

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No. 1823/Mum/2025
(Assessment Year:2015-16)

Dy. CIT (Central Circle)-3(3) Room No. 404, Kautilya Bhavan, BKC, Mumbai-400 051	Vs.	M/s. Welspun Enterprises Limited 4 th Floor, Welspun House, Senapati Bapat Marg, Lower Parel, Delisle Road, S.O., Mumbai-400 013
PAN/GIR No. AABCM 4107 C		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Harsh Kapadia & Shri Ajay Nagpal
Respondent by	:	Shri Arun Kanti Datta – CIT DR

Date of Hearing	:	28.01.2026
Date of Pronouncement	:	06.03.2026

ORDER

Per Saktijit Dey, Vice President:

Captioned appeal by the department, arises out of order dated 17.01.2025 of learned Commissioner of Income Tax (Appeals), Mumbai, pertaining to A.Y. 2015-16.

2. In ground no. 1, the department has challenged the deletion of addition of Rs.23,47,354/-, being addition made by the Assessing Officer (A.O. for short) on account of alleged non-genuine expenses.

3. Briefly the facts are, the assessee a resident corporate entity is stated to be engaged in the business of developing infrastructure projects such as roads and bridges. For the assessment year under dispute, the assessee filed its return of income on 26.11.2015, declaring loss of Rs.1192,63,50,282/- under the normal provisions of the Act and book loss

of Rs.83,97,776/- u/s. 115JB of the Act. Subsequently, a search and seizure operation u/s. 132 of the Act was carried out on the assessee on 30.06.2017. Pursuant to the search action, proceedings u/s. 153A of the Act were initiated. In response to notice issued u/s. 153A of the Act, the assessee filed its return of income, declaring the same figures as were disclosed in the original return of income.

4. In course of assessment proceeding, the Assessing Officer ('A.O.' for short), while verifying the books of account noticed that the assessee had debited expenditure of Rs.23,47,354/- to a party, by name, Mr. Mohd Salim, S/o. Mohd. AinuddinHoque. Referring to the statement of employees recorded in course of search and seizure operation, the A.O. observed, though, the expenditure was claimed towards sub-contract expenses and purchases, however, they were unable to furnish authenticating documentary evidences in support. Based on such enquiry conducted in course of search and seizure operation, the A.O. called upon the assessee to prove the genuineness of such expenses. In response to the query raised, the assessee reiterated that they were sub-contract expenses paid to a labour contractor, who supplied labour at various work sites. The A.O., however, was not convinced with the explanation of the assessee. Treating the expenses as non-genuine, the A.O. added to the income of the assessee.

5. The assessee contested the aforesaid addition before Id. First appellate authority.

6. While deciding the issue in appeal, Id. First appellate authority based on materials available on record found that in course of search and seizure operation, ledger extracts of the payments made towards labour supplied and other supporting evidences were found. He further observed that the reasoning of the A.O. that the labour contractor has declared

meagre income is of no relevance in the context of assessee's claim of expenditure. Further, he found that all primary evidences to prove the genuineness of expenditure such as the name of the party, his address, PAN, RA bills, purchase register, ledger account, bank statements, etc. have been furnished by the assessee. Thus, based on the aforesaid analysis of facts, ld. First appellate authority deleted the addition.

7. We have considered rival submissions and perused the materials on record. It is a common point before us that identical issue came up for consideration before the co-ordinate bench in assessee's case in A.Y. 2013-14. While deciding the issue in ITA No.3625/Mum/2024, the co-ordinate bench in order dated 23.12.2025 upheld the decision of ld. First appellate authority in deleting the addition. Notably, in the decision referred to above, the co-ordinate bench while dealing with the issue has held as under:

7. We have carefully considered all relevant facts of the case and find sufficient merits in the contentions of the assessee. There is absolutely no infirmity in the findings and the decision arrived at by the ld. CIT(A). Section 37(1) of the Act is a residual provision that allows businesses to deduct revenue expenditures not specifically covered under Sections 30 to 36, provided they meet certain conditions. The primary condition is that the expense must not be a capital or personal expense and must be incurred "wholly and exclusively" for the purpose of the business or profession. To claim a deduction under Section 37(1), the following cumulative conditions must be met: -The expenditure must be revenue in nature, not a capital expenditure. -It must not be a personal expense of the assessee. -It must have been incurred wholly and exclusively for the purposes of the business or profession. -It should not be an expense of the nature specifically described in Sections 30 to 36 of the Income Tax Act. 7.1 Nothing has been brought by the AO on record to show that expenses incurred on labour contractors were capital in nature or were personal expenses and also were not wholly and exclusively incurred for the purposes of business of the assessee. It is settled law that burden of proof is on assessee and in order to claim that an expenditure falls under section 37(1), the burden of proving the necessary facts in that connection is on the assessee. Where an assessee claims a deduction, the onus is on him to bring all material facts on record to substantiate his claim. It is his duty to prove payment especially when the ITO doubts the genuineness thereof. In the instant case, the assessee has been able to discharge the onus in satisfactory manner duly supporting the claim of deduction with documentary evidences. All the payments have been made through banking channels and TDS has also been duly deducted by the assessee on the impugned payments. It is also worth mentioning here that the assessment in this case has been made u/s 153A consequent to search and seizure operation. However, the AO has utterly failed to bring on record any adverse incriminating materials found during search in respect of these payments. The disallowance made lacks any substance and is devoid of any merit and has been made only on presumptions and surmises. Accordingly, we hold that there is no infirmity in the appellate order which is therefore upheld. The ground of appeal, therefore, fails.

8. There being no difference in the factual position obtaining in the impugned assessment year, respectfully following the decision of the co-ordinate bench, we uphold the order of Id. First appellate authority on the issue. Ground raised is dismissed.

9. In ground nos. 2 to 7, the department has challenged the deletion of certain additions, such as, disallowance of Rs.5,41,718/- u/s. 40(a)(ia) of the Act, disallowance of Rs.86,54,962/- u/s. 14A of the Act, disallowance of Rs.5,13,47,789/- u/s. 36(1)(iii) of the Act and disallowance of depreciation on BOT projects amounting to Rs.83,78,549/-. The aforesaid statutory disallowances were made by the A.O. while completing the assessment u/s. 153A r.w.s. 143(3) of the Act.

10. Before Id. First appellate authority, the assessee contested these disallowances, pleading that in case of unabated assessment, no disallowance can be made in absence of any incriminating material found during the search and seizure operation. Id. first appellate authority having found merit in the submissions of the assessee, deleted the disallowances.

11. Before us, Id. Departmental Representative (Id. DR for short) relying upon the decision of Hon'ble Supreme Court in case of *PCIT vs. Abhisar Buildwell (P.) Ltd.* 149 taxmann.com 399 (SC) submitted that while deciding the appeals relating to *M/s Kesarwani Zarda Bhandar Sahson Allahabad* (Civil Appeal Nos. 7738-7739/2021, 7732-7735/2021 and 7740/2021), the Hon'ble Supreme Court has held that even in case of unabated/completed assessment, the A.O. retains the jurisdiction to assess not only the undisclosed income found during the search operation, but the other income materials relating to which were available at the time of original assessment.

12. Per contra, Id. Counsel appearing for the assessee submitted that the issue is squarely covered by the decision of Hon'ble Supreme Court in case of *Abhisar Buildwell (P.) Ltd* (supra). In this context, he specifically drew our attention to para 13 of the judgment.

13. We have considered rival contentions, in light of the decisions relied upon and perused the materials on record. Insofar as, the factual position relating to the issue in dispute is concerned, there is nothing in the assessment order or any other materials available on record to demonstrate that the statutory disallowances noted above were based on any incriminating material found during the search and seizure operation. In fact, Id. First appellate authority in his order has recorded a categorical finding of fact regarding absence of incriminating material *qua* the disallowances made. Even, at the time of hearing before us, Id. DR was unable to demonstrate any reference to incriminating material by the A.O. while make the subject disallowances. Thus, it is proved on record that the statutory disallowances made by the A.O. were not based on any incriminating material found during the search and seizure operation. In case of *Abhisar Buildwell (P.) Ltd* (supra), the Hon'ble Supreme Court has held as under:

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

- (i) *that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- (ii) *all pending assessments/reassessments shall stand abated;*
- (iii) *in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

- (iv) *in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021

14. As could be seen from the above, in paragraph 14(iv), the Hon'ble Supreme Court in no uncertain terms has held that in absence of any incriminating material found during search and seizure operation, the A.O. cannot assess or reassess taking into consideration the other material in respect of completed/unabated assessment. The Hon'ble Apex Court has further held that in case of unabated/completed assessment, the only recourse available to the A.O. is reopening of assessment u/s. 147 of the Act. Thus, keeping in view the ratio laid down by the Hon'ble Supreme Court, as above, we do not find any infirmity in the decision of Id. First appellate authority in deleting the disallowances. Grounds are dismissed.

15. In the result, the appeal is dismissed.

Order pronounced in the open court on 06.03.2026

Sd/-

(Arun Khodpia)
Accountant Member

Mumbai; Dated : 06.03.2026
Roshani, Sr. PS

Sd/-

(Saktijit Dey)
Vice President

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai