

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR**

**BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND SUDHIR PAREEK, HON'BLE JUDICIAL MEMBER**

**Stay Application No. 8 to 13/Jodh/2024
(Arising out of ITA Nos. 620, 621, 622, 624, 625 & 628/Jodh/2024)
(Assessment Year – 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18)**

JS Engineering Works J-16, M/s. SCLJ & Associates, Lal Kothi Yojana, Sahakar Marg, Jaipur – 302015. PAN No. AAFFJ 9260 Q		DCIT, Central Circle, Chittorgarh.
ITA Nos. 620, 621, 622, 624, 625 & 628/Jodh/2024 (Assessment Year – 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18)		
JS Engineering Works J-16, M/s. SCLJ & Associates, Lal Kothi Yojana, Sahakar Marg, Jaipur – 302015. PAN No. AAFFJ 9260 Q		DCIT, Central Circle, Chittorgarh.
Assessee by	Shri Sandeep Jhanwar, CA (Virtual)	
Revenue by	Shri P.R. Mirdha, Addl. CIT (Virtual)	
Date of Hearing	18.02.2026.	
Date of Pronouncement	26.02.2026.	

ORDER

PER BENCH:

All the captioned appeals have been filed by the assessee against the separate orders even dated 21/06/2024 of the Ld. Commissioner of Income Tax (Appeal), Udaipur-2 (hereinafter referred to as the CIT (A)).

2. Since the common issues challenged by the assessee pertains to re-opening of the case as well as the addition made in respect of disallowances of shut down wages paid on identical facts except variation in the quantum of shutdown amount disputed and therefore, these appeals were heard together and disposed off by this consolidated order for the sake of convenience and brevity. Accordingly, the ITA No. 622/Jodh/2024 for the Assessment Year 2014-15 has been taken as a lead case for discussion where the assessee has taken the following ground of appeal:

1. *Under the fact and circumstances of the case, Id. CIT(A) has erred in not quashing the order passed by Id. AO u/s 144 r.w.s. 147 of the Income Tax Act, 1961.*
2. *Under the facts and circumstances of the case the Id. CIT(A) has erred in confirming the disallowance made by Id. AO in respect of shut down expenses of Rs. 34,43,214/- by holding it to be bogus.*
3. *The Appellant craves leave to add, amend, alter or delete the ground of appeal on or before date of hearing*

3. The facts of the case as per record are that the appellant Firm M/s J.S. Engineering Works is engaged in the work of supply of manpower in large industries like cement factories, power plants etc. The assessee e-filed its return of income for the years under consideration as under:

AY	Date of Filing Return	Income Declared
2012-13	25.09.2012	17,36,570
2013-14	29.09.2013	14,99,910
2014-15	29.11.2014	53,48,580
2015-16	28.09.2015	57,42,060

2016-17	15.10.2017	45,91,610
2017-18	01.11.2017	37,99,680

In the present case, Proceedings u/s 263 was initiated for the Assessment Year 2015-16. During proceedings u/s 263 of the Income Tax Act, 1961, verification of claim of shut down wage expenses was undertaken, and shutdown register for Financial Year 2014-15 was impounded u/s 131(3) of the Income Tax Act on 15.10.2018. Later, a survey u/s 133A of the Income Tax was conducted on 17.10.2018 at the business premise of the firm to verify the claim of shut down expenses. Thereafter, notice u/s 148 IT Act, 1961 was issued on 25.02.2019. In compliance with the notice, the assessee filed ITR for the following assessment year as under:

AY	Date of filing of return u/s 148	Income declared
2012-13	09.03.2019	17,36,570
2013-14		14,99,910
2014-15		53,48,580
2015-16		57,42,060
2016-17		45,91,610
2017-18		37,99,680

3.1 In these cases, the regular scrutiny assessments u/s 143(3) have been completed for the assessment years 2012-13 to 2015-16. The details of the same are as below:

AY	Date of order	Retuned income	Addition made	Remarks
2012-13	09.01.2015	17,36,570	30,76,950	Trading result accepted by the Id. AO. The Id. AO disallowed service tax penalty of Rs. 10,000/-, remuneration paid to partner of Rs. 28,29,852/-, Diwali and Vishwakarma Puja Expenses Rs. 78,146/-, depreciation of Rs. 1,22,952/- and interest paid to partner of Rs.36,001/-.However all ground have been deleted in CIT (Appeal) except interest paid to partner.
2013-14	09.03.2016	14,99,910	3,21,580	Trading result accepted by the Id. AO. The Id. AO disallowed telephone expense of Rs. 32,997/-, travelling and conveyance expenses of Rs. 1,29,000/-, depreciation on car of Rs. 21,000/-, Workman and staff welfare expenses of Rs. 1,23,000/- and interest on service tax of Rs. 15,586/-. The Id. CIT(A) has partially allowed the appeal.

2014-15	28.12.2016	53,48,580/-	5,20,280	Wages discussed in assessment order. The Id. AO made lump sum disallowance of Rs. 4,00,000/- out of salary, wages and staff welfare expenses and disallowed late payment of ESIC of Rs. 1,20,275/-.The above disallowance have been deleted in CIT(A).
2015-16	18.08.2017	57,42,060	2,00,000	Wages discussed in assessment order. The Id. AO made lump sum disallowance of Rs. 2,00,000/- out of salary & Wages and staff welfare expenses.
2016-17	No Regular Scrutiny			
2017-18	No Regular Scrutiny			

3.2 During the survey, the assessing officer noted that the assessee has claimed the following types of wages as expenses:

AY	Total wages	Regular Wages	Shut Down Wages
2012-13	6,34,80,026	5,74,41,186	60,38,840
2013-14	8,03,57,624	7,80,02,865	23,54,759
2014-15	7,30,51,779	6,96,08,565	34,43,214
2015-16	10,40,76,946	7,59,08,853	2,81,68,093

2016-17	11,58,22,004	9,00,99,045	2,57,22,959
2017-18	8,91,78,138	8,64,93,022	26,85,116

The Id. AO has observed during the assessment proceedings that shut down wages has been paid in cash. The statements of Sh. Nathuram (Accountant), Sh. Anil Kumar Agal (Partner) and Sh. Jagdish Kumar Agal (Partner) were also recorded during survey wherein shut down wage registers were found/produced for Assessment Year 2014-15 to 2017-18 to justify the genuineness of the claim of such shut down expenses for the years under consideration. AO being not satisfied with the reply of the assessee, made an addition of Rs. 34,43,214/- on account of disallowance of the claim of "Shutdown Wages" for assessment year 2014-15 in the Assessment order passed u/s 144 r.w.s. 147 of Income Tax Act, 1961 while assessing income at Rs. 87,91,790/- on 10.12.2019.

4. Being aggrieved with the assessment order, the appellant has preferred an appeal before the CIT (A) who has upheld the finding of the AO by observing as under:

"It is found that the AO has made addition on the basis of chart which was provided by the assessee firm during the course of survey and therefore, contention of the assessee that how the figure of shut down wages are taken by AO is not found to be acceptable. The assessee has tried to manipulate and misguide by saying that the basis of the figures is

not known when the figures are given by the assessee itself. The AO reported that the assessee firm has not furnished any details of shut down wages during the course of remand proceedings. Hence, the appellant did not avail the opportunity to explain the discrepancy before the AO even when the opportunity was provided on the request of the assessee. The assessee is now referring to the documents which are already available with Id. AO as these documents were impounded by the department during the course of survey. The AO has made the addition on the basis of these documents. The appellant assessee failed to furnish any details of shut down wages during the course of remand proceedings. Hence, the decision of the AO is found to be justified and confirmed.”

5. At the time of hearing, the Id. A/R of the assessee submitted that the reopening of assessment is not valid for all the years as the reasons recorded are not justified. He has submitted that there was no admission on part of accountant or the partner of the assessee firm that verification of the shut down wages is not possible. They submitted all the details; invoices raised on the customers wherein the details of labour employed were mentioned and the wages registers which according to him were sufficient for verification of the payment of wages in this nature of the assessee's trade. He submitted that once the assessee has shown the revenue, details from wage registers for providing the labours to the customers, the related expenses incurred has to be allowed. As far as Assessment Years 2012-13 and 2013-14 are concerned, he

further submitted that the re-assessment notices were barred by limitation as they were issued beyond 4 years. He submitted that both the years had already been assessed u/s 143(3) earlier and all the books of accounts, details etc. were available during the course of assessment proceedings and there was no failure on part of assessee to fully and truly disclose all material facts. He placed reliance on Supreme Court of India Judgment in case of DCIT vs. Jayesh T Kotak [2021] 130 taxmann.com 170, Delhi High Court Judgment in the case of PCIT vs. Superior Films (P.) Ltd [2021] 129 taxmann.com 360, Gujarat High Court Judgment in the case of Kantibhai Dharamshibhai Narola vs. ACIT [2021] 125 taxmann.com 348, Bombay High Court Judgment in case of M/s Akshar Anshul Construction LLP vs. ACIT [2019] 104 taxmann.com 94 and Gujarat High Court in case of Jivraj Tea Ltd vs. ACIT [2020] 116 taxmann.com 27.

6. On the other hand, Id. DR has relied on the order of CIT(A). She argued that since the assessee did not object the reassessment proceedings before the Id. AO, it cannot be challenged now.

7. We have heard the rival submissions and perused the material on record. On perusal of reasons, we find that the AO has just referred the statements of the accountant and the statement of the partner and has mentioned that they admitted the fact that the wages cannot be verified. It is noted that for the

Assessment Years 2012-13 & 2013-14, complete scrutiny assessment had taken place u/s 143(3). The assessee has submitted the invoices raised on the customers wherein the details of number of labours is also mentioned. The revenue receipts have been included in income and respective payments of wages has been claimed as expenditure. The books of accounts of the assessee are audited. The assessee has furnished complete details of the shut down wages earned and the respective expenditure incurred in that respect.

8. In present appeals, we find that in the facts and circumstances of the case, the appeals of Assessment Years 2012-13 & 2013-14, **the notice u/s 147 of the Act were issued on 25/02/2019 i.e. beyond the period of 4 years of the due date prescribed for the issue of notice u/s 148 of the Act.** Thus, AO has lost jurisdiction under Proviso to section 147 of the Act. Further, the Ld. AO has not brought on record any fact by which it can be said that the assessee has not disclosed fully and truly all material fact which were necessary for assessment. Although the assessee did not file objection before the assessing officer, yet the jurisdiction of AO is a legal point which can be challenged at any stage of adjudication. A notice issued after 4 years would render the assessment beyond the jurisdiction of the Assessing Officer and it will always be invalid. Therefore, the assessment proceedings for the Assessment Years 2012-13 & 2013-14 are quashed being without jurisdiction. However, the

proceedings for the other years i.e. Assessment Years 2014-15, 2015-16, 2016-17 & 2017-18 are held to be valid.

9. Accordingly, the assessment proceedings for the Assessment Years 2012-13 & 2013-14 are quashed ab initio viod and invalid being without jurisdiction. Since we have held that the assessment for the A Y 2012-13 & 2013-14 are invalid, hence we are not dealing with the other grounds which remain of academic nature.

10. The Next issue in 4 appeals of the A Y 2014-15, 2015-16, 2016-17 & 2017-18 are concerned, is in respect of disallowance of shut down wages where the assessment year 2014-15 is taken as a lead case for discussion of facts. The Id. A/R of the assessee submitted that the assessee furnished complete registers for payment of wages which is the best evidence for payment of wages that too when it is supported with the corresponding invoices raised to the customers mentioning all details. He has also submitted that the accounts of the assessee are audited and were subject to scrutiny assessment for the Assessment Years 2014-15 & 2015-16. After thorough examination of books of accounts and the details furnished by the assessee, to cover up the possible minor deficiencies, the AO has already made a disallowance of Rs.4,00,000/- & Rs.2,00,000/- in respect to Assessment

Year 2014-15 and 2015-16 respectively. He referred to the statements appended in the Paper Book, where customer wise list of Shut Down revenue and expenditure is given in detail (APB, Pgs. 1-2). The summary of the same is as under:

A Y	Revenue	Shut down Expenditure	Shut down Expenditure as per AO/CIT(A)
14-15	3,78,91,482	3,33,59,909	34,43,214
15-16	4,04,42,839	2,81,68,093	2,81,68,093
16-17	4,41,72,113	2,57,22,959	2,57,22,959
17-18	73,65,139	56,85,127	56,85,127

11. The Ld. AR pointed out that in the Assessment Year 2014-15, Id. AO has wrongly taken expenditure on shut down at Rs.34,43,214/- only as against the total expenditure of Rs.3,33,59,909/- incurred. Similarly, in Assessment Year 2017-18, as sum of Rs.26,85,127/- was wrongly disallowed earlier in respect of which enhancement of Rs.30,00,000/- has been made by CIT(A).

12. The AR submitted that the Id. AO has pointed out meager deficiency of repetitions of one or two names of the labourors out of thousands of them. According to the Id. AR, the possibility of two persons with the same name cannot be denied and also, the possibility of one person taking payment on behalf of other can also not be denied. As far as Id. AO's observation in pointing out of certain non-compliances, Id. A/R submitted that AO has just made a passing reference without any specific mentioning or any violation of

the law under which such compliance was actually required during the year under consideration. Even otherwise, mere non compliance of certain procedural aspects does not affect the allowability of expenditure actually incurred. Ld. AR also read out the relevant part from the statements of accountant and partners of the assessee firm. The AR contended that they have only shown their inability to produce few out station labours who left the assessee business. In our view, looking into the nature of business of the assessee and that the shutdown labour is arranged on temporary basis through various channels, it would not possible to produce all the labours worked in the past years. Ld. AR further submitted that although there was few non-appearance during the course of assessment proceedings, however, entire details i.e. wage registers, books of accounts, vouchers etc. were already with the assessing officer as a result of survey proceedings. Moreover, all the details which were submitted to CIT(A) were also available to the Assessing Officer in remand proceedings. No adverse comment on the same has been made by the Id. AO even in the remand proceedings. Ld. AR also referred to the submissions made by him before the CIT(A) and appended in the paper book. Ld. AR accordingly concluded that the disallowance of wages in respect of the shut down work, where receipts are included in the assessee's income, is highly unjustified and deserves to be deleted.

13. Per contra, Ld. DR on the other hand supported the order of the authorities below but she failed to rebut the contention of the Ld. AR being made based on documentary evidences, admissions of the facts in the remand report by the AO regarding the claim of shut down expenses against the corresponding revenue receipts.

14. Having heard the rival contention and perusal of the material on record, we find that a survey on the assessee's premises was conducted where the entire record of the assessee has been gone through and examined by the department. The Assessing Officer (In short, the AO") also made observations on the basis of the wage registers. Further, in the remand proceedings as well, the details were produced before the AO for examination. Based on such detailed explanation given by the Ld. AR for the assessee that the appellant has earned income from manpower supplied during shut down activities of the customers who are large corporates like Lafarge, Shree Cement, Raj West Powers etc. In the invoices also, the assessee has mentioned the details of manpower supplied. For obvious reasons, such invoices could not have been raised without providing manpower. In our view, if the Ld. AO, assessed the revenues earned on one hand from man power supply to the costumer corporates, then it is not justified to disallow corresponding expenditure incurred by pointing out certain deficiencies either in the wage register and for want of non-verification of some labours by way of producing them before the AO at the time of survey or post survey proceedings without disproving either such expenditure claims debited in the name of the parties in the books of account by way of examination and verification of the quantum of claim of such expenditure instead harping on production of outstation labours. We are therefore in agreement with the contentions made by the Id. AR that it is very

difficult to produce labour who worked in past years and left over where labour is arranged temporarily for the work like shut down activities. Such a minor deficiencies pointed out by the Id. AO should not result in disallowance of entire wages. In the original assessment proceedings, the Id. AO had already made disallowances of lump sum amount of Rs.4,00,000/- and Rs.2,00,000/- in respect of salary and wages to cover these minor deficiencies which were found during the verification of records. Further, the accounts of the assessee are audited and the disallowance of huge amount of shut down wages based on presumption and assumptions, without any specific finding is not justified. In our considered view, such an addition is against the standard principles of accountancy and settled law.

15. Considering the peculiar facts, we hold that the impugned order of the CIT (A) is perverse to the facts on record. Accordingly, the addition of Rs. 34,43,214 made by the Id. AO in respect with Assessment Year 2014-15 is deleted. Thus, Ground No. 2 of the appeal is allowed.

16. The issue and facts in ground no 2 regarding claim of Shut down expenses in ITA Nos. are 624, 625 & 628/Jodh/2024 for Assessment Year 2015-16, 2016-17 and 2017-18 are identical to that of ITA No. 620/Jodh/2024 for Assessment Year 2014-15 except variation of the quantum. Therefore, our observation and findings given in ITA No. 620/Jodh/2024 shall apply in ITA Nos. are 624, 625 & 628/Jodh/2024 in *mutatis mutandis*, ordered accordingly.

17. 628/Jodh/2024 (Assessment Year 2017-18)

In the 3rd ground of this appeal, the appellant has challenged that's the Id. CIT (A) has erred in enhancing the disallowance of shutdown expenses by

₹30,00,000 considering the wage chart signed by the Assessee during the course of survey proceeding.

17.1 The issue has been discussed at length in the aforesaid ground no. 2. While adjudicating the issue it is held that the department assessed the revenues earned on one hand from man power supplied by the assessee to the costumer corporates, then how it could be justified to disallow corresponding expenditure incurred by assessee without pointing out specific deficiencies in the wage register. Merely non-verification of a few labours by way of producing them before the AO at the time of survey or post survey proceedings without disproving any such expenditure claims debited in the name of such person in the books of account by way of examination and verification of the quantum of claim of such expenditure instead harping on production of outstation labours. Further the Ld. CIT (A) has ignored the factual content of the remand report submitted by the AO on the issue of shut down expenses. The Ld. CIT (A) has also not rebutted the contention of the Assessee as per the submissions furnished before the CIT (A) during the 1st appellate proceedings. In our view, the Ld. CIT (A) has failed to appreciate the merits of the case and the documentary evidences filed before it by the appellant and proceed with enhancement of addition in mechanical and arbitrary manner by a mere reference to the observation of the AO during survey and post survey proceedings which has already been stands clarified and explained in the aforesaid discussion.

17.2 In view of that matter, we hold that the enhancement of addition of Rs. 30,00,000/- by the Ld. CIT(A) is perverse to the facts on record being irrational, illogical and against the mandate. As such, this enhancement of Rs. 30,00,000/- is deleted. Thus, Ground No. 3 is allowed.

18. The Stay Application No. 8 to 13/Jodh/2024 arising out of the appeals filed by the assessee rendered infructuous consequent to the relief granted.

19. In the result, all these 6 appeals filed by the assessee are allowed.

Order pronounced on 26/02/2026 in the open court.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated : 26/02/2026.

Nimisha Sr. PS

True Copy

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

BY ORDER,