement showing the comparative chart of the turnover, sub-contract expenses, labour expenses, gross profit & net profit and various ratios for the current as well as past years. The assessee submitted the said statement and no irregularity or

difference in the pattern was found compared to the earlier or subsequent assessment years. It is also noticed that the profit declared for the current year is much higher than preceding and subsequent years and accordingly it can be concluded that there is no inflation of expenses to reduce the profit corresponding to the earlier or subsequent years.

10.17 Lastly, we are also surprised to note that the Id. Additional Commissioner of Income Tax, Range-1(2) had although accepted the payments towards the sub-contractor expenses on one hand, however on the other hand relying on the certain decisions of the Hon'ble Supreme Court and High Court had directed the AO to add Rs. 4,65,00,000/- u/s 37 of the Act treating the same as not incurred wholly & exclusively for the business purpose of the assessee. We could not understand that when the assessee is a civil contractor & executed the work contract of Government of Karnataka, then how the payments towards the sub-contract work/ Labour contract work are not related wholly & exclusively for the business of the assessee. We are of the considered opinion that these sub-contract work/ Labour contract expenses incurred by the assessee is wholly & exclusively for the purposes of the business of the assessee & hence the same is allowed u/s 37 of the Act.

10.18 In view of the above detailed discussions, we direct the AO to delete the disallowances of expenditure amounting to Rs. 4,65,00,000/- & Rs.1,94,62,591/- as made for the assessment year 2017-18 & assessment year 20180-19 respectively.

10.19 In the result both these appeals filed by the assessee are allowed.

Order pronounced in the open court on 7th Nov, 2025

**Sd/-
(Prashant Maharishi)
Vice President**

**Sd/-
(Keshav Dubey)
Judicial Member**

Bangalore,
Dated 7th Nov, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**