

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos. 1222 & 1223/PUN/2017
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The Dy. Commissioner of Income Tax,
Circle – 6, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Shalaka Infra Tech (India) Pvt. Ltd.,
13, Kamal Regency, Opp. Petrol Pump,
F.C. Road, Pune – 411016

PAN : AAJCS6397Q

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.27/PUN/2018
(Arising out of ITA No. 1497/PUN/2016)
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Shalaka Infra Tech (India) Pvt. Ltd.,
Plot No. 22, Shalaka House,
Gajanan Housing Society,
Ganeshkhind Road, Shivajinagar,
Pune – 411016

PAN : AAJCS6397Q

.....अपीलार्थी / Appellant

बनाम / V/s.

JCIT, Circle – 6,
Pune

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.21/PUN/2019
(Arising out of ITA No. 1222/PUN/2017)
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Shalaka Infra Tech (India) Pvt. Ltd.,
Plot No. 22, Shalaka House,
Gajanan Housing Society,
Ganeshkhind Road, Shivajinagar,
Pune – 411016

PAN : AAJCS6397Q

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle – 6,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 01-09-2021

घोषणा की तारीख / Date of Pronouncement : 29-11-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Above said two appeals in ITA Nos. 1222 & 1223/PUN/2017 by the Revenue and cross objection in CO No. 21/PUN/2019 by the assessee against the common order dated 12-01-2017 passed by the Commissioner of Income Tax (Appeals)-4, Pune [‘CIT(A)’] for assessment years 2012-13 and 2013-14. The assessee has filed another cross objection in CO No. 27/PUN/2018 against the order dated 28-03-2016 passed by the Commissioner of Income Tax (Appeals)-2, Pune for assessment year 2011-12.

2. Upon hearing, we note that the issues raised in all the two appeals and cross objections are similar basing on the same identical facts. With

the consent of both the parties, we proceed to hear all the two appeals and cross objections together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up Cross Objection in CO No. 27/PUN/2018 (Arising out of ITA No. 1497/PUN/2016) for A.Y. 2011-12. The ITA No. 1497/PUN/2016 has been dismissed as withdrawn on account of low tax effect.

4. The brief facts of the case are that the assessee is a company and is engaged in the business of civil and electrical contracts. The projects of assessee are located across various cities in India. The contracts undertaken by the assessee are highly labour intensive. To fulfill these contracts the assessee company either employs its own labour force or outsources the work to other subcontractors.

5. The only issue raised by the assessee to be decided is as to whether the CIT(A) is justified in restricting the disallowance at 2% of total labour expenditure in the facts and circumstances of the case.

6. Heard both the parties and perused the material available on record. We note that the AO on an examination of profit and loss account found labour charges and contract receipts for A.Ys. 2010-11 and 2011-12 found as under :

| Particulars | For A.Y. 2010-11 | For A.Y. 2011-12 |
|-------------------|-------------------|-------------------|
| Labour Charges | Rs.36,02,77,332/- | Rs.47,15,94,654/- |
| Contract Receipts | Rs.75,92,45,892/- | Rs.77,05,16,538/- |

7. In the light of the above, according to the AO, when compared to A.Y. 2010-11 the labour expenses for A.Y. 2011-12 were increased by 30.80% and the contract receipts increased only 1.48%. To verify the genuineness of labour expenses, summons were issued to M/s. Krishna Electricals & Engineers and M/s. Rohan Electricals and others. According to AO in statement at Q. No. 8 of Shri Krishna Sayaram Bhoi the Proprietor of M/s. Krishna Electricals and Engineers stated that during the F.Y. 2009-10 (A.Y. 2010-11), work done of only Rs.51,53,808/- against Rs.105 lacs shown by the assessee and that he submitted a letter dated 06-08-2010 with the assessee pointing out that the amount of the bills shown excess by of Rs.55,32,463/-. The ld. AR, Shri Hari Krishan submits that the letter dated 06-08-2010 filed before the AO by Shri Krishna Dayaram Bhoi is a fabricated document and argued that if the letter dated 06-08-2019 was actually filed by Shri Krishna Dayaram Bhoi with the assessee disputing the labour payments, he would not have continued to work with the assessee any longer and M/s. Krishna Electricals and Engineers have continued to work for the assessee company and the last bill was raised on the company on 09-02-2011. The ld. AR vehemently contended that no such letter was ever received by the assessee from Shri Krishna Dayaram Bhoi and explained that a plain reading of notings of this letter shows that the letter is purported to be received by somebody on 19-08-2010 has been forward to the accounts department on 06-08-2010 and argued that it is impossible to understand how a letter purported to have been filed on 19-08-2010 could have been forwarded to the accounts department before the date of its receipt.

8. We note that a perusal of the trading and profit and loss account enclosed with the return of income of Krishna Electricals and Engineers for

A.Y. 2010-11 shows Krishna Electricals & Engineers have done work of Rs.1,43,85,580/- for A.Y 2010 -11 as against labour expenditure of Rs.1,04,47,269/- booked by the assessee in the name of Krishna Electricals & Engineers. Further, the trading & profit & loss account for A.Y. 2011-12 which reflects work done of Rs.1,00,44,368/- in the F.Y. 2010-11, which is much more than the labour expenditure of Rs.43,58,502/- booked by the assessee in his accounts in the name of Krishna Electricals & Engineers. We note that the ledger account of assessee maintained by Krishna Electricals & Engineers in its books was also filed by Shri Bhoi before the AO, wherein, it is seen, the total of the debit entries made in the assessee's ledger account on account of bills raised by Krishna Electricals & Engineers on the assessee for A.Y. 2010-11 amounts to Rs.51,53,739/- and for A.Y. 2011-12 amounts to Rs.24,08,710/-, which clearly suggests that if this party has done work of only Rs.51,53,739/- for A.Y. 2010-11 and Rs.24,08,710/- for A.Y.2011-12 for the assessee, in respect of which other parties must have done the remaining work to arrive at the sales as mentioned in the trading account.

9. We note, further, on perusal of copies of Bills raised by M/s. Krishna Electricals & Engineers on the assessee, which were filed by M/s. Krishna Electricals & Engineers before the AO show that in F.Y. 2009-10, relevant to A.Y. 2010-11, the bills are raised on the letter head as "Krishna Electricals & Engineers" where as in the Balance Sheet, Trading Account and Profit & Loss enclosed with the Return of Income filed with the Department, the name of the concern has been mentioned only as "Krishna Electricals". Further, it is observed that on the bills issued by M/s. Krishna Electricals & Engineers, the address of the concern is shown as "Flat No. 494, Behind Dattawadi Police Station, Dattawadi Pune" whereas

in the Balance Sheet, Trading Account etc., the address of the concern is mentioned as "S. No. 128, B/ 5, Hanuman Nagar, Dattawadi Pune." The copies of the documents filed by Shri Krishna Dayaram Bhoi with the Respondent Revenue show that the PAN of the assessee as "AJM PB 4523 A" on the invoices raised on the assessee for A.Y. 2010-11.

10. We find in answer to Q.7 of statement recorded by the AO u/s. 131 of the Act on 07-03-2013, Shri Krishna Dayaram Bhoi has stated that PAN i.e. "AJMPB 4523 A" belongs to his brother Shri Shivaji Dayaram Bhoi and invoice also signed by his brother. It is further seen that in the invoices raised on the assessee, by M/s. Krishna Electricals & Engineers for A.Y. 2011-12, the PAN used was "AXVPB6495N". In answer to Q.1, Shri Krishna Dayaram Bhoi has mentioned the PAN belongs to him.

11. It is further seen that in the invoice raised on the assessee, by M/s. Krishna Electricals & Engineers for a part of A.Y.2011-12, the PAN used is "AJMPB 4523 A" which belongs to Shri Shivaji Dayaram Bhoi, brother of Shri Krishna Dayaram Bhoi.

12. We find, in his letter dated. 08-03-2013, filed before the AO Shri Krishna Bhoi has used his brother's PAN i.e. "AJMPB 4523 A". In his Return of Income, for A.Y. 2009-10 & A.Y. 2010-11, filed with the Department Shri Krishna Dayaram Bhoi used his brother's PAN i.e. "AJMPB 4523 A", but for return of Income filed for A.Y. 2011-12, he used his own PAN i.e. "AXVPB 6495 N", therefore, in our opinion, it is clear that Shri Krishna Dayaram Bhoi, Prop. Krishna Electricals & Engineers supports the arguments of ld. AR that the Prop. of Krishna Electricals &

Engineers is resorted to fabrication of documents probably to suppress his own income.

13. Likewise, the AO found that M/s. Rohan Electricals have filed their return of income on the basis of the turnover as per Form 26AS and no separate record for M/s. Shalaka Infra Tech Pvt. Ltd. was maintained. The ld. AR submits that the confirmation from Mr. Mohan Shivatare proprietor of M/s. Rohan Electrical of the account of M/s. Rohan Electrical company was filed before the AO and all the payment to the labour contractor have been made through cheques by deducting the tax at source through the normal banking channel. We note that the AO in his order observed that as per the statement of Mr. Mohan Shivatare recorded on 07-03-2013 vide Q. No. 5 that he used to make payments to the labour engaged by him on fortnightly basis and vide Q. No. 11 the labour payment was made by him out of the payments received from M/s Shalaka Infra Tech Pvt. Ltd. Further, as per the ledger of Rohan Electricals in the books of account of the assessee M/s Rohan Electricals has carried out the cable laying work of more than Rs.85.75 lakhs in the F.Y. 2009-10 and doubted that during this period M/s. Rohan Electrical have received payment of only Rs.41.96 lakhs from the assessee and according to AO, we note that the labour engaged by M/s. Rohan Electrical remained unpaid, concluded that the expenses booked by the assessee against M/s. Rohan Electrical is not genuine, held that the amounts mentioned in the bills submitted by M/s. Rohan Electricals are considered as actual expenditure and treated the balance amount of Rs.44,80,895/- as inflation of labour expenses and added to the income of the assessee.

14. Another allegation of AO is that the assessee has not shown M/s. Krishna Electrical and Engineering in the list of sundry creditors exceeding Rs.20,00,000/- as on 31-03-2010. We note that the list of the sundry creditors furnished before the AO was in respect of the suppliers. The amount payable to M/s. Krishna Electricals and Engineers as on 31-03-2010 was reflected in the other schedule of the balance sheet. The AO accorded another reason for disallowing the labour expenses is that a part of the labour expenses have remained payable for a long time to the subcontractors namely Krishna Electricals and Engineers and Rohan Electricals, held that since the payments are required to be made by the subcontractors to the labour engaged by them soon after the work was carried out and these subcontractors had no other source of income that the assessee has inflated its labour expenses. The ld. AR, in this regard, argued that it for these subcontractors to explain as to from which sources they have made payments to the labour employed by them. We find force in the arguments that it is a general practice in the business of contracts/subcontracts that a part of the payments are retained as security for faithful execution of the sub contractors and also that a certain portion of the bills raised by the subcontractors are paid only after the project is handed over and the project is cleared of any defects or deviations by the project awarding authority.

15. Further, we note that as per terms and conditions contained in the work order awarded by the assessee to the sub-contractors, it has been duly specified in the payment terms that 15 per cent of the bill amount will be released only on completion of the entire work and another 5 per cent will be released only after site is handed over, thus, 20% of the total amount of the bills is to be retained, that the payments outstanding in the

account of the labour contractors in the books of accounts of assessee shows the same. The work order of Rohan Electricals clearly specifies the payment of 20% of the bill amounts proves the same. The ld. AR vehemently contended that the entire amount of the bills raised by the sub-contractors are not required to be disbursed to the labourers and the labour content is only a part of the expenses of the sub-contractors, according to him there is an element of profit in the sub-contracts, in addition the sub-contractors also deploy their own funds. We note that the proprietors of Rohan Electricals & Krishna Electricals & Engineers have stated in their statements that all the payments to the labour was made by them only out of the payments received from the assessee, the ld. AR submits that it is only to avoid explaining to the Revenue their own sources of funds for payments of the labour. Further, we note that all the payments to M/s Krishna Electricals and Engineers and Rohan Electricals have been made through banking channels and the copies of the relevant bank accounts showing relevant debit entries were filed before the AO. We find that the payment of labour charges constitutes a major portion of the expenses of these contracts and the assessee has duly deducted TDS on the labours expenses claimed by it and M/s. Krishan Electrical and Engineers have claimed the credit for the same.

16. Having considering the above contentions, we note that the AO asked the assessee to furnish details from M/s. Krishna Electricals and Engineers and M/s. Rohan Electricals for the A.Y. 2011-12 and the AO for the reasons recorded in the assessment order for A.Y. 2010-11 proceeded to consider the amount mentioned in the bills as actual expenditure and the differences against M/s. Krishna Electricals and Engineers at Rs.36,48,540/- (Rs.46,23,895/- - Rs.9,75,355/-) and M/s. Rohan

Electricals at Rs.44,80,895/- (Rs.1,17,26,560/- - Rs.72,45,665/-) totaling to Rs.81,29,435/- disallowed on account of labour charges. Further, the AO in order to seek information from the other parties issued notice u/s. 133(6) of the Act to six parties out of which we note that no compliance was made by M/s. Chinmay Electricals in view of the death of its proprietor and notice u/s. 133(6) of the Act could not be served on M/s. Sanjivani Electrical. Remaining four entities were made compliance u/s. 133(6) of the Act wherein the AO recorded statements of proprietors of two entities i.e. M/s. Kalyani Electrical and M/s. Om Electricals. We also note that all the four entities given similar replies and are assessed on presumptive basis u/s. 44AD of the Act. It is also brought to our notice by the ld. AR that they are not maintaining any record relating to labour who carried out the work. We note that the proprietor of M/s. Kalyani Electricals made no adverse statement against the assessee but the AO opined that she did not provide any satisfactory explanation to convince him that the labour who are subsisting on daily basis would not have waited until such a long time to receive the payment. Further, regarding Mr. Bharat Kisan Sathe representing M/s. Om Electrical retracted his statement as reflecting in Page No. 41 of the assessment order. We find that when there is no adverse statement by the M/s. Kalyani Electricals and retraction of statement by the proprietor of M/s. Om Electrical, in our opinion carries no adverse view or evidentiary value against the assessee.

17. Regarding the allegation of immediate cash withdrawals bank accounts after cheque being credited, we find no such incidence and instances have been pointed in the assessment nor were confronted to the assessee in the assessment proceedings. Since, we held that the statements recorded u/s. 133(6) of the Act carries no evidence the

allegation of the cash is being withdrawn immediately after credit of cheque cannot be accepted. Further, we note that the Managing Director of assessee clearly stated that all the payments paid to the labour contractors are genuine and we find, the AO could not bring on record anything contrary to the statement made by the Managing Director except making the allegation that the said Managing Director refused to cross-examine the concern persons of all the four entities i.e. M/s. Krishna Electricals and Engineers, M/s. Rohan Electricals, M/s. Kalyani Electricals and M/s. Om Electricals.

18. Another contention raised by the ld. AR is that there was no adverse finding against the credits found in Form No. 26AS and the AO without examination the same held the payments made to all these four entities are not genuine, in our opinion, without any basis on record. We note that the AO made disallowance at 4% of total labour expenses (Rs.47,15,94,654/- @ 4%) is Rs.1,88,63,786/- which is inclusive of disallowance made against M/s. Krishna Electricals and Engineers and M/s. Rohan Electricals which clearly establishes there was no basis made by the AO for such kind of estimation at 4% which clearly proves that the disallowance made by the AO only on presumptions and assumptions. Further, the CIT(A) also in his order at Para No. 5.1.7 clearly held that the assessee cannot be held liable for any inaccuracy in the books of the sub-contractors which clearly supports the arguments of the ld. AR that all the payments made to sub-contractors which was debited to profit and loss account are genuine, the payments of which made through banking channel by way of cheque by deducting TDS. We find that the CIT(A) has correctly concluded in Para 5.3 at Page No. 15 that from the documents brought on record by holding that Shri Krishna Dayaram Bhoi has fabricated his statement in order to

suppress his own income, in our opinion, requires no interference from us, it is justified. The CIT(A) also observed the claim of deleting entire disallowance is not acceptable in view of holistic view considering the facts on the issue also clearly demonstrate that there was no evidence or adverse material against the books of the assessee to hold that the payments made to all these four entities are not genuine. Therefore, we do not accept the findings of CIT(A) in confirming the addition on the basis of ad hoc estimation and restricting the disallowance at 2% as against the 4% as held by AO, in our opinion, is not justified. Thus, the ground raised in cross objection by the assessee is allowed.

19. Now, we shall take up ITA No. 1222/PUN/2017 for A.Y. 2012-13 filed by the Revenue.

20. The only issue to be decided is as to whether the CIT(A) is justified in deleting the disallowance of Rs.1,68,87,175/- as against Rs.1,88,63,786/- made by the AO on account of labour expenses in the facts and circumstances of the case.

21. Heard both the parties and perused the material available on record. We note that vide Para No. 5 of the assessment order that the assessee had debited an amount of Rs.46,37,67,463/- as labour charges under the head "Other Expenses" in Note No. 20 of the profit and loss account. The AO requested the assessee to file the details of parties against whom labour charges claimed. The assessee filed details of eight labour contractors vide its submission dated 09-03-2015. The AO proceeded to disallow on three entities called M/s. Rohan Electricals, M/s. Kalyani Electricals and M/s. Sanjivani Electricals. We find that in Para No. 501 of the assessment

order, without there being any examination and verification proceeded to disallow labour expenses being excessive payment by the assessee on M/s. Rohan Electricals and M/s. Kalyani Electricals only on presumption that in A.Ys. 2010-11 and 2011-12 disallowance were made against two entities. On perusal of the assessment order from Para Nos. 5.2 we find that the AO mentioned profit and loss account for the period from 01-04-2010 to 31-03-2011 which is relevant to A.Y. 2011-12 which amply proves that there was no enquiry and examination by the AO in respect of above said three entities separately concerning the year under consideration. We also note that the statements of Shri Krishna Dayaram Bhoi representing M/s. Krishna Electricals and Engineers and bills raised by the M/s. Krishna Electricals and Engineers were reproduced at Para Nos. 4, 5 and 6 of the paper book which clearly demonstrate that the statements of Shri Krishna Dayaram Bhoi representing M/s. Krishna Electricals and Engineers and bills raised by M/s. Krishna Electricals and Engineers shown A.Y. 2010-11 but not to the year under consideration. Further, the AO also reproduced ledger account of assessee in the books of M/s. Rohan Electricals and statement thereon at Page Nos. 8, 9, 10, 12, 13, 14 and 15 clearly shows those are relevant to A.Ys. 2009-10 and 2010-11 but not to the year under consideration. Likewise, without having any independent enquiry the AO made disallowance on estimation basis @ 4% of total labour expenditure at Rs.1,85,50,699/- (Rs.46,37,67,463/- at 4%).

22. Further, we find the CIT(A) discussed the entire issue in the impugned order at Para No. 6.3. The CIT(A) held the disallowance made by the AO at 4% of total labour expenses is not justified in view of the disallowance made on the basis of preceding assessment years but however, the CIT(A) restricted the disallowance to Rs.16,63,524/- against

M/s. Kalyani Electricals, M/s. Rohan Electricals and M/s. Sanjivani Electricals.

23. The contention of the ld. DR is that the AO conducted enquiries concerning the A.Ys. 2009-10 and 2010-11 and on the basis of which the AO also examined the accounts of the assessee be that of said three entities and found discrepancies in the account of the assessee. The AO rightly held the assessee inflated its labour expenditure and disallowed 4% of total labour expenditure. The CIT(A) without examining the assessment record in detail simply deleted major portion of the disallowance by holding that the assessment for the year under consideration is on the basis of preceding assessment years which is incorrect. The ld. DR vehemently supported the order of AO.

24. The ld. AR requested us to adopt the same arguments advanced in CO No. 27/PUN/2018 and submitted that the CIT(A) rightly held that without bringing on record the AO made assessment on enquiries made concerning A.Ys. 2009-10 and 2010-11 and supported the order of CIT(A) to that extent. We note that in aforementioned paragraphs we discussed the same issue on identical facts in the case of M/s. Krishna Electricals and Engineers and M/s. Rohan Electricals and considering the material evidence on record together with the submissions of ld. AR and ld. DR we held the assessment made on ad hoc basis is not maintainable and allowed cross objection filed by the assessee. In view of the same we adopt the same view in this appeal. Thus, the ground raised by the Revenue is dismissed.

25. Now, we shall take up the Co No. 21/PUN/2019 for A.Y. 2012-13 filed by the assessee.

26. The ld. AR submits that the assessee is not interested to prosecute ground No. 3 and requested us to treat the same as not pressed. Accordingly, the ground No. 3 is dismissed as not pressed.

27. Ground No. 2 raised by the assessee is as to whether the CIT(A) is justified in confirming the disallowance on labour expenses to an extent of Rs.16,63,524/- in the facts and circumstances of the case.

28. We note that the ld. AR placed on record the details of expenditure for ETC and Civil Work relating to Government contractor for the period of 01-04-2011 to 31-03-2012 relevant to the year under consideration wherein we note that the assessee debited an amount of Rs.46,37,67,463/- which is reflected in the assessment order relating to 109 parties. We held in the appeal filed by the Revenue in the aforementioned paragraphs that the assessment made by the AO on ad hoc basis is not justified without there being separate enquiry concerning the year under consideration. We find that as rightly pointed by the ld. AR that no discrepancies or whatsoever material concerning the same were reflected in the assessment order against M/s. Rohan Electricals, M/s. Kalyani Electricals and M/s. Sanjivani Electricals. On perusal of the details in Schedule 20 we note that the assessee an amount of Rs.9,69,594/- against M/s. Kalyani Electricals at Sr. No. 34, M/s. Rohan Electricals of Rs.6,68,930/- at Sr. No. 36 and M/s. Sanjivani Electricals at Sr. No. 78 to an extent of Rs.25,000/-. As we noted above, there was no enquiry or examination conducted by the AO regarding the above entities to show that the assessee inflated labour

expenses to the said three entities. In view of the same when there is no independent enquiry regarding the above said three entities involving an amount of Rs.16,63,524/- the disallowance is not maintainable and therefore, the order of CIT(A) is not justified. Thus, ground No. 2 raised by the assessee in cross objection is allowed.

29, Now, we shall take up the appeal in ITA No. 1223/PUN/2017 for A.Y. 2013-14 filed by the Revenue.

30. The Revenue raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in deleting the disallowance of labour expenses of Rs.1,88,47,258/- paid to BVG India Limited without giving an opportunity to the AO in the facts and circumstances of the case.

31. Heard both the parties and perused the material available on record. During the course of assessment proceedings on perusal of the details submitted by the assessee the AO asked the assessee to submit details regarding labour expenses in respect of BVG India Limited. We note that the Id. AR submitted that the BVG India Limited is based in Pune and it provides facility management services for private, public and government sectors in India, also provides an array of services ranging from housekeeping services, high-rise building cleaning, logistics and transport, civil engineering services etc. In addition, the company also offers factory construction, factory relocation airport maintenance etc. The assessee had been allotted a contract by Bangalore Electricity Supply Company Limited (BESCOM) towards the execution of “Restructured Accelerated Power Development & Reforms Programme” for different districts and towns in

Karnataka and in order to get the contracts executed, the assessee sublet the work to BVG India Limited and debited Rs.1,88,47,288/- to its profit and loss account which is reflected under the head “Expenses for ETC and Civil Work” in the financials.

32. The case of the AO was that the complete address of M/s. BVG India Limited, BESCOM Karnataka were not submitted, but, we note that vide submissions dated 03-11-2015 the assessee brought on record the complete details of the work. Further, the AO observed that the notice issued u/s. 133(6) of the Act to M/s. BVG India Limited was returned as “not served”. We note that in response to notice u/s. 133(6) of the Act, the copies of invoices raised by BVG India Limited on the assessee towards the work executed by them were submitted before the AO vide Annexure III of submission dated 12-02-2016. The assessee vide Annexure IIIA-IIID brought on record complete relevant documentation of transaction with BVG India Limited i.e. description of work allotted by BESCOM, Work Order allotted by BESCOM to the assessee, Ledger Extract of BVG India Limited appearing in books of assessee along with invoices raised by BVG India Limited on the assessee and ledger Extract of BESCOM in the books of the assessee and invoices raised by the assessee on BESCOM. TDS has been deducted on advance payments made to them in the previous Assessment Years i.e. A.Y. 2012-2013 and corresponding invoices towards the same were booked in the current assessment year. The complete details of the work allotted by BESCOM and sublet to M/s. BVG India Ltd. was filed before the AO as Annexure III to the written submissions dated 18-02-2016, a copy of which has been placed before us in Page No. 11 of the Paper Book. The copies of the work order issued by BESCOM were also filed before the AO as Annexure III B of the written submissions dated

18-02-2016 which are placed before us at Page No. 12 of the Paper Book. It is seen that the AO agitated that the party was not produced nor any confirmation from the party was furnished. The copy of the confirmation from M/s. BVG India Ltd. was also filed before the AO along with the written submissions dated 29-02-2016 which is placed before us at Page No. 30 of the Paper Book. We find that the CIT(A) examined the reply of M/s. BVG India Ltd. dated 01-03-2016, to the notice u/s 133(6) of the Act, submitted in the office of the AO on 02-03-2016 along with the written submissions dated 05-01-2017 which is at Page Nos. 37 and 38 of the Paper Book filed before us. A copy of the ledger extract of the sales made to BESCO in respect of their work order was filed before the AO along with the written submissions dated 03-11-2015 was also filed before us which is at Page Nos. 41 and 42 of the Paper Book. The CIT(A) also examined the return of income of M/s. BVG India Ltd. containing PAN and complete address of M/s. BVG India Limited along with the computation of income, the audit report and the bank statements of M/s. BVG India Ltd. along with written submissions dated 10-01-2017 which are placed at Page Nos. 65 to 175 of the Paper Book before us.

33. The ld. DR vehemently contended that the assessee did not produce any relevant details regarding the labour expenses in respect of BVG India Limited before the AO and the AO had no occasion to examine the same. The CIT(A) ought to have called for remand report from the AO before deleting the disallowance made by the AO. The ld. AR contended that every detail was submitted to the AO as well as CIT(A). The CIT(A) examined the ledger extracts of BVG India Limited in the books of the assessee, balance confirmation regarding the invoices issued and also response to the summons u/s. 133(6) of the Act. We note that Para No.

6.3.1 of impugned order that the CIT(A) held that BVG India Limited submitted the requisite details before the AO on 02-03-2016 and the AO passed order on the same day. The CIT(A) held the order of AO is not justifiable on the ground that no confirmation or supporting evidence filed by the BVG India Limited. The CIT(A) also held that all the details regarding the labour expenses received by the BVG India Limited are on record before the AO and the AO simply without considering all the details and disallowing the entire labour expenses on the basis of non-receipt of confirmation from BVG India Limited, in our opinion is incorrect.

34. As discussed above, the AO as we note from its order that the notice u/s. 133(6) of the Act was issued to BVG India Limited and all requisite documents and evidences were submitted by the assessee before the AO on 02-03-2016. There is no dispute the AO completed the assessment proceedings considering all the details. Further, as noted by us all the relevant details like work order, ledger extracts of BVG India Limited in the books of the assessee along with invoices and also ledger extracts of BESCO in the books of the assessee and the invoices raised by the assessee on BESCO were before the AO and there is no dispute in this regard which are all filed before us by way of a paper book. The CIT(A) also examined the return of income, computation of income, audit report and bank statements of BVG India Limited which are also available before the AO during the course of assessment proceedings. We find the same at Page Nos. 65 to 175 of the paper book filed before us. Therefore, the contention of the ld. DR that the CIT(A) ought to have given an opportunity to the AO in the remand proceedings does not arise at all for the reason that no evidence brought on record before us that these documents were not before the AO in assessment proceedings and also the CIT(A)

considered any additional evidence which was not before the AO. Therefore, the submissions of ld. DR that there was no opportunity for AO for examination of relevant details are rejected and the order of CIT(A) is justified. Thus, the grounds raised by the Revenue are dismissed.

35. In the result, both the appeal of the Revenue are dismissed and both the cross objections by the assessee are allowed.

Order pronounced in the open court on 29th November, 2021.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th November, 2021.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune
4. The Pr. CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune