IN THE INCOME-TAX APPELLATE TRIBUNAL"F" BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 5584/MUM/2024
(A.Y. 2013-14)
ITA No. 5585/MUM/2024
(A.Y. 2014-15)
ITA No. 5586/MUM/2024
(A.Y. 2015-16)

M/s JSW Steel Limited JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Central Circle-8(3) Aaykar Bhavan, 6th Floor, Room No. 659, Maharishi Karve Road, Mumbai – 400 020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACJ4323N		
Appellant/अपीलार्थी	..	**Respondent/प्रतिवादी**

ITA No. 5599/MUM/2024
(A.Y. 2013-14)
ITA No. 5615/MUM/2024
(A.Y. 2014-15)
ITA No. 5601/MUM/2024
(A.Y. 2015-16)

Deputy Commissioner of Income Tax, Central Circle - 8(3) Aaykar Bhavan, 6th Floor, Room No. 659, Maharishi Karve Road, Mumbai – 400 020, Maharashtra	v/s. बनाम	**M/s JSW Steel Limited** JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACJ4323N		
Appellant/अपीलार्थी	..	**Respondent/प्रतिवादी**

For Assessee	Shri Rakesh Joshi, AR
For Revenue	Ms. Kavitha Kaushik, (Sr. DR)

Date of Hearing	10.10.2025
Date of Pronouncement	08.12.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeals emanate from the appellate order of even date in ITA No. 5584/MUM/2024, ITA No. 5585/MUM/2024 and ITA No. 5586/MUM/2024 have been preferred by the assessee and Cross appeals in ITA No. 5599/MUM/2024, ITA No. 5615/MUM/2024 and ITA No. 5601/MUM/2024 have been filed by the Revenue pertaining to assessment orders passed u/s. 143(3) r.w.s 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"]as passed by the Learned Commissioner of Income-tax, Appeal, CIT(A) 50, Mumbai [hereinafter referred to as "CIT(A)"] for the Assessment Years 2013-14, 2014-15, and 2015-16.Since the issues involved are common, the facts being identical, barring figurative variations and also that appeals were heard together, they are being taken up for adjudication vide this composite order for the sake of brevity. We take up appeal for the AY 2013-14 first.

2. The grounds of the appeals are as under:-

ITA No. 5584/MUM/2024 (A.Y. 2013-14)

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in reopening the assessment u/s.147*

of the Income Tax Act, 1961, without considering the facts and circumstances of the case.

2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the amount to be reduced from Work in progress (WIP) to the extent of 15% of the total transaction made by the appellant with M/s Birla Aircon Infrastructure Pvt. Ltd., without considering the facts and circumstances of the case.*
3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in giving direction to the Learned Assessing Officer to verify the amount of expenditure debited in the books of the appellant on account of transactions with M/s. Birla Aircon Infrastructure Pvt. Ltd., without considering the facts and circumstances of the case.*
4. *On the facts and circumstances of the case as well as in law, the order passed by Learned CIT(A) is not in compliance with the provision of section 251 of the Income Tax Act, 1961.*

3. Brief facts of the case are that the assessee is a Listed company engaged in the business of manufacturing and selling of pellets, hot/cold rolled coils/sheets, galvanized coils/sheets etc. It filed return of income on 28.11.2013, declaring Total Income of Rs. NIL/-. Assessment was completed and order u/s. 143(3) r.w.s. 144C(1) of the Act. Subsequently, order u/s.263 of the Act was passed on 25.03.2019 by Pr.Commissioner of Income Tax, Central 4, Mumbai and the assessment was completed u/s.143(3) r.w.s 263 of the Act dt. 25.12.2019. Later, based on the information received from the DCIT-3(1)(1), Mumbai, assessee's case for the year was re-opened u/s 147 of the Act after recording the reason as reproduced as under:-

> "Information has been received from the DCIT-3(1)(1), Mumbai vide letter No. ITBA/COM/F/17/2018-19/1014602416(1), dated 27.12.2018 that **M/s Birla Aircon Infrastructure Pvt. Ltd. ("BAIPL")** assessed in his jurisdiction

was incorporated on 13.10.2013 and is a wholly owned subsidiary of Birla Infrastructure Limited. This company was involved in civil constructions/sub-contracting and it filed its Income Tax Returns (henceforth 'ITRs') only for AY 2011-12 & 2012-13. The scrutiny assessment of BAIPL was completed for AY 2012-13 u/s 144 of the Income Tax Act, 1961 due to non compliance, thereby disallowing Other Expenses (Rs. 16,15,60,552/- out of Rs. 64,62,42,207/-) & raising a demand of Rs 7,32,11,000/-.

13. In subsequent assessment years, the BAIPL has not filed ITRs for any of the assessment years even though the BAIPL has turnovers running into crores of rupees. The company has also failed to get its accounts audited u/s 44AB of the Act even though the turnovers are more than the prescribed limits for the respective years.

14. As BAIPL had not filed its ITRs for the subsequent years and there were huge contractual and professional receipts received during these years as per ITS/AIR, the cases were reopened for assessment u/s 148 of the Act. BAIPL neither filed returns in response to notice u/s 148 of the Act nor complied with assessment proceedings subsequently. The directors did not comply with summons u/s 131 of the Act. The assessments were again completed u/s 144 of the Act for these years. BAIPL has either diverted all the infused capital of Rs. 20,00,00,000/- and receipts of these years or taken the funds out through bogus expenses like Other Expenses.

15. In the received information, it was revealed that the assessee M/s JSW Steel has availed bogus sub-contracting entries from M/s Birla Aircon Infrastructure Pvt. Ltd. It has also been informed that the said company M/s Birla Aircon Infrastructure Put. Ltd. is a non-filer and is also non-compliant as far as income tax proceedings are concerned.

16. To verify the received information, notice u/s 133(6) was issued to M/s Birla Aircon Infrastructure Put. Ltd. with prior approval of the Pr.CIT(Central)-4, Mumbai, calling for certain details such as audited financial statements, IT'Rs, Tux Audit Report, etc. In response, BAIPL has stated that such audited financials are not available as the accounts are not prepared that the ITR has not been filed. Further, BAIPL was asked to furnish a list of its top customers and vendors. However, BAIPL could not give the names of its top customers/vendors and has merely stated certain names of parties based on the TDS statements and bank accounts.

6. Further, BAIPL was asked to state the nature of transactions carried out with the assessee, M/s JSW Steel Ltd. However, BAIPL could not even state the same. Neither were other essential documents/information produced like invoices, ledger confirmation, purchase orders, mode of receiving orders, names of contact persons in JSW Steel Ltd, bank book, delivery challans, transport receipts, agreements, etc, even though these documents were specifically called for. BAIPL has stated that such documents are not available

with them or are under preparation. In the absence of these basic documents, the transaction involving payments made by the assessee M/s JSW Steel Ltd. to BAIPL cannot be accepted to be genuine.

7. Thus, it is clear that BAIPL has not delivered any goods and/or performed any services in lieu of the payments made by JSW Steel Ltd to BAIPL and that these payments have merely been made by M/s JSW Steel Ltd towards bogus accommodation entries.

8. In view of the above, I have reasons to believe that the assessee company M/s JSW Steel Ltd has been involved in taking bogus accommodation entry. Therefore, 1 have reasons to believe that the assessee's income to the tune of Rs. 8,93,55,700/-on account of bogus accommodation entry and also any other income which subsequently comes to notice of the undersigned during the course of reassessment, has escaped assessment for the A.Y. 2013-14 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. Thus remedial action u/s 147 of the IT Act, 1961 needs to be taken in this case and notice u/s. 148 of the Income Tax Act, 1961 is required to be issued in the case of the assessee for the AY 2013-14."

4. Facts in brief as culled from the assessment order reveals that M/s Birla Aircon Infrastructure Pvt. Ltd. ("BAIPL"), was vendor for the assessee company, being engaged in the business of civil construction/sub-contracting work. The assessee company had awarded contract to BAIPL for carrying out excavation and other work in the course of the expansion of the plant capacity by the assessee company at Vijaynagar. All payments made to BAIPL were towards Capital expenditure under contract awarded to the said party. Accordingly, for the year that the contracts were awarded/executed, the respective expenses had not been debited to the Profit & Loss Account as expenses for the respective year but had been debited to Capital WIP to be capitalised in future years. In view of the recorded reasons(supra)

indicating bogus expenses, the assessee was asked for its response. Accordingly, it submitted copies of the Invoices / RA Bills and other relevant documents in support of the said claim as also independent third party supporting, name, address and PAN, contact no. Email, date of receipt of fund, mode of receipt of fund, with supporting bank statement and copy of the instrument. It also submitted PAN of BAIPL, address mentioned as per invoice, screen shots showing active status of the BAIPL on Central Board of Indirect Taxes and Custom, its active status of the BAIPL on Commercial Taxes Department, Government of Karnataka, screen shot showing active but non compliant status of the BAIPL on Ministry of Corporate Affairs, particulars of the main persons/Directors of the said company alongwith their last known/updated contact details. It was also pointed out that the contract having been completed, the assessee company was not in touch with anyone from the said organisation so as to exert any influence upon them for complying with notice issued / ensuring attending before the AO to confirm the particulars sought.

4.1 The AO observed that during the year the assessee had availed bogus sub-contracting entries from BAIPL of Rs. 8,93,55,700/-. The said company was a non-filer and also non-compliant as far as Income Tax proceedings were concerned. A notice u/s 133(6) dated

02/12/2019 was issued to it. However, assessee did furnish any detail. Notice was issued to the assessee company to produce the Principal officer of BAIPL in support of their claim of expenses incurred during the year. However, it did not produce the party. Further, the assessee had not furnished any ledger confirmation from the said concern as also bank statement reflecting the transaction made. The onus of burden of proof vested with the assessee to prove and establish and genuineness of the transaction, identity of the party. Since the expenses incurred by the assessee through the said party were in the nature of capex (Rs.8,93,55,700/- during the year under consideration), having been incurred for expansion of its plant, the AO disallowed the said sum and adjusted the WIP accordingly.

5. In the subsequent appeal filed before the ld.CIT(A), the assessee submitted that merely owing to alleged non-compliance by the said party before the Income Tax Authorities, they held the said party to be allegedly 'bogus' party and the transactions entered into with the said party by the assessee have been termed as non- genuine. No opportunity for cross examination of the concerned AO of the said party was also provided to it despite the same being requested to examine his basis of terming the said party as non-genuine merely owing to their non compliance.

5.1 The assessee at the outset challenged the validity of reassessment proceedings before the ld.CIT(A) claiming that the assessee had been previously assessed u/s 143(3) r.w.s. 144C vide order dated 30.12.2016 wherein the AO after verifying all the details submitted made certain addition and disallowance and assessed the income amounting to Rs. Rs.16,51,87,470/- and Book Profits u/s.115JB of the Act of Rs.22,72,20,97,009/-. Thereafter, it was assessed u/s. 143(3) r.w.s 263 of the Act vide order dated 25.12.2019 determining total income Rs.2,95,60,05,170/- and Book Profits u/s.115JB of the Act of Rs.22,72,20,97,009/-. Thus, the assessee had made full and true disclosure of all material facts during the course of the assessment proceedings u/s 143(3) r.w.s. 144C as well as revisionary proceedings u/s 263 of the Act. It is a trite law that no action can be initiated under section 147 after the expiry of 4 years from the end of the relevant assessment year unless the income chargeable to tax has escaped assessment by reason for the failure on the part of the taxpayer to disclose fully and truly all material facts necessary for his assessment. However, in the present case there was no omission or failure on the part of the assessee whatsoever to disclose all material facts and that the reopening had been made beyond the period of 4 years from the relevant assessment year.

5.2 It was stated further that at the time of recording the reasons there was no material with the AO to form his own belief but only the information passed on to him. No reassessment proceeding is permitted to be initiated on the basis of borrowed satisfaction. Further for the years that the contracts were awarded/executed, the respective expenses were not debited to the Profit & Loss Account as expenses for the respective year but had been debited to Capital WIP to be capitalized in future years. Thus, there would just be no income escaping assessment for the respective years as has been contended in the reasons for the reopening.

5.3 It was claimed that the case had been reopened on mere change of opinion by the AO. It is now a well decided judicial pronouncement that no reopening is possible on the basis of change of opinion. It is well-established judicial principle that the AO could not issue notices u/s. 148 of the Act for making roving enquiries and under vague suspicions.

6. The ld.CIT(A) observed that in this case after completion of assessment u/s 143(3) r.w.s. 263 of the Act, the AO received the information from the DCIT-Circle-3(1)(1), Mumbai that BAIPL was assessed with the DCIT-Circle3(1)(1), Mumbai. The scrutiny assessment in case of BAIPL was completed for AY 2012-13 u/s 144 of the Act.

Subsequently, it was found that BAIPL had not filed any ITR for the subsequent years. The turnover was running in crores of rupees, however, the company had failed to get its account audited u/s 44AB of the Act. The directors of this company did not comply with the summons issued u/s 131 of the Act and the subsequent assessments had been completed u/s 144 of the Act. The AO found that the assesse company had availed bogus contracting entries from BAIPL. After receiving the information, the AO issued notices u/s 133(6) to BAIPL, however, it could not furnish the names of its top customers/vendors and has merely stated certain names of the parties based on the TDS statements and bank accounts. From these facts, the AO concluded that BAIPL had not carried out any work/ services for the assesse company and the payments shown by the assesse to this company are nothing but bogus accommodation entries. Therefore, the AO had reasons to believe that the income to the extent of Rs.8,93,55,700/-, which was shown as payments on account of sub contract expenses to BAIPL had escaped the assessment. From these facts, it was evident that after completion of assessment order, the AO received fresh tangible information indicating inflation of expenditure on account of bogus subcontract payments made to the party BAIPL. The addition made in the assessment order had 'live nexus' with the tangible information received by the AO.

Hence, the contention of the assessee regarding the change of opinion was factually incorrect. Further, from the facts of the case, it could be seen that the assessment was not reopened for any roving inquiry. Section 147 of the Act authorizes and permits the AO to assess or reassess income chargeable to tax, if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If he has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The only requirement of law in this regard is that the said 'reason to believe' must be recorded in writing. It is stated that it has been held in a number of decisions of Apex Courts and various High Courts that at the time of issuance of notice, the AO is not required to prove to the hilt that the income had escaped assessment rather as mentioned earlier, the only requirement is to have a belief which must be based on some credible evidence or information. It was undisputed fact that there indeed was an information received with respect to BAIPL and the AO proceeded to issue the notice only after recording his reasons as to why he believed that income had escaped

assessment. At the initiation stage, what is required is "reason to believe", and not to establish fact of escapement of income. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction as held in ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996]217 ITR 597 (SC).,(Sheo Nath Singh 82 ITR 147)(SC) & Bhagwan Industrial P.Ltd 31STC 293 (SC). The Hon'ble Apex Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) (291 ITR 500) has categorically stated that "reason to believe" does not mean that the reason for re-opening should have been factually ascertained by legal evidence or conclusion before the re-opening of an assessment. The Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. VS. ITO 236 ITR 34, 35 (SC) held that for determining whether initiation 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. It further held that the sufficiency or correctness of the material is not a thing to be considered at this stage. In ITO v. Purushottam Das Bangur[1997] 90 Taxman 541/224 ITR 362 (SC), the Hon'ble Supreme Court rejected the contention of the assessee that the information received from the Deputy Director, Directorate of Income tax (Inv.) was not a definite information and should not be acted upon by the Income Tax Officer for

taking action under Section 147 of the Act. It was held that the information contained in the letter could form the basis for forming an opinion that there was reason to believe that income had escaped assessment without any further verification In view of the above binding judicial precedents, The ld.CIT(A) concluded that the AO had valid reasons to initiate the reassessment proceedings, which were duly recorded and communicated to the appellant. Thus, he concluded that the AO had rightly assumed jurisdiction and correctly initiated proceedings u/s 148 of the Act. Therefore, ground of the assessee was dismissed.

6.1 In so far as merits of the case are concerned, it was submitted by the assessee before the appellate authority that the AO erred in considering the amount of capital expenditure incurred by the appellant amounting to Rs.8,93,55,700/- instead of the actual expenditure debited to CWIP amounting to Rs.4,40,07,698/-. In order to substantiate the same, a copy of the complete bifurcation of the Capital Work in Progress was attached for ready reference and perusal. It was submitted that the assessee had awarded contract to BAIPL for carrying out excavation and other work in the course of the expansion of the plant capacity by the appellant at Vijaynagar. All payments made to BAIPL were towards Capital expenditure incurred under contract awarded to the said party.

Accordingly, for the year that the contracts were awarded / executed, the respective expenses had not been debited to the Profit & Loss Account as expenses for the respective year but had been debited to Capital WIP to be capitalised in future years as apparent from Schedule 12 of Balance sheet as on 31.03.13. Further, all details along with relevant supporting documents had already been submitted before the AO. The assessee had discharged its onus of proving the genuineness of the said transactions. However, the AO completely ignored the details filed by the appellant company. Moreover, he grossly erred in concluding the fact that since the Principal officers of the company were not produced nor was the company complying with the notices u/s. 133(6) of the Act, the said company was bogus in nature. In this regard, it was submitted that it is not the prerogative of the assessee company to ensure statutory compliance by its vendors/ clients / parties. Further, the conclusion were being drawn on the basis of an enquiry conducted on a party that was allegedly non compliant. When it had not attended to their own assessment proceedings, it may actually not come as surprise if they had not even responded to an enquiry u/s. 133(6) of the Act in another entity's case. Furthermore, the AO of BAIPL had sent notice u/s. 133(6) of the Act to the assessee which were promptly responded to. It is submitted that the assessee had provided all the details available with

them of the principal officers of BAIPL. Moreover, at the time of the re-assessment proceedings, the contract entered into by the appellant with BAIPL was completed and therefore, it was not in touch with anyone from the said organisation so as to exert any influence upon them for complying with the notice issued / ensuring attending before the AO to confirm the particulars sought.

6.2 Before him, it was further submitted that the assessee in order to set up a plant, engaged BAIPL to manage the civil engineering works required for establishing the Reverse Osmosis Plant and Steel Melting Shop. BAIPL, with its expertise in construction and civil engineering, was selected for their ability to handle such complex projects. Due diligence was performed by the assessee including verifying BAIPL's credentials through various government portals (e.g. Dealer Search System, MCA Portal, Excise Accounting System). Screenshots of the same were enclosed by the assessee in the paper book. It was further submitted that it issued purchase orders (PO) to BAIPL for the agreed upon services. Based on such PO, BAIPL issued work orders. Further, once the parties to contract agreed to the terms and conditions, BAIPL had conducted area analysis for excavation and prepared design documents, which are reviewed and discussed with the assessee. Copies of samples designs were filed. Further, since the

execution of work was labour intensive which carried significant risks, necessitating insurance for the workforce was primary objective, for this purpose, BAIPL had taken insurance for the employees engaged for the excavation and installation services. Sample insurance copies for employees who were engaged in aforementioned work were attached in the paper book. Subsequently, BAIPL had invoices based on the percentage of work completed. Further, in conjunction with services, various materials say cement, coarse aggregate, reinforcement steel, etc were also provided by BAIPL. To facilitate the entry of materials into the premises of the assessee, BAIPL submitted a request for entry inward giving details of vehicles carrying the said materials, which was then subsequently approved by it. Sample copies of application made by BAIPL were also enclosed in the paper book. On perusal of the same, it could be concluded that actual goods were received by the company from BAIPL. In addition to the above, BAIPL also submitted timely statements detailing the consumption of these materials, copies of which were enclosed in the paper book. Before the ld.CIT(A), the assessee furnished the following-

1. Copy of Purchase/ work Orders
2. Copy of Invoices issued on work completion basis
3. Copy of Insurance Documentation taken for site workers
4. Copy of detailed Architecture of the RO Plant and SMS Plant
5. Samples of design of hard rock, Cable Tunnel.

6.Samples of Preliminary Design of the plants and area of installation of such plants.
7. Copy of request for entry inward gate pass permission for materials
8. Copy of consumption statement report
9. Copy of due diligence documents

6.3 It was pleaded that all above stated details were claimed to have been finished before AO during the assessment proceedings. Further, all the payments to this party were made through account payee cheques after deducting TDS. Accordingly, it had submitted that the payments are genuine payments for services availed. It relied upon certain judicial precedents wherein, it has been held that in case of alleged bogus purchases, once the primary onus is discharged, no addition can be made i.e Espirit Finco Pvt. Ltd. ITAT Delhi in ITA No. 1834/Del/2015,Umbrella Project Pvt. Ltd. vs. ITO- (ITA No. 5955/Del/2014) and Cheil India Pvt. Ltd. Vs ITO Ward 3(3) Income Tax Appeal No. 6183/Del/2014

7. After going through all the above evidences, the ld.CIT(A) observed that the assessee had issued work orders for specific work to be carried out by this alleged party which raised the bills for the specific work done against the allocation of work as per the work order. After verification of these bills, the payments had been done through the banking channels after deducting the TDS. The concerned contractors

also certified the completion of work. The insurance of the employees showed that BAIPL had engaged employees for the work to be carried out for the assessee. This showed that the work given to the BAIPL has been carried out. From the details furnished it was noticed that during the year, the assessee had following transaction with the party:

S.No	**Name of Party**	**Amount (Rs.)**	**Nature of transaction**
1.	M/s Birla Aircon Infrastructure Pvt. Ltd.(BAIPL)	Rs.8,93,55,700/-	Job work (sub-contractors payment)

7.1 Further, during the assessment proceedings the AO asked the assessee to submit details of payments made, ledger accounts, copies of bills, work order etc to prove the genuineness of this transaction. The appellant had submitted that BAIPL was contractor, whose services were availed by the assessee company for its ongoing projects. The AO issued notice u/s 133(6) of the Act to M/S BAIPL, however, this party had not provided the requisite details. Thereafter, the AO asked the assessee to produce the Principal officer of BAIPL. However, the appellant did not produce him before the AO. Hence, the AO held that the assessee had not discharged its obligations to prove the genuineness of the expenditure claimed by it. Hence, the AO held that this party was a bogus contractor engaged into providing accommodation entries. In the

backdrop of these facts, the AO reduced the amount of Rs.8,93,55,700/- from the WIP.

7.2 He further observed that the above documents show that the appellant has issued work orders for specific work to be carried out by this alleged party. This party had raised the bills for the specific work done against the allocation of work as per the work order. After verification of these bills, the payments have been done through the banking channels after deducting the TDS. The concerned contractors also certified the completion of work. The insurance of the employees shows that the party BAIPL had engaged the employees for the work to be carried out for the appellant. This showed that the work given to the BAIPL has been carried out. In the backdrop of the above facts, the existence of the party and payments made to it for the work done cannot be denied only on the basis that the party did not file the income tax returns and furnished any confirmation. The AO also stated that M/s BAIPL has huge turnover running into crores. Merely on the fact that the alleged party has not filed the IT returns, the expenditure of the appellant cannot be held as bogus. Further, the appellant placed on record, the reply filed by the appellant in response to the notice issued u/s 133(6) of the Act by the AO of BAIPL, which was responded by the

appellant. It had furnished the documentary evidence to prove that the work has been carried out by this party and for that the appellant has made payments through banking channels after deducting the TDS.

7.3 He concluded that on the similar facts, the Ahmadabad ITAT in the case of **Ultratech Transmission (P.) Ltd [2023] 151 taxmann.com 20**, has held that if the assessee has claimed deduction for sub-contracting expenses and AO disallowed the said expenses on ground that the sub-contractors failed to provide evidence of work done for the assessee, since it could not carry out its contract work without engaging subcontractors, only 10 per cent of the alleged bogus sub-contracting expenses were to be disallowed. The assessee is a listed company engaged in the business of manufacturing and selling of pellets, hot/cold rolled coils/sheets, galvanized coils/sheets & plates & slag cement. For the purpose of carrying out work, the appellant had engaged several contractors. It was not possible for the appellant to carry out such work without engaging contractors to carry out the same. It was also not a matter of dispute that the income earned from such activities has been offered for tax. At the same time, it was also observed that the contractor had neither filed the returns nor complied with the notice issued u/s 133(6) of the Act. In the said facts of the case, the entire contract payment made to the contractor could not be disallowed.

In the identical set of facts, the Hon'ble ITAT Ahmedabad, as discussed above, in the case of Ultratech Transmission (P) Ltd., relying on various decisions restricted the disallowance to 10%.In the backdrop of these facts, he opined that to cover up the discrepancies, disallowance to be restricted to 15% of the total payments made to the subcontractor. The appellant had contended that it has capitalized the expenditure of Rs.4,23,43,900/- whereas the AO has considered the expenditure of Rs.8,93,55,700/-. Accordingly, the AO was directed to verify the facts of expenditure debited and restrict the disallowance to 15% of the expenditure actually debited in the books.

8. Before us, the ld.AR has reiterated the same contentions as made before the lower authorities in respect of reassessment proceedings and on merits. Per contra the ld.DR has placed reliance on the assessment order claiming that there was sufficient basis for initiation of reassessment proceedings. It is not a case of change of opinion rather based on certain external information.

9. We have carefully considered all the relevant facts of the case, perused the records and heard rival submissions. In so far as the ground challenging the legality of reopening proceedings are concerned, we find that the ld.CIT(A) has categorically rebutted the contentions of the assessee stating that there being tangible information passed on to the

AO from the other Assessing Officer of BAIPL on which reassessment proceedings were correctly intitated. It is clearly not a case of change of opinion as well. We find that the department was in possession of fresh information which led the AO to arrive at reasons to believe necessary to invoke the provisions of section 147 of the Act. The Hon'ble Delhi High Court in the case of **AGR Investments Ltd. vs. Addl. CIT (Del) 333 ITR 146** held that that where Assessing Officer had specific information from DDIT (Investigation) as regard transactions entered into by assessee company with a number of concerns whichhad made accommodation entries and they were not genuine transactions, it could be said that there was material on basis of which notice under section 148 of the Act could be issued. It is further pertinent to mention here that in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012,** the Hon'ble Delhi High Court, held that as long as there is a 'live link' between the material which was placed before the AO at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held- "*We are aware of the legal position that at the stage of issuing the notice u/s 148 the merits of the matter is not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment.*"

Moreover it is a settled la that sufficiency of such information cannot be gone into while deciding the issue of validity or reopening. In view of discussed facts of the case and judicial pronouncements on the issue of the reopening of case u/s 147 and issuance of notice u/s 148 of the Act, by the AO, we are of the considered opinion that the AO had sufficient 'reason to believe' for reopening of the case u/s 147 by issuing notice u/s 148 of the Act. We may place reliance on the case of **Central Provinces Manganese Ore Company ltd. (191 ITR 662 SC),** wherein the Apex Court interpreted the word "reason to believe". It was held that, the words "reason" in the phrase "reason to believe" in section 147of the Act, would mean cause or justification. If the AO has cause or jurisdiction to know or suppose that income has escaped assessment, he can be said to have reason to believe that income has escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. In **Praful Chunilal Patel Vs. M.J.Makwana Vs. CIT, [236 ITR 832],** the hon'ble court while interpreting the term 'reason to believe', held that, the word "reason to believe" cannot mean that the AO should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and, if he likes, from any information that he receives. If he discovers or finds or

satisfies himself that the taxable income has escaped assessment, it would amount to saying that he had reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief though justified for the purpose of initiation of the proceedings under Section 147 of the Act may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such income has escaped assessment, the AO is not required to base his belief on any final adjudication of the matter". His formation of belief is not a judicial decision but an administrative decision. It does not determine anything at the initial stage, but the AO has a duty to proceed so as to obtain, what the taxpayer was always bound to pay if the increase is justified at all. The decision to initiate the proceedings is not to be preceded by any judicial or quasi judicial enquiry. His reasoning may be the result of official information or his own investigation or may come from any source that he considers reliable. His reason is not to be judged by a Court by the standard of what the ideal man would think. He is the actual man trusted by the legislature and charged with the duty of forming of a belief for the mere purposes of determining whether he should proceed to collect what is

strictly due by law, and no other authority can substitute, its standard of sufficient reason in the circumstances, or his opinion or belief for his. Unless the ground or material on which his belief is based, is found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion that it constitutes a sufficient reason, cannot be overridden. What is, therefore, to be ascertained is, whether the alleged reason really existed, and if it did, whether it was so irrational as to be outside the limits of his administrative discretion with which the AO is invested so as to be really in disregard of the statutory condition.....".

9.1 In view of the settled principle of law as propounded by the Apex Court as well as by high court and considering the contention of the reasons recorded for reopening and further clarification of the information made by the revenue, we are of the view that, the Assessing Officer himself was satisfied with regard to the information and other materials on record, he formed an opinion that, the income had escaped assessment. Therefore, when the information was specific with regard to suspected transactions entered into by the assessee and the AO had applied his independent mind to the information and upon due satisfaction, led to form an opinion that, the expenses claimed by the assessee were chargeable to tax has escaped assessment, which facts suggests that, there is live link between the material which suggested

escapement of income and information of belief. Under the circumstances, we are satisfied that, there was enough material before the AO to initiate proceedings under section 147 of the Act.

9.2 Considering the facts and circumstances of the present case, we have no hesitation to hold that it could not be said that there was no material or grounds before the AO and the assumption of jurisdiction on the part of the AO under Section 147 of the Act to reopen the assessment by issuing impugned notice under Section 147 of the Act is without authority of law, which render into the notice unsustainable. Therefore, the assessee failed to make out a case of invalid assumption jurisdiction u/s 147 of the Act. Therefore, **ground no. 1 of the appeal is dismissed.**

10. **Ground nos.2 to 4** concern merits of the addition made in Capital WIP. We find that both the authorities have exhaustively dealt with the issue and came to the conclusion that that the assessee could not establish the payments conclusively. While the AO added the entire payment made during the year, the ld.CIT(A) restricted it to 15 % by placing reliance on a decision of ITAT, Ahmedabad in the case of Ultratech Transmission P.Ltd where in the disallowance was restricted to 10% on identical set of facts.

11. Before us, the ld.AR has reiterated the same contentions as made before the lower authorities both in respect of reassessment proceedings and on merits. It is contended that the assessee by filing all relevant evidences has duly discharged the onus cast on it to prove the genuineness of the expenses. All transactions are made through banking channels and TDS was also deducted .Merely for the fact that the said contractor did not file return of income for the relevant year or did not comply before the AO could not be considered sufficient reasons for disallowing a major part of capital WIP. The assessee had provided all relevant details regarding the said party with complete address etc.

11.1 Per contra the ld.DR has placed reliance on the assessment order claiming that the assessee did not discharge the primary onus on it to prove the genuineness of the entire transaction.

12. We have carefully considered all the relevant facts of the case. It is quite evident from the contents of the assessment order that the AO has treated the impugned sum as non genuine mainly on the ground that BASPL did not file its return of income and the assessment order in its case was framed u/s 144 of the Act and also the Principal officer neither attended before him to explain the transactions nor the assessee produced him. However, it is noticed that that assessee filed various details before him explaining the genuineness of the impugned

transaction and the AO did not make any adverse comments on them. Thus, he accepted them without any defect. The ld.CIT(A) also took due cognizance of these details and did not find any infirmity therein. Rather, he agreed with the assessee that there was no concrete basis for adding back the entire sum in the hands of the assessee though he observed that to cover up any discrepancy the addition was restricted to 15% based on certain decision of ITAT, Ahmedabad. However, he did not discuss the facts and the circumstances of this case in arriving at the conclusion that it was identical. Moreover, in the decision relied upon the disallowance was restricted to 10% as per his own observations. Therefore, there appears to be no cogent basis for applying rate of 15% instead in the instant case. The conclusion drawn by the ld.CIT(A) is contrary to his own findings and observation made in the order in respect of various details and explanation submission made before him in the appellate proceedings. We further find that the assessee had filed several details to prove the case i.e. copies of Purchase/ work Orders, invoices issued on work completion basis, copy of Insurance Documentation taken for site workers, detailed architecture of the RO Plant and SMS Plant, samples of preliminary design of the plants and area of installation of such plants, request for entry Inward gate pass permission for materials, copy of consumption statement report etc.

Besides, it is undisputed that all the payments were made based on bills submitted through banking channels and TDS due were also deducted. In respect of the said party BAIPL, it furnished its PAN, communication address etc. Therefore, we are of the considered view that the assessee company has duly discharged its onus quite satisfactorily .It would be unfair to penalise it for the misdeeds of BAIPL for not filing the return and non-compliance leading to its assessment getting competed u/s 144 of the Act. For such non compliant attitude BAIPL and its directors could be hauled up as per the provisions of law and not the assessee which apparently engaged its services for bonafide purposes and there is no apparent basis for treating the expenses in the nature of accommodation entries or bogus by any stretch of imagination. Therefore, from all aspects of the case, we find that the disallowance was uncalled for. Accordingly, we set aside the appellate order and direct the AO to delete the addition made. Consequently, relevant grounds of appeal are allowed.

13. In the result appeal of the assessee is **partly allowed.**

14. **ITA No. 5585/MUM/2024 (A.Y. 2014-15)**

ITA No. 5586/MUM/2024 (A.Y. 2015-16)

15. In the above appeals, identical disallowances have been made in respect of similar transactions with BAIPL on same reasons. As

we have already partly allowed the appeal in AY 2013-14 in para 12(supra),the findings and decisions rendered therein apply *mutatis mutandis* in these appeals as well which are also **partly allowed**.

16. In the result, all the appeals of the assessee stand partly allowed.

17. **Revenue's Cross Appeals**

ITA No. 5599/MUM/2024 (A.Y. 2013-14)
ITA No. 5615/MUM/2024 (A.Y. 2014-15)

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance to 15% of the total payments made by the assessee, without properly examining as well as appreciating the facts and findings brought out by the AO in assessment order that M/s. Birla Aircon Infrastructure Pvt. Ltd. (BAIPL) was a bogus contractor, based on its failure to respond to a notice u/s 133(6) of the Act?"*
2. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the AO rightly reduced the disallowance of Rs.8,93,55,700/- from the Work-in-Progress (WIP), as it was not allowable to be capitalized?"*
3. *"Whether, on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in not properly considering the findings highlighted in Para 7 of the assessment order regarding the failure of the assessee to discharge the burden of proof concerning the genuineness of the transactions and the identity of the party?"*
4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on the Hon'ble Ahmedabad ITAT judgment in the case of Ultratech Transmission (P.) Ltd. [2023] 151 taxmann.com 20, despite the facts and merits of that case being materially different from the instant case?"*

18. Since we have already partly allowed the appeal of the assessee in its appeals stated above and have also set aside the appellate order and directed the AO to deleted similar disallowance, facts being identical, there is no merit in the above Cross appeal which is accordingly **dismissed**.

19. **ITA No. 5601/MUM/2024 (A.Y. 2015-16)**

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance to 15% of the total payments made by the assessee, without properly examining as well as appreciating the facts and findings brought out by the AO in assessment order that M/s. Birla Aircon Infrastructure Pvt. Ltd. (BAIPL) was a bogus contractor, based on its failure to respond to a notice u/s 133(6) of the Act?"*
2. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the AO rightly reduced the disallowance of Rs.16,65,000/- from the Work-in-Progress (WIP), as it was not allowable to be capitalized?"*
3. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not properly considering the findings highlighted in Para 8 of the assessment order regarding the failure of the assessee to discharge the burden of proof concerning the genuineness of the transactions and the identity of the party?"*
4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on the Hon'ble Ahmedabad ITAT judgment in the case of Ultratech Transmission (P.) Ltd. [2023] 151 taxmann.com 20, despite the facts and merits of that case being materially different from the instant case?"*
5. *Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the AO rightly making a disallowance of depreciation amounting to Rs.38,47,500 on Rs. 5,13,00,000 capitalized during the year under appeal for transaction with BAIPL without properly examining as well as appreciating the facts and findings*

brought out by the AO in assessment order that M/s. Birla Aircon Infrastructure Pvt. Ltd. (BAIPL) was a bogus contractor, based on its failure to respond to a notice u/s 133(6) of the Act?"

20. Since we have already partly allowed the appeal of the assesse in its appeals stated above and have also set aside the appellate order and directed the AO to deleted similar disallowance, facts being identical, there is no merit in the above Cross appeals. The **ground no.5** relating to depreciation of Rs 38,47,500/- on the capitalized amount is inconsequential in nature and does not survive since the entire amount of disallowance has already been allowed in the preceding appeals(supra). Thus, the Cross appeal is **dismissed**.

21. In the result, **all the above appeals of the assessee are partly allowed** and **Cross appeals of the Revenue are dismissed.**

Order pronounced in the open court on **08.12.2025**.

Sd/-	**Sd/-**
NARENDER KUMAR CHOUDHRY	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 08.12.2025
Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.