

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 510, 511 & 512/RPR/2024
निर्धारण वर्ष / Assessment Years : 2014-15, 2017-18 & 2018-19

Nishant Jain
Ring Road No.2, Shanti Nagar,
Near Sidhasikhar Vistar,
Bilaspur (C.G.)-495 001
PAN: AGEPJ9793M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Sunil Kumar Agrawal &
Vimal Kumar Agrawal, CAs

Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2025

घोषणा की तारीख / Date of Pronouncement : 20.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), Raipur-3, dated 08.10.2024 and 10.10.2024, which in turn arises from the respective orders passed by the A.O under Sec.143(3) r.w.s. 263 AND 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 21.12.2019, 14.12.2019 and 30.04.2021, for the assessment years 2014-15, 2017-18 & 2018-19, respectively. As the facts and issues involved in the captioned appeals are common, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.510/RPR/2024 for assessment year 2014-15 wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

“1. For the assessment order passed by the Ld. CIT(A) is bad in law as well as on facts.

2. The learned CIT(A) has erred in upholding the addition of Rs.1,36,15,941 to the income of the appellant on the basis of a difference in turnover as reported in the audit report and Form 26AS, without properly considering the explanations and reconciliations provided by the appellant. The difference in turnover arose due to machinery and mobilization advances received by the appellant, on which the contractee had deducted TDS, and which were appropriately accounted for by the appellant as part of gross receipts as and when the work was completed. The addition is, therefore, unjustified and deserves to be deleted.

3. That the appellant provided a detailed reconciliation explaining the difference in turnover, which was due to the advances, and this was disregarded by the CIT(A). The addition was made without considering the correct accounting treatment and factual submissions.

4. That under the facts and circumstances of the case, the additions made by the Ld. CIT(A) are liable to be deleted.

5. That the appellant craves leave to add, alter or withdraw any ground(s) of appeal on or before hearing of the appeal.”

3. Succinctly stated, the assessee who is a civil contractor had filed his return of income for A.Y. 2014-15 on 29.10.2014, declaring an income of Rs.1,32,93,100/-. Original assessment was, thereafter, framed by the A.O vide his order passed u/s. 143(3) of the Act, dated 29.07.2016 determining his income at Rs.1,33,36,734/-.

4. Thereafter, the Pr. Commissioner of Income Tax, Bilaspur (for short “Pr. CIT) passed an order u/s. 263 of the Act, wherein it was, inter alia, observed by him that the A.O while framing the assessment had failed to consider the fact that as the assessee had suppressed/short accounted for machinery and mobilization advance of Rs.1,36,15,941/- in his books of account vis-à-vis “Form 26AS”, therefore, the order passed by him was rendered as erroneous in so far it was prejudicial to the interest of the revenue. Accordingly, the Pr. CIT had, inter alia, based on his aforesaid observation, set-aside the assessment order and restored the same to the file of the A.O with a direction to pass a fresh assessment order after affording reasonable opportunity of being heard to the assessee.

5. As the assessee in the course of the set-aside assessment proceedings that were taken up by the A.O to give effect the direction of the Pr. CIT, Bilaspur, failed to reconcile the aforesaid discrepancy of Rs.1,36,15,941/-, therefore, the latter made an addition of the said amount. Accordingly, the A.O vide his order passed u/s.143(3) r.w.s. 263 of the Act, dated 21.12.2019 determined the income of the assessee at Rs.2,69,52,680/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5.Ground No. 2 & 3:- During the course of assessment proceedings, the assessee has filed his original return of income electronically for the year under consideration on 29.10.2014 declaring total income at Rs.1,32,93,100/-. In the case scrutiny assessment u/s 143(3) was completed on 29.07.2016 thereby assessing income at Rs.1,33,36,734/-. Thereafter, the Pr. Commissioner of Income Tax, Bilaspur has passed order u/s 263 of the Income Tax Act, 1961 on 25.03.2019 and made the following observation:-

(i) As per submission of the assessee, 26AS was rectified on 25.02.2019 i.e. during revisional proceedings. Still there is discrepancy of Rs.1,05,87,547/- as per reconciliation submitted by the assessee with reference to his books of account.

(ii) As per reconciliation statements submitted during scrutiny assessment proceedings, the assessee submitted reconciliation in respect of mobilization advance and machinery advance.

(iii) Again to reconcile the discrepancy the assessee has submitted additional remarks. In respect of discrepancy of Rs.2528,394/- in respect of TAN-BPLE0525A, the assessee has submitted that he has received mobilization advance of

Rs.1,81,48,000/- out of which amount of Rs.93,87,704/- was adjusted during the year under consideration.

(iv) Similarly, to reconcile discrepancy of Rs.1,36,16,000/- the assessee has stated that he received mobilization advance of Rs.1,56,87,000/- out of which a sum of Rs. 20,71,000/- was adjusted during the year under consideration.

(v) The assessee has also referred to the reconciliation submitted during scrutiny assessment proceedings of the case. However, proper reconciliation for amount of mobilization advance and machinery advance mentioned in reconciliation submitted during the scrutiny assessment proceedings with the amount mentioned now has not been submitted.

In view of the above, the Pr. CIT, Bilaspur has set aside the assessment order and restore it to the file of the AO and directed to pass the order in accordance with the provisions of Income Tax Act, 1961 after proper verification of the above fact discussed above and available on record after providing proper opportunities to the assessee of being heard. Accordingly, notice u/s 142(1) of the I. T. Act, 1961 dated 28.03.2019 was issued and duly served to the assessee to provided an opportunity to explain the difference in gross receipt in the audit report in comparison with 26AS. In response to the notice, the assessee has made submission which has duly examined.

In In the view, the assessee has shown less receipt of Rs. 1,36,15,941/- in the book of account in comparison of 26AS against the TAN No. JBPE00749A during the year under consideration. the assessee has stated that he has received Rs.1,36,15,941/- against Machinery advances and mobilization advances, which have been taken to gross receipts in the year itself or in next year. But he has failed to produce documentary evidence in support of his claim. Therefore, the sum of Rs.1.36,15,941/- is added to the income of the assessee for the year under consideration.

During the appeal proceeding the appellant company to submitted the reply as under:- That all the payments received by the appellant have been duly recorded in the books of accounts. Payments may be in the shape of gross receipts or mobilization advances or machinery advances.

That the various government departments while making the payments deduct TDS. The payment may be for work done or mobilization advance or for advance for machinery purchase. They don't differentiate between the payment of gross receipts of advance made for machinery or mobilization advance.

That during the year under consideration Rs.1,56,87,000/- amount has been received against mobilization advances and machinery advances from Executive Engineer Chhattisgarh Rural Roads Development Agency (TAN-JBPE00749A). We are hereby enclosing the copy of government department letter regarding the details of mobilization and machinery advances for Rs.1,56,87,000/-. That all the machinery advances and mobilization advances were added to the gross receipts in the year itself or following years.

However, amount of Rs.20,71,000/- out of Rs.1,56,87,000/- which is against mobilization advances or, machinery advances has been added in the gross receipts in current year only. Therefore, total gross receipts for TAN-JBPE00749A is Rs.4,13,04,440/- which has been duly recorded in the books of accounts. We are hereby enclosing the ledger copy of such gross receipts and the bill of memorandum received from the government departments for your kind consideration.

Further, balance amount of Rs.1,36,16,000/- has been shown in gross receipts in the following year. We are hereby enclosing the ledger copy of gross receipts for the next following year as well as the bill of memorandum received from the government departments.

That we are enclosing herewith 26AS for F.Y. 14-15 (A Y. 15-16) for your reference. While analyzing the 26AS, it is clear that gross receipts shown in the books of account is more as compared to the gross receipts appearing in the 26AS the gross receipts in books of account is inclusive of mobilization or machinery advances adjusted of earlier year.

That unless the work is completed against which the mobilization or machinery advance has been received no expenses can be booked in the books of account. Hence, showing such advances in the income is against the law & accounting practice. Further, in this regard, we place reliance on judicial pronouncement in the matter of:-

DCIT vs Five star Constructions (supra) Delhi Income Tax Tribunal:-Held that... Merely because tax at source has been deducted by the builder the receipt of mobilization money cannot be deemed as income of the assessee for the year under consideration.

ITO, Mumbai vs Divinity, Mumbai (2019), ITAT Mumbai:- that the mobilization advance is not a payment from MBMC but it is only advance. Since the mobilization advance is recoverable, the same cannot be income of the appellant. It is apparent from the records that during the year under consideration bills were not raised by MBMC, therefore no recovery was made.

That in view of above and considering the nature of work and considering the position of the assessee's law points involved and various decisions of different High Court and Tribunal, the additions made by the learned Assessing Officer is not justified and deserves to be deleted.

During the appellate proceedings, the appellant has furnished documentary evidence. The documentary evidence kept on record. On examination of all these documents, it is seen that the assessee has submitted reconciliation of gross receipt. The total gross receipts for TAN-JBPE00749A is Rs. 4,13,04,440/- as per audit report and Rs.5,49,20,381/- as per 26AS. The assessee has shown less receipt of Rs.1,36,15,941/- in the book of account in comparison of 26AS against the TAN NO. JBPEO00749A during the year under consideration. **The assessee has stated that he has received Rs.1,36,15,941/- against Machinery advances and mobilization advances, which have been taken to gross receipts in the year itself or in next year. But he has failed to produce documentary evidence in support of his claim. Therefore, I find that the Ld. AO justified the making addition of Rs.1,36,15,941/-, is hereby confirmed. Therefore, appeal on these grounds are dismissed."**

(emphasis supplied by us)

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

8. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

9. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold, submitted that both the lower authorities had based on perverse observations made/sustained the addition of Rs.1,36,15,941/- in the hands of the assessee. Elaborating on his contention, the Ld. AR submitted that though the assessee had before the CIT(Appeals) duly reconciled the impugned difference/variance of his gross receipts of Rs.1,36,16,000/- (supra), therefore, the latter had most arbitrarily upheld the addition. The Ld. AR in support of his aforesaid claim had taken us through the submissions that were filed by the assessee before the CIT(Appeals), Raipur-3, dated 21.02.2024, Page 72 to 80 of APB, wherein at Sr. No.6, he had filed a reconciliation of the gross receipts of Rs.1,36,15,941/-, Page 74-75 of APB. For the sake of clarity, the reconciliation of the gross receipts of Rs.1,36,16,000/- (supra) filed by the assessee vide his written submission before the CIT(Appeals) is culled out as under:

6. Reconciliation of Gross Receipt - JBPE00749A i.e difference of Rs. 1,36,15,941 due to mobilisation or machinery advances

Gross receipts as per 26AS			5,49,20,381
Less: Mobilization & Machinery advances received during the year		1,56,87,000	
Less: Machinery advances adjusted during the year out of Rs. 1,56,87,000 taken to gross receipts	1,55,000		
Less: Machinery advances adjusted during the year out of Rs. 1,56,87,000 taken to gross receipts	12,87,000		
Less: Machinery advances adjusted during the year out of Rs. 1,56,87,000 taken to gross receipts	2,00,000		
Less: Mobilization advances adjusted during the year out of Rs. 1,56,87,000 taken to gross receipts	4,29,000	20,71,000	1,36,16,000
Gross receipts as per Books of accounts			4,13,04,440

7. That during the year under consideration, Rs. 1,56,87,000 amount has been received against Mobilization advances and Machinery advances from Executive Engineer Chhattisgarh Rural Roads Development Agency (TAN JBPE00749A). We are hereby enclosing the copy of Government department letter regarding the details of mobilization and machinery advances for Rs. 1,56,87,000/-

8. That all the Machinery advances and Mobilization advances were added to the gross receipts in the year itself or following years. Details of such advances have been shown in the gross receipts in the following years which are given below.

S.No	Details of Mobilisation or machinery advances	Date	Amount of advances	Advances added in Gross Receipts in A.Y. 2014-15	Date	Advances added in Gross Receipts in A.Y. 2015-16	Date
1.	CG-MU-10	08.08.13	32,20,000	--	--	4,60,000	24.04.14
						27,60,000	01.07.14
2.	CG-MU-04	08.08.13	30,03,000	4,29,000	15.02.14	12,87,000	08.05.14
						12,87,000	20.05.14

3.	CG-MU-10	30.08.13	30,03,000	12,87,000	28.02.14	4,29,000	20.05.14
						12,87,000	01.07.14
4.	CG-MU-04	30.08.13	32,20,000	--	--	4,60,000	24.04.14
						14,60,302	24.09.14
						12,99,698	09.10.14
5.	CGMMGS VYM	04.09.13	20,86,000	--	--	16,00,000	08.05.14
						4,86,000	01.07.14
6.	CGMMGS VYM	04.09.13	11,55,000	1,55,000	22.02.14	8,00,000	01.05.14
				2,00,000	28.02.14		
	Total		1,56,87,000	20,71,000		1,36,16,000	

The Ld. AR submitted that the assessee had before the CIT(Appeals) duly demonstrated that out of the mobilization and machinery advance of Rs.1,56,87,000/- received by him from Executive Engineer, Chhattisgarh Rural Roads Development Agency (TAN : JBPE00749A) during the subject year, an amount of Rs.20,71,000/- was disclosed in the gross receipts for the subject year itself i.e. A.Y.2014-15, while for, the balance amount of Rs.1,36,16,000/- formed part of its gross receipts for A.Y.2015-16. The Ld. AR submitted that though the CIT(Appeals) had duly taken cognizance of the aforesaid factual position but had thereafter, without any reason upheld the addition of Rs.1,36,15,941/-. The Ld. AR to buttress his aforesaid claim had once again drawn our attention to the “reconciliation chart” of gross receipts, Page 74-75 of APB. It was, thus, the Ld. AR’s claim that now when the impugned discrepancy of gross receipts of Rs.1,36,15,941/- was duly explained by the assessee, therefore, there was no justification for the lower authorities to have made/sustained addition of the same to his returned income.

10. Per contra, Smt. Anubhaa Tah Goel, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. Controversy involved in the present appeal lies in a narrow compass i.e. as to whether or not the A.O/CIT(Appeals) are right in law and facts of the case in making/sustaining the addition of Rs.1,36,16,000/- in the backdrop of the explanation filed by the assessee?

12. As observed by us hereinabove, it is a matter of fact borne from record that the gross receipts disclosed by the assessee in his books of account falls short of the amount disclosed in "Form 26AS" by an amount of Rs.1,36,15,941/-. We find that though the assessee had filed a reconciliation explaining the aforementioned impugned variance/advance in the gross receipts, which, though was considered by the CIT(Appeals), but the latter had, thereafter, upheld/sustained the addition made by the A.O.

13. Although, the assessee by drawing support from the reconciliation of gross receipts, Page 74-75 of APB that was filed before the CIT(Appeals), had submitted before us that the impugned variance/difference in gross receipt of Rs.1,36,16,000/- of mobilization and machinery advance was disclosed by him in his gross receipts for the immediately succeeding year i.e. A.Y.2015-16, but we are afraid that the said claim cannot be summarily accepted on the very face of it. We, say so, based on a perusal

of the “reconciliation chart” that was filed by the assessee in the course of proceedings before the CIT(Appeals) [as had been culled out by us hereinabove). We cannot remain oblivious of the fact that the claim of the assessee that the amount of Rs.1,36,16,000/- (supra) had been disclosed by him in his gross receipts for the immediately succeeding year i.e. A.Y.2016-17 is not supported by any documentary evidence. Accordingly, we are of the view that the matter in all fairness requires to be restored to the file of the A.O with a direction to verify the authenticity of the aforesaid claim of the assessee. In case the aforesaid claim of the assessee that the mobilization and machinery advance of Rs.1,36,16,000/- (supra) received by him during the subject year was properly accounted for by him as part of his gross receipts of the succeeding year i.e. A.Y.2016-17 is found to be in order, then the impugned addition made by him during the subject year would stand vacated. Thus, the **Grounds of appeal Nos. 2 & 3** raised by the assessee are allowed for statistical purposes in terms of our aforesaid observations.

14. **Grounds of appeal Nos.1, 4 & 5** being general in nature are dismissed as not pressed.

15. In the result, appeal of the assessee in ITA No.510/RPR/2024 for A.Y.2014-15 is allowed for statistical purposes in terms of our aforesaid observations.

ITA No.511/RPR/2024
A.Y.2017-18

16. We shall now take up the appeal filed by the assessee in ITA No.511/RPR/2024 for A.Y.2017-18, wherein he has assailed the impugned order on the following grounds of appeal:

“1. For the assessment order passed by the Ld. CIT(A) is bad in law as well as on facts.

2. That the addition of Rs.18,08,007/-on account of undisclosed investment is unjustified and should be deleted, as the said investment has already been duly accounted for in the succeeding Assessment Year 2018-19. Therefore, the addition made in the current assessment year is redundant and not supported by any legal or factual basis.

3. That the learned AO has upheld addition of Rs.3,43,651/- due to difference in turnover between 26AS and turnover as per audit report. As per the order the learned AO and CIT(A) has mentioned contract receipts reported by the assessed in the financial statements is Rs.15,26,65,404/- and receipts as per 20AS Rs.15,30,09,055.- and has added difference of Rs.3,43,651/- in the income of the assessee. But this contract receipt does not belong to the assessee. The actual contractual receipt reported by the assessee is Rs.20,08,28,757/-which is in conformity with 26AS. The discrepancy in the assessment order arises from a typographical error, as the amount of Rs.15,26,65,404/- pertains to another entity, M/s Landmark Royal Engineering Pvt. Ltd., a concern of the assessee. Therefore, this addition of Rs.3,43,651/- has been wrongly made to the assessee's income and should be deleted, as no such discrepancy or difference exists. The assessee has accurately reported all relevant information, and there is no basis for the said addition.

4. That the addition of Rs.6,00,000/- on account of cash payments in contravention of Section 40A(3) deserves to be deleted, as the assessee has already offered the profit difference for taxation in lieu of the discrepancies arising during the survey. The payment in question was addressed by including the necessary profit adjustments, and therefore, no further addition on this account is warranted.

5. The addition of Rs.84,398/- on account of delayed payment of Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) contributions by 1-2 days is unjustified. The delay was minimal and does not warrant an addition to the total income. It is respectfully submitted that this addition should be deleted as it is not in accordance with the law, considering the trivial nature of the delay.

6. That the appellant craves leave to add, alter or withdraw any ground(s) of appeal on or before hearing of the appeal.

7. That under the facts and circumstances of the case, the additions made by the Ld. CIT(A) are liable to be deleted.”

17. Succinctly stated, the assessee had filed his return of income for A.Y.2017-18 on 02.11.2017, declaring an income of Rs.1,05,73,620/-. Survey proceedings u/s.133A of the Act conducted on the assessee on 29/30.01.2018. During the course of the survey proceedings, the assessee had vide his statement recorded u/s.131 of the Act, dated 30.01.2018 come forth with a surrender of additional income of Rs.2,82,68,266/-, i.e. for A.Y. 2017-18 and A.Y.2018-19, as under:

A. Offering of net profit @8% of turnover after depreciation, interest etc. (as against net profit of 5% (approx.) disclosed since last few years:

	F.Y.2016-17	F.Y.2017-18
Turn over	20,08,287,57/-	34,00,00,000/- (estimated)
Profit shown	1,04,43,575/-	1,02,00,000/- (estimated)
Profit @8%	1,60,66,300/-	2,72,00,000/-
Difference	56,22,775/-	1,70,00,000/-

Total surrender	2,26,22,775/-
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B. Disclosure of unexplained investment in immovable property (building at Street No.13, Block No.19, Plot No.2/81, P.H. No.26, Ward No.03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur):

FY	Investment value as per Approved Valuer	Value of investment taken in Books of account	Difference in Investment (Discrepancy)
FY 2014-15	Rs.20,60,501/-	Rs.20,72,875/-	Nil
FY 2015-16	Rs.53,08,177/-	Rs.53,20,011/-	Nil
FY 2016-17	Rs.38,20,796/-	Rs.20,12,789/-	Rs.18,08,007/-
FY 2017-18	Rs.38,37,484/-	Nil	Rs.38,37,484/-
Total	Rs.1,50,26,958/-	Rs. 94,05,675/-	Rs.56,45,491/-

The assessee revised his return of income for the subject year i.e. A.Y.2017-18 on 31.03.2018, declaring an income of Rs.1,61,96,390/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

18. During the course of the assessment proceedings, the A.O observed that though the assessee had in his statement recorded u/s. 131 of the Act, dated 30.01.2018 in the course of survey proceedings for the subject year i.e. A.Y.2017-18, inter alia, made a disclosure of Rs.18,08,007/- towards discrepancy in investment in construction of building i.e. Street No.13, Block No.19, Plot No.2/81, P.H. No.26, Ward No.03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur, but he had not offered the same in

his return of income for the year under consideration. Accordingly, the A.O made an addition u/s. 69C of the Act of Rs.18,08,077/-.

19. Also, the A.O observed that as per “Form 26AS” of the assessee for the year under consideration, the assessee had though received total contract receipts u/s. 194C of the Act of Rs.15,30,09,055/-, but he had disclosed the same in his return of income at Rs.15,26,65,404/-. Accordingly, the A.O made an addition of the balance amount of difference of Rs.3,43,651/-.

20. Apart from that, the A.O observed that certain incriminating documents found in the course of survey proceedings revealed that the assessee had made cash payments of Rs.6 lacs on 29.03.2017 to Shri Vikash Singh. As the aforementioned cash payment of Rs.6 lacs was in contravention of the provisions of Section 40A(3) of the Act, therefore, the A.O made an addition of the same to the returned income of the assessee.

21. Also, the A.O disallowed assessee’s claim for deduction of delayed deposits of employee’s share of contribution towards ESI/PF of Rs.84,398/-. Accordingly, the A.O vide his order passed u/s. 143(3), dated 14.12.2019 after, inter alia, making the aforesaid addition determined the income of the assessee at Rs.1,90,32,450/-.

22. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who finding no infirmity in the view taken by the A.O upheld the additions and dismissed the same.

23. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

24. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

25. Apropos the addition made by the A.O towards the suppressed investment of Rs.18,08,007/- made by the assessee towards investment in construction of building i.e. Street No.13, Block No.19, Plot No.2/81, P.H. No.26, Ward No.03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur, we principally concur with the Ld. AR's contention that as the assessee pursuant to his statement recorded in the course of the survey proceedings u/s. 131 of the Act, dated 30.01.2018, had offered to disclose his net profit @8% of turnover [as against 5% (approx.) disclosed in the last two years], which, thereafter, was duly honoured by him and offered for tax in the return of income for the subject year i.e. A.Y.2017-18, therefore, the additional income so offered would duly be available with him to

explain the source of investment made in the subject property. Although, the assessee had vide his statement recorded u/s. 131 of the Act, dated 30.01.2018 agreed to offer the shortfall/deficit in the investment towards construction of the subject property pertaining to the year under consideration of Rs.18,08,007/-, but thereafter had resiled and not honoured the same.

26. At the first blush, it appeared that there was no justification for the assessee to have not offered the deficit/shortfall in the investment in the aforementioned property as his income for the year under consideration (as was agreed by him in his statement recorded u/s.131 of the Act), however, the issue for which our indulgence had been sought by the assessee is that as to whether or not there was justification on the part of the A.O to have made addition u/s. 69C of the Act of Rs.18,08,007/-.

27. As the assessee vide his statement recorded u/s. 131 of the Act, dated 30.01.2018 had agreed to offer his net profit @8% of turnover i.e. contract receipts [as against net profit of 5% (approx.) disclosed in the last few years] which was duly honoured and offered by him in his return of income, therefore, the additional income so disclosed by him could safely be held to be available with him. However, we cannot remain oblivious of the fact that the assessee on being confronted by the survey officials that the facts unearthed in the course of survey proceedings revealed multi-

facet discrepancies , viz. (i) payment made in violation of Section 40A(3) of the Act; (ii) unsubstantiated claim of expenses under the head sub-contractors, unregistered Dealer (URD), road material purchases; and (iii) claim for expenses without supporting documentary evidence, had, thus, after taking cognizance of the aforesaid multi-facet discrepancies agreed to offer the net profit for the subject year @8% of turnover (supra). For the sake of clarity, the Question No.17 a/w. answer of the assessee is being culled out as under:

“Q.17. During Survey u/s 133A, it is seen that you do not maintain stock register. There are several payments in violation of section 40A(3) of the IT Act, 1961. You have also failed to justify all expenses claimed under the head sub-contractors, URD/Road material purchase. You have also failed to furnish all documentary evidences in respect of your claim of expenditure under different heads. Please offer your comments. As considering the above stated discrepancies your book results are not reliable.

Ans. Our concern has been showing net profit of about 5% since the last few years. Since, we are engaged in contractual job it is not possible to maintain documentary evidences in respect of all the petty expenses including petty contractor expenses. However, considering all the findings noted as above during Survey u/s 133A, I offer net profit @8% of turnover, after depreciation, interest etc. The working of additional income disclosed during survey is given as under:

	F.Y.2016-17	F.Y.2017-18
Turn over	20,08,287,57/-	34,00,00,000/- (estimated)
Profit shown	1,04,43,575/-	1,02,00,000/- (estimated)

Profit @8%	1,60,66,300/-	2,72,00,000/-
Difference	56,22,775/-	1,70,00,000/-
Total surrender	2,26,22,775/-	

28. On a perusal of the statement of the assessee recorded u/s. 131 of the Act, we find that the same revealed multi-facet discrepancies that had surfaced in the course of survey proceedings and were confronted to the assessee, viz. (i) payment to Shri Vikash Singh in contravention of Section 40A(3) of the Act : Rs.6 lacs; (ii) payment made outside the books of account : Rs.16,39,982/-; (iii) unsubstantiated payments to related parties/employees viz. Shri Shaukat Ali, Shri Ramesh Pandey, Shri Pradeep Kumar Yadav etc.; and (iv) unreconciled claim of expenditure under the head URD purchases : Rs.2,31,53, 231/-. As the assessee had offered additional business income i.e. @8% of his turnover/contract receipts (supra) [as against 5% of the last few years] to cover the aforementioned discrepancies, therefore, we are afraid that the short/deficit investment of Rs.18,08,007/- (supra) towards construction of subject building cannot be held to have been telescoped or subsumed in the additional business income so offered by him. Our aforesaid conviction is all the more fortified by the fact that the assessee on being confronted with the discrepancies in the investment made towards short/deficit

investment in the construction of subject building, had, inter alia, separately surrendered an amount of Rs.18,08,007/- on the said count. For the sake of clarity, the statement of the assessee pertaining to the aforesaid issue is culled out as under: (relevant extract)

“Q.16. During the Survey u/s 133A, it is noted that you have made substantial investment in the immovable property (building at Sheet No.13, Block No.19, Plot No.2/18, P.H. No.26, Ward No. 03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur). From the books of account, it is seen from the balance sheet for the FY 2016-17 the value is shown at Rs.94,05,655/- as office at Shanti Nagar. In order to ascertain the actual investment made in the building, Shri Murlidhar Gidwani, Government Approved Valuer, vide letter dated 29.01.2018 is requested to value the investment made in the building. On 30.10.2018, Shri Murlidhar Gidwani submitted his valuation report and gave total value of construction in the building at Rs.1,50,26,958/- on the basis of audited balance sheet and oral information given by you. The report encompasses FY 2014-15, FY 2015-16 & FY 2017-18 (upto November 2017). The period wise construction is valued as under:

FY	Investment value as per Approved Valuer	Value of investment taken in Books of account	Difference in Investment (Discrepancy)
FY 2014-15	Rs.20,60,501/-	Rs.20,72,875/-	Nil
FY 2015-16	Rs.53,08,177/-	Rs.53,20,011/-	Nil
FY 2016-17	Rs.38,20,796/-	Rs.20,12,789/-	Rs.18,08,007/-
FY 2017-18	Rs.38,37,484/-	Nil	Rs.38,37,484/-
Total	Rs.1,50,26,958 /-	Rs. 94,05,675/-	Rs.56,45,491/-

The report of the approved valuer is being shown to you and it is requested to furnish your explanation in respect of difference in investment in the building of Rs.56,45,491/-

Ans. I have to state that the cost estimated by the registered valuer is on the higher side because I being a contractor myself and has obtained the material at much cheaper rates as compared to the market rate and have supervised the project myself due to which cost of investment is much lower in comparison. The report of the approved valuer has been taken on higher side as he has not considered the factors pointed out above by me. However, I do not dispute the valuation given by the approved valuer and accept the difference of Rs.56,45,491/- as unexplained investment in the building for the AY 2017-18 respectively as detailed in the above chart.

On the basis of statement given by me above, I voluntarily agree to surrender the amount of Rs.2,26,22,775/- as profit from business during the FY 2016-17 & 2017-18 and Rs.56,45,491/- as unexplained investment in the building (Total Surrender Rs.2,82,68,266/-). As above, with a request that a penalty may not be imposed and I promise to pay the due taxes on the surrendered income on or before 15th March 2018 by paying advance tax for the AY 2018-19 and self assessment tax for the AY 2017-18 by filing the revised return of income.”

29. Accordingly, in the totality of the aforesaid facts, we are of a firm conviction that the claim of the Ld. AR that the additional business income of Rs.56,22,775/- disclosed by the assessee i.e. by offer of net profit @8% of turnover (as against 5% of the last few years) would explain the source of short/deficit investment of Rs.18,08,007/- (supra) towards construction of the subject property cannot be accepted and, thus, fails. Accordingly, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of the aforesaid observations.

30. We shall now deal with the Ld. AR's contention that both the lower authorities had erred in law and facts of the case in making/sustaining an addition of Rs.3,43,651/- i.e. the difference in turnover as disclosed in "Form 26AS" vis-à-vis books of account of the assessee.

31. The A.O observed that on verification of "Form 26AS" of the assessee, it transpired that the assessee had received total contract receipts u/s. 194C of the Act of Rs.15,30,09,055/-, whereas the assessee had disclosed the same in his return of income at Rs.15,26,65,404/-. Accordingly, the A.O based on the aforesaid discrepancy had made an addition of the short/deficit amount of receipt of Rs.3,43,651/-.

32. The Ld. AR submitted that the impugned addition of Rs.3,43,651/- (supra) was made by the A.O based on incorrect facts. Elaborating on his contention, the Ld. AR submitted that the A.O had wrongly referred to the facts that were involved in the case of M/s.Landmark Royal Engineer (India) Pvt. Ltd. i.e. a "sister concern" of the assessee. The Ld. AR to buttress his aforesaid claim had taken us through the order passed by the A.O u/s.143(3) of the Act, dated 14.12.2019 in the case of M/s. Landmark Royal Engineer (India) Pvt. Ltd, Page 57 to 61 of APB. On a perusal of the aforesaid assessment order, it transpires that a similar observation that is recorded by the A.O at Para 6 of the assessment order in the case of the captioned assessee while making an addition of Rs.3,43,651/- towards

short/deficit contract receipts, had also figured in the body of the assessment order of its “sister concern” viz. M/s. Landmark Royal Engineer (India) Pvt. Ltd, Page 58 of APB.

33. Considering the aforesaid facts, we restore the matter to the file of the A.O with a direction to verify the authenticity of the aforesaid claim of the assessee. In case, the assessee’s claim that the disallowance of Rs.3,43,651/- made by the A.O is based on facts borrowed from/pertaining to the case of his sister concern i.e. M/s. Landmark Royal Engineer (India) Pvt. Ltd, is found to be in order, then the addition so made in the hands of the assessee shall stand vacated. Accordingly, the **Ground of appeal No.3** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

34. We shall now deal with the Ld. AR’s claim that the A.O had grossly erred in law and facts of the case in making the disallowance u/s. 40A(3) of the Act of Rs.6 lacs.

35. As per the incriminating documents found in the course of survey proceedings, the assessee had made cash payment of Rs.6 lacs on 29.03.2017 to Shri Vikash Singh. As the aforementioned payment was in contravention of Section 40A(3) of the Act, therefore, the A.O disallowed the same.

36. The Ld. AR submitted that now when the assessee pursuant to his statement recorded u/s. 131 of the Act, dated 30.01.2018 had offered his business income on estimated basis @8% of gross receipt (as agreed by him), therefore, there was no justification for the A.O to have worked out a separate disallowance u/s. 40A(3) of the Act. Elaborating on his contention, the Ld. AR submitted that as the income of the assessee was in itself estimated @8%, therefore, in absence of any claim for deduction of the aforementioned amount, the same could not have been disallowed.

37. Alternatively, the Ld. AR submitted that as the assessee had in his statement recorded u/s. 131 of the Act in reply to Question No.17, on being confronted with the violation of Section 40A(3) of the Act, had offered an additional business income @8% of turnover (as against 5% of the earlier years), which, thereafter, was duly honoured and disclosed by him in his return of income for the subject year, therefore, the alleged discrepancy was telescoped/subsumed in the aforementioned additional income so offered by him and, thus, no separate addition/disallowance on the said count was called for in his hands.

38. We have thoughtfully considered the aforesaid contention of the Ld. AR and find substance in the same. As stated by the Ld. AR, and rightly so, as the income of the assessee pursuant to his statement recorded u/s. 131 of the Act dated 30.10.2018 was estimated by the A.O @8%, therefore,

in absence of any claim by the assessee for deduction of the aforementioned amount as an expenditure, there could be no justification for the A.O to have worked out a separate disallowance u/s. 40A(3) of the Act. Also, we concur with the Ld. AR's claim that as the assessee had pursuant to his reply to Question No.17 of the statement recorded u/s. 131 of the Act, dated 30.01.2018 offered an additional business income @8% of turnover (supra) to, inter alia, cover the contravention of Section 40A(3) of the Act, therefore, he could not have been separately visited with a disallowance under the aforesaid statutory provision. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Punjab and Haryana** in the case of **CIT Vs. Smt. Santosh Jain, (2008) 296 ITR 324 (P & H)**, wherein it was held by the Hon'ble High Court that where the income of the assessee has been computed by applying a gross profit rate, there is no need to look into the provisions of Section 40A(3) of the Act, as applying the gross profit rate takes care of expenses otherwise than by way of crossed cheque also. Thus, the **Ground of appeal No.4** raised by the assessee is allowed in terms of our aforesaid observations.

39. Apropos the claim of the assessee that the A.O had grossly erred in disallowing the assessee's claim for deduction of delayed deposit of employees share of contribution towards ESI/PF of Rs.84,398/-, we are unable to concur with the same. Ostensibly, as the issue is squarely covered against the assessee by the judgment of the Hon'ble Supreme

Court in the case of **Checkmate Services Pvt. Ltd. Vs. CIT, Civil Appeal No.2833 of 2016, dated 12.10.2022**, therefore, we find no infirmity in the view taken by the lower authorities who had rightly made/sustained the aforesaid addition, and thus, uphold the same. Thus, **Ground of appeal No.5** raised by the assessee is dismissed in terms of our aforesaid observations.

40. **Grounds of appeal No.1, 6 and 7** being general in nature are dismissed as not pressed.

41. In the result, appeal of the assessee in ITA No.511/RPR/2024 for A.Y.2014-15 is partly allowed for statistical purposes in terms of our aforesaid observations.

ITA No.512/RPR/2024
A.Y.2018-19

42. We shall now take up the appeal filed by the assessee in ITA No.512/RPR/2024 for A.Y.2018-19, wherein the assessee has assailed the impugned order on the following grounds of appeal before us:

“1. For the assessment order passed by the Ld. CIT(A) is bad in law as well as on facts.

2. That the Ld. CIT(A) has upheld the addition of Rs.2,77,000/- on account of post-survey expenses incurred by the assessee. The aforementioned increase in expenses primarily pertains to depreciation, bank charges, and interest paid to the bank. These expenditures are inherently essential and unavoidable for the continued and effective operation of the business. In accordance with the established principles of tax law, such expenditures should be recognized as legitimate business expenses.

Consequently, the addition in question ought to be deleted, as the expenses incurred were beyond the control of the assessee and were necessarily expended for the purpose of business.

3. That the addition of Rs.4,17,448/- should be deleted as no individual labour has been paid in cash in excess of Rs.10,000/-. The amount recorded in the Cash Book represents the aggregate of all labour payments, and not any single payment exceeding the specified threshold.

4. That the Ld. CIT(A) has upheld the addition of Rs.7,33,566/- on account of unexplained investment on the basis of the valuation report. The ld. Valuer has given year wise value of construction. As per his valuation report investment incurred between April 2017 to Nov. 2017 is Rs.38,37,484/- while the assessee has already booked investment in the current year as Rs.58,26,521/-. Therefore, addition of Rs.7,33,566/- should be deleted as the addition has been made without any factual basis or substantiation, and is grounded solely on arbitrary assumptions.

5. That the appellant craves leave to add, alter or withdraw any ground(s) of appeal on or before hearing of the appeal.

6. That under the facts and circumstances of the case, the additions made by the Ld. CIT(A) are liable to be deleted.”

43. Succinctly stated, the assessee had filed his return of income for A.Y. 2018-19 on 31.10.2018, declaring an income of Rs.2,73,51,250/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

44. Thereafter, assessment was completed by the A.O vide his order passed u/s. 143(3) of the Act, dated 30.04.2021, wherein, the income of the assessee was determined at Rs.2,87,79,264/-, after, inter alia, making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Addition on account of short/deficit business income that was offered by the assessee in his statement recorded u/s. 131 of the Act, dated 30.01.2018 (during survey proceedings) @8% of the turnover vis-à-vis net profit of 7.92% of the turnover disclosed in the return of income	Rs.2,77,000/-
2.	Addition/disallowance u/s. 40A(3) of the Act	Rs.4,17,448/-
3.	Unexplained investment towards construction of building	Rs.7,33,566/-

45. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

46. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

47. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

48. As is discernible from the records though the assessee on being confronted with the multi-facet discrepancies that had surfaced in the

course of survey proceedings, had vide his statement recorded u/s. 131 of the Act, dated 30.01.2018 agreed to disclose net profit @8% of turnover/contract receipt (as against 5% of the earlier years), but the A.O observed that he had disclosed net profit in his return of income @7.92% of Rs.34,61,51,512/- i.e. lower by 0.08% i.e. Rs.2,77,000/-. Accordingly, the A.O in the backdrop of the aforesaid facts made an addition of the aforesaid amount to the returned income.

49. It is a matter of fact borne from record that the assessee on being confronted with the multi-facet discrepancies that had surfaced in the course of survey proceedings agreed to offer his business income @8% of his turnover/contract receipts. As the A.O based on the aforesaid concession of the assessee had not made any separate addition regarding the aforesaid discrepancies which were confronted by him to the assessee in the course of survey proceedings, therefore, we find no infirmity in the view taken by the A.O who had rightly adopted the net profit @8% (as was agreed by the assessee in his statement recorded u/s.131 of the Act, dated 30.01.2018). Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of our aforesaid observations.

50. Apropos the disallowance made by the A.O u/s. 40A(3) of the Act of Rs.4,17,448/- regarding the labour expenses exceeding the prescribed amount contemplated in the aforesaid statutory provision, we are of the

view that as the assessee had while offering the additional business income specifically stated that the same would, inter alia, take care of contravention of the payments made u/s. 40A(3) of the Act, therefore, there was no justification for the A.O to have worked out a separate addition on the said count in his hands.

51. Alternatively, we are of the view that as the business income of the assessee had been estimated @8% of his turnover and he had not raised any claim for deduction of the aforementioned amount, therefore, the A.O could not have carried out any disallowance of any such expenditure which was never claimed by the assessee as a deduction. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Punjab and Haryana** in the case of **CIT Vs. Smt. Santosh Jain, (2008) 296 ITR 324 (P & H)**, wherein it was held by the Hon'ble High Court that where the income of the assessee has been computed by applying a gross profit rate, there is no need to look into the provisions of Section 40A(3) of the Act, as applying the gross profit rate takes care of expenses otherwise than by way of crossed cheque also. Thus, the **Ground of appeal No.3** raised by the assessee is allowed in terms of our aforesaid observations.

52. Apropos the addition of Rs.7,33,566/- made on account of short/deficit investment by the assessee during the subject year towards construction of subject building, viz. Street No.13, Block No.19, Plot

No.2/81, P.H. No.26, Ward No.03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur, we find that though the impugned variance/difference in the valuation that was initially based on the value that was adopted by the approved valuer in the course of survey proceedings worked out at Rs.38,37,484/-, which the assessee had admitted as his unexplained investment and, inter alia, agreed to surrender as his income from unexplained sources for the subject year, but it transpires that, the A.O, thereafter, while framing the assessment had scaled down the addition towards short/deficit investment to an amount of Rs.7,33,566/-. Ostensibly, the assessee in the course of assessment proceedings on being confronted with the aforementioned discrepancy towards investment made in the building of Rs.7,33,566/-, had agreed to offer the same as his income for the current year. For the sake of clarity, the extract of the letter dated 30.04.2021 filed by the assessee with the A.O in the course of assessment proceedings is culled out as under: (relevant extract)

“4. That however due to certain unavoidable reason and beyond my control and in absence of my husband and to buy peace of mind and to avoid further litigation I hereby offer the difference amount of Rs.7,33,566 as my current year income with a request that no penalty should be levied and also it should be taxed at normal rates of taxation.”

53. Considering the fact that the assessee in the course of assessment proceedings had agreed to cover the aforesaid discrepancy i.e. unexplained investment of Rs.7,33,566/- in the construction of building i.e. Street

No.13, Block No.19, Plot No.2/81, P.H. No.26, Ward No.03, Near Siddh Shikar Vistar, Shanti Nagar, Bilaspur, therefore, we are of the view that no infirmity arises from the addition made by the A.O. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Punjab & Haryana** in the case of **Banta Singh Kartar Singh Vs. CIT, (1979) 125 ITR 239 (P & H)**, wherein the Hon'ble High Court had held that an order based on an agreement cannot give rise to grievances and the same cannot be agitated in appeal. As the assessee in the present case before us had admitted the aforementioned amount of investment of Rs.7,33,566/- as having been sourced out of his unexplained sources and had agreed to offer the same as his income from current year, therefore, he could not be permitted to turn round and, thereafter raise a grievance regarding the addition of the same to his returned income. Thus the **Ground of appeal No.4** raised by the assessee is dismissed in terms of our aforesaid observations.

54. **Grounds of appeal Nos. 1, 5 & 6** being general in nature are dismissed as not pressed.

55. In the result, appeal filed by the assessee in ITA No.512/RPR/2024 for A.Y. 2018-19 is partly allowed in terms of our aforesaid observations.

56. Resultantly, all the aforementioned appeals filed by assessee are partly allowed/partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 20th day of January, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 20th January, 2025.

***SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.