

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.662/JP/2018
निर्धारण वर्ष/Assessment Years : 2012-13

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| Income Tax Officer, Ward-1(1), Kota | बनाम Vs. | Late Shri Chandi Ram Through L/H Smt. Sarla Devi A-20, Vallabh Nagar, Kota |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABIPR 6234 N | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Sh. Siddharth Ranka (Adv.) &
Sh. Saurav Harsh (Adv.)

राजस्व की ओर से / Revenue by: Smt Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 28/03/2023

उद्घोषणा की तारीख / Date of Pronouncement: 14/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the revenue aggrieved from the order of the Commissioner of Income Tax (Appeals), Kota [Here in after referred as "Ld. CIT(A)"] for the assessment year 2012-13 dated 21.02.2018 which in turn arises from the order passed by the ITO, Ward-1(1), Kota passed under Section 143(3) r.w.s 147 of the Income tax Act, 1961 (in short 'the Act') dated 28.12.2016.

2. In this appeal, the revenue has raised following grounds: -

"1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,76,41,574/- out of total addition of Rs. 1,93,23,858/- made on account of arbitration receipts.

2. The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing."

3. The assessee has raised a preliminary objection against the maintainability of the appeal on the ground that the department has filed the

present appeal against the deceased person despite the fact the assessee had already expired on 21.02.2017. The Id. Counsel contended that since the assessee has raised legal issue regarding maintainability of the appeal and the preliminary objection raised by the assessee being legal in nature and goes into the root of the matter therefore, vide order dated 31.07.2019 after hearing both the parties the coordinate bench of this tribunal has passed a detailed order. The relevant finding of the bench on the legal issue vide order dated 31.07.2019 is reiterated here in below for the sake of brevity of the facts:

4. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the assessee late Shri Chandi Ram had expired on 21st February, 2017 during the pendency of the appeal before the Id. CIT (A). This fact was apprised to the AO by the legal heir by various letters and also brought to the notice of the Id. CIT (A). However, the Id. CIT (A) has passed the impugned order in the name of the deceased assessee and not against the legal heir of the deceased assessee. The AO was very much aware about the death as it is manifest from the record that even the set aside assessment order for the assessment year 2004-05 was passed by the AO on 21st December, 2017 in the name of legal heir. When the appeal of the revenue was listed for hearing first time before the Tribunal on 12th July, 2018, the legal heir of the deceased assessee filed an application raising the objection against the maintainability of the appeal. On that date of hearing, the Tribunal adjourned the matter to 4th September, 2018 and directed the AO to submit the report on the expiry of the assessee and necessary steps/action taken. Immediately after the said directions of the Tribunal, the AO has filed a revised Memorandum of Appeal in Form No. 36 wherein deceased assessee has been substituted by the legal heir. It is pertinent to note that on 12th July, 2018 when the Tribunal directed the AO to take the necessary action on this aspect, the limitation had already expired for filing the appeal against the impugned order of the Id. CIT (A). However, since the Tribunal has directed the AO to take necessary action and thereby granted the leave to the department to substitute the deceased assessee by legal heir, therefore, the revised form no. 36 filed by the department on 26th July, 2018 is as per the leave granted by the Tribunal for bringing the legal heir on record. There is no quarrel on the point that the appeal filed against the deceased assessee is not maintainable, however, the said invalid appeal filed by the revenue will not forfeit the right to file a fresh appeal against the legal heir subject to the leave of the court. In the case in hand, since the revenue was allowed to take the necessary steps, therefore, the delay in filing the Memorandum of Appeal against the legal heir of the deceased assessee has been found to be explained by the revenue due to inadvertent mistake and, therefore, even if the said revised form no. 36 is filed belatedly, the Tribunal is satisfied with the reasons and cause of delay explained by the Id. D/R. Accordingly, the delay in filing the form no. 36 is condoned.

5. As regards the decisions relied upon by the Id. Counsel for the assessee, there is no dispute that the appeal filed against the deceased assessee is not covered under the provisions of section 292B and, therefore, the same is an invalid appeal liable to be dismissed. However, the appeal dismissed being invalid in limini due to the reason of impleading a deceased assessee cannot take away the right of the appellant to file a fresh appeal against the legal heir of the deceased assessee

subject to the provisions of limitation and leave taken from the court. Hence once the Tribunal has granted the leave to the revenue for filing the revised form no. 36, the appeal of the revenue is admitted for deciding on merits. The legal preliminary objection raised by the assessee is rejected. The appeal of the revenue is directed to be listed for hearing on merits on 14th October, 2019. In the result, preliminary objection of the assessee is dismissed.

4. Since the preliminary objection raised was dismissed by a detailed order as referred in above by the coordinate bench of this tribunal and there is no contrary order of the higher court in the matter, the appeal filed by the revenue listed to be decided on merits and the same was heard on merits.

5. Succinctly, the fact as culled out from the records is that the assessee derives income from civil construction works. A notice u/s 148 of the Income-Tax Act, 1961 issued on 08.03.2016, after seeking prior approval of the Additional Commissioner of Income-Tax, Range-01, Kota u/s 151(2) of the Income Tax Act, 1961 duly served upon the assessee on 09.03.2016 through the Notice-Server with requiring to deliver a return in the prescribed form of his income for the AY 2012-13 within 30 days from the date of service of that notice. The reasons to believe recorded u/s. 148(2) of the Act which reads as under :

"On perusal of the assessment records, it is noticed that the assessee has received interest on arbitration receipts of Rs. 1,39,44,881 which has credited in capital account. But, he has not pay tax thereon as he did not disclose such receipts as revenue receipts. Further, he has received contract receipts of Rs. 58,46,714 and the same has shown in P&L A/c, out of which he has transferred of Rs. 53,78,977 in his capital A/c without forming part of his total income. Thus, it is a clear that the assessee has capitalized such sums without paying a single penny as a tax thereon.

In view of the above facts and circumstances, such income i.e. Rs. 1,93,23,858 (Rs. 1,39,44,881 + Rs. 53,78,977), to the extent of such receipts which is not forming part of his total income, has escaped assessment should be chargeable to tax under section 147 of the Income-Tax Act, 1961. I, therefore, have reason to believe that the assessee has concealed the particulars of his income for the above-mentioned year. Therefore, Notice under section 148 of the Income-Tax Act, 1961 is to be issued for initiating the escaped assessment proceedings under section 147 of the Act."

6. In response assessee contended that there is no understatement of income and no income has escaped assessment to tax as envisaged u/s. 147 of the Act. Therefore, assessee stated to vacate the notice and drop the re-assessment proceedings. Without prejudice assessee also submitted that the return filed on 28.05.2012 be treated as a return filed in compliance to the impugned noticed dated 08.03.2016. Thereafter the notice u/s. 143(2) of the Act issued on 08.04.2016 for compliance on 25.04.2016 with notice u/s. 142(1) of the Act duly served upon the assessee along with a copy of reasons recorded u/s. 148(2) of the Act.

6.1 The assessee objected to issue notice u/s. 148 which was rejected by letter dated 08.04.2016. The assessee again objected to the issue of notice u/s. 148 vide letter dated 25.04.2016 which was also rejected vide letter dated 28.04.2016.

6.2 The assessee filed a written submission on 14.06.2016 in compliance to the notice dated 28.04.2016 along with re-computation / revised computation of income offering at Rs. 4,96,970/- [being the 8.5 % of Rs. 58,46,714 receipt relating to contract work] and Rs. 11,85,314/- [being the 8.5 % of 1,39,44,881/-interest of compensatory nature for delay of payment] totaling to 16,82,284/- as against the return of income of Rs. 4,67,737/- stating that this additional income is declared to purchase the peace and to avoid unending litigation with the department. The assessee further stated that tax on the said income is paid on the condition that no additional tax liability is created; no penalty is lied and no other action for this or earlier year is taken and assessee requested to accept the humble offer as the assessee seriously ill and is bed ridden. The impugned receipt is received

in the assessment year 2012-13 pertains to the work executed by the assessee in assessment year 1989-90 & 1990-91 but the payment was not released as the matters went in dispute to be decided by the arbitration. The assessment for both these years were completed u/s. 143(3) of the Act. The books of accounts were rejected u/s. 145(3) of the Act and income of the assessee was determined by way of rate application which stood finally determined at 8.5 % by CIT(A) and ITAT. It is the submission of the assessee that had there been no dispute and if the contract receipts were released in the relevant assessment years, then the income on these receipts apparently would have been decided by way of rate application. Therefore, the assessee urges and made the submission to complete the assessment by applying to NP rate of 8.5%. It is further submitted that the major part of the receipt is on account of interest of Rs. 1,39,44,881/-. This receipt of interest fallout of the long delay of 20-22 years in settling the matter. Therefore, it would be not proper on the part of the department to press for submitting details of expenses on such receipts which are impossibility. The assessee spends time and money in engaging the advocates and that all these efforts ultimately succeeded. The interest has been paid as compensation for delay and is of the character of contract receipts to be assessed by way of rate application. The second part of the receipt to the tune of Rs. 58,46,714/- pertain to works executed in the assessment year 1989-90 & 1990-91 but was not paid in those assessment years. Further it is submitted that it was because of these facts and nature of the case that the books of account were rejected and income was determined by way of net profit of 8.5% of the receipt.

6.3 The Id. AO taken into consideration the submission of the assessee and stated that receipts to the tune of Rs. 58,46,714/- pertain to work executed by the assessee on Anandpuri Canal Work and Annas Syphone Works. These receipts are in respect of works executed by the assessee in Assessment Year 1989-90 & 1990-91 but were not released on account of arising of disputes. The matter went to arbitration and it is after more than 20 years that the amount has been released to the assessee during the A. Y. 2012-13. The assessee has also received interest of compensatory nature for delay of payment of long delay of 20-22 years in settling the disputes.

6.4 Based on the detailed discussion in the assessment order, a final show cause notice dated 18.11.2016 was issued to the assessee and the assessee filed reply on 28.11.2016 and 14.12.2016 contending that the receipt under reference relates to those years i.e. A. Y. 1989-90 & 1990-91 where in the books were rejected and profit was estimated and the similar ratio should apply related to the receipt received in the year under consideration related those years. Relying on the decision of the apex court in the case of Govinda Choudary [203 ITR 881] the assessee submitted that the interest payable in connection with the delayed payment of contract amount partakes the same character as the receipt of contract.

6.5 The Id. assessing officer observed in the order that the assessee did not produce any books of account with its supporting bills and vouchers regarding expenditure which may be considered therefore, he rejected the contention of the assessee while doing so he relied upon the order dated

15.12.2010 of ITAT in the assessee 's case for A. Y. 2006-07 where in the ITAT took the view that

“No details of expenses shown to have been incurred in those years and it is a finding that such expenses have not been entered in books of account. Such an expenditure for which no details filed or not entered in books of account is not allowable as per provision to section 69C of the Act. Hence even if for the argument it is accepted that the assessee has incurred expenditure against such receipts then such expenditure will not be allowable”

However, the Id. AO has accepted the submission of the assessee to treat the interest receipts of Rs. 1,39,44,881/- as business receipts considering the decision of the apex court in the case of Govinda Choudhary & sons [203 ITR 881 (SC)]. However, the contention of the assessee to consider the income of Rs. 11,85,314/- against such interest receipts of Rs. 1,39,44,881/- was not accepted. As the assessee did not furnish and/or explain for incurring any expenditure against such interest receipts. The Id. AO further noted the interest receipt of the assessee on compensation / enhanced compensation is being deemed to be the income of the year in which it is received under the provision of section 145A(b) of the Act. The assessee has capitalized the entire interest receipts in his original ITR and since it was escaped the assessment the reopening proceeding initiated against the assessee. The assessee furnished the details of the legal expenses of Rs. 26,29,000/- and travelling expenditure of Rs. 3,49,330/- over these periods. On perusal of these bills the Id. AO noted that these expenses are not having nexus with the court proceedings related to the arbitration awards and he has discussed the purposes of each legal expenses bills in his order in para 9.5. Finally, the Id. AO made an addition of Rs. 1,93,23,858/- [58,46,714 + 1,39,44,881 less 4,67,737/- income already offered] charged to tax.

7. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). Before the Id. CIT(A) the assessee has challenged the reopening proceeding and the addition made by the AO. The Id. CIT(A) upheld the reopening proceeding. But in respect of the addition made by the Id. AO the relevant finding of the Id. CIT(A) is reiterated here in below:

“As regards Ground of appeal no. 8 to 14 (Except 10&11), objecting to treating of gross receipts as income by the A.O. when these pertained to A.Y. 1989-90 & 1990-91 where the books were already rejected by the A.O. u/s 145 & profit estimated, it is apparent that though the facts are as above, however the A.O.'s stand on this has to be seen in the light of department's earlier stand.

On his part the assessee, in the course of reassessment proceedings filed a revised computation offering an additional 0.5% above the originally returned income (accepted by the department with income of Rs 4,67,737/-) and on the interest portion @ 8.5% amounting to Rs. 11,85,314/- thus revising his total income to Rs. 16,82,284)-& passing the additional tax & interest thereon voluntarily.

The fact involved was that the assessee received an amount of Rs. 32,16,195/- an award for Anandpuri Canal Work & Rs 1,69,37,559/- for Annas Syphon Work vide order of Supreme Court in SLP no. 11185-86 of 2011 (order dt. 16/08/11) in civil suit filed against the irrigation department. The amount of award became final as it was finally decided by Apex Court dismissing the irrigation department's appeal on limitation. The award constituted refund of security, compensation, extra & disputed items & interest etc.

Since the award was pertaining to A.Y. 1989-90, the assessee referred to the order in that year's assessment proceedings mentioning rejection of books there & application of N.P. rate @ 10% (against 1.48% shown by him) by the A.O., which was upheld by CIT(A) upto 8.5% and also confirmed by ITAT.

For the A.Y. 1990-91, similarly the books were also rejected and N.P. rate of 11% adopted by the A.O. which was again reduced by CIT (A). Ajmer to 8.5% which on this Ground was not challenged by the department before ITAT, hence on N.P. rate it became final.

The A,O in this assessment order has held that the interest was compensatory in nature hence covered u/s 145A(6) of the IT Act, 1961. Further, in the absence of any evidences in support of any claim of expenses incurred to earn these amounts, since all the expenses had been duly considered in the originally filed returns, no further claims were allowable & for that reason argument of applying percentage as profit on this receipt was not allowable.

He relied on the order for A.Y. 2004-05 where award for contract related to A.Y. 1993-94 was received where a similar stand had been taken by the assessee & rejected by the department. The ITAT in that case set aside the matter on verification of expenses. In the second round the ITAT mentioned that the identical issue was decided by the Bench for AY 2006-07 and challenged before the High Court & was pending disposal. Hence, they again set aside the issue to the AO. to decide the same on the basis of

High Court decision (setting aside order of CIT (A) who had allowed part relief to the assessee.

The issue decided in AY. 2004-05 which was referred by ITAT was regarding verification of claim of expenses against the reward (claimed in A.Y. 1993-94 or not). The ITAT treated the entire contract receipt as income of the assessee. Hence in A.Y 2006-07 also the A.O. took the same stand & held that since the assessee could not prove with documentary evidence that expenses pertaining to A.Y. 1993-94 & 1990-91 were not claimed in those years, the entire arbitration receipts were liable to be brought to tax.

In further appeal, the ITAT reversing the order of CIT(A) held that the expenditure was not allowable even if incurred as it was never a part of audited P&L account for A.Y. 1990-91 & 1993-94.

The assessee explained in the present assessment under appeal here that receipts in AY. 2006-07 which pertained to two years did not contain contract related receipts to but for illegal termination of contract work. However in A.Y. 2012-13 the award receipts were related to contract works. He summarized the difference accordingly & mentioned that the ratio for A.Y. 2006-07 was not applicable here as in this year receipts pertained to A.Y. 1989-90 & 1990-91 when books were rejected & N.P. rate applied.

The A.O. has however, not considered the explanations of the assessee & held the entire receipt as taxable based on ITAT's order for A.Y. 2006-07 regarding claim of expenses & secondly on the interest receipts while agreeing that these were business receipts in view of Apex Court order in Govinda Chaudhary & Sons (1993) 203 ITR 881 (SC), he has not accepted rate application on the basis of no claim of expenses evidenced against these receipts. He has therefore also rejected the assessee's revised computation of income filed in the assessment proceedings as discussed earlier. He also rejected the claim of expenses of Rs. 26,29,000/- for AY 2011-12 to 2017-18 as legal expenses & Rs. 3,49,330/ for AY 2001-02 to 2012-13 as travelling expenses since nexus of these with arbitration award could not be established & order of Apex Court was dated 16.08.2011 & this claim was made afterwards vide order sheet entry dated 16.12.16 (Page 49 & 50 of assessment order).

Since the A.O. has broadly relied on the ITAT's order in the appellant's own case for A.Y. 2006-07 in which the ITAT had mentioned that no claim of expenses will be allowable & as per the assessment order the appeal was then pending before the High Court, a reference is now needed to be made to the Rajasthan High Court order for the above year enclosed with the assessee's paper book. The appeal was decided on 30/08/17 in DB income tax appeal no. 19/2011 on the following issue-

“Whether the Tribunal was justified in treating the entire income of Rs. 8,13,194// as income for the assessment year in question?”

The Hon'ble jurisdictional High Court at para 8.1 to 8.4 of the order held that “while considering the statement for A.Y. 1990-91 & 1993-94, the A.O. ought not to have been given finding whether the expenses are claimed or not instead of deciding the issue which is not relevant and simply deducted the amount which is claimed in the income.”

The High Court opined that the CIT (A) had rightly held the profit rate and allowed the claim of the appellant. The Tribunal had committed serious error in concluding that subsequent year's expenses which are claimed ought not to be allowed in the relevant year.

In view of the decision of Supreme Court & other High Court decisions, the income which has been incurred in the year 2006-07 is required to be allowed as expenses were not claimed in the earlier year. Since no finding arrived by the A.O. whether the expenses are claimed or not for the AY 2004-05.

Taking into consideration the above, the issue is answered in favour of the assessee and against the department.

The agreement of the High Court on the Apex Court decision in the case of CIT vs. Govind Chaudhary & Sons 203 ITR 881 (SC) & other High Court decisions cited to reach its findings mentioned above shows that while the income from interest & contract work were both revenue receipts & the interest being attributable to the contract receipts disputed (& received later) it was totally de hors the contract business and could not be from other sources' as the A.O. has also agreed here.

In the present case also, therefore the entire receipts of contract & interest amounts covered by the award pertaining to the A.Ys. 1989-90 & 1990-91 will be considered as business receipts only. Now coming to the issue of what amount out of the above required to be taxed, firstly it is clear from the High Court order for A.Y. 2006-07 in the appellant's own case (on which ITAT order reversed by High Court as referred above, the A.O. had relied), the entire income could not be brought to tax.

The issue will then arise as to whether any expenses were there in respect of the same? Although the appellant in the course of the proceedings did mention about legal & travelling expenses which the A.O. did not consider in absence of nexus with the arbitration award, but in any case the analogy is that these awards pertained to works done for A.YS 1989-90 & 1990-91 & only reflected in the return for AY 2012-13 because they were received in financial year 2011-12, when the matter of award was finalized by the Apex court. Various Tribunals & High Courts have opined that in the case of contractors, estimation of income on such arbitration awards was a reasonable view on facts involved.

In the present case also, it is observed that on the regular receipts for A.Y. 1989-90 & 1990-91, the department had resorted to rejection of books of accounts u/s 145. Since the receipt of award is from those very contracts & related books rejected by the department then & estimating the profits, the contract & the interest awarded are also deemed to be of the same character & whatever be the receipt it was duly covered by the Net Profit rate on the same as applied & finalized earlier in the first round of assessment proceedings.

The contract as well as interest award only partake the character of business receipts in the present case and were awarded on disputes & delay caused in regular course of contract works, the primary business of the assessee.

As regards the revised computation of the assessee filed in the course of assessment proceedings, it has been held by higher judicial forums that if a revision is done in the income before the completion of assessment proceedings, there is no bar against it being accepted (at least at appellate level).

In view of the discussion made above on the facts involved & in law, I am of the view that the contract as well as interest receipts awarded to the appellant totaling to Rs. 1,93,23,858/- were in the nature of business receipts & deserved to be assessed as such. In the background of these pertaining to the A.Ys for which books of the appellant were rejected u/s 145 & net profit rate estimated, I am of the opinion that the same net profit rate of 8.5% shall be applicable on these receipts as well.

THE ITAT CHANDIGARH BENCH B in Mit Mohan Singh Kahlon v. Deputy Commissioner of Income-tax 39 taxmann.com 145 (Chandigarh - Trib.) held-

Section 143, read with section 139, of the Income tax Act, 1961-Assessment - General Revised computation of income Assessment year 2007-08 Whether when a notice under section 143(2) has been issued and proceedings of assessment under section 143(3) are in progress, assessee can put forth any claim for deduction or exemption or relief, which was not claimed in return of income and same shall have to be considered by Assessing Officer Held, yes - Whether similarly, in case assessee files and produces correct computation of his income, and can convince Assessing Officer that income disclosed in original return is not actually correct income and correct income is one which is being furnished during assessment proceedings, such a revised computation has to be considered and acted upon by Assessing Officer-Held, yes Whether, therefore, where assessee had inadvertently offered higher income in his return but during assessment proceeding assessee filed reused computation of his total income to show that he had lower income than declared in return, Assessing Officer must compute income on basis of revised computation of income- Held, yes

THE ITAT MUMBAI BENCH F in Furniture Concepts (1) Ltd. v. Assistant Commissioner of Income-tax, Range-9 (1), Mumbai 64 taxmann.com 47 (Mumbai Trib.) held-

Section 139 of the Income-tax Act, 1961 Return of income (Revised computation)- Assessment year 2007-08 Assessee filed its return declaring certain taxable income- Subsequently assessee filed revised computation wherein deduction was claimed on account of remission by bank under one time settlement Assessee did not raise said claim by filing a revised return because prescribed time for filing return had already elapsed Assessing Officer refused to consider revised computation submitted by assessee Whether since mandate of Constitution is to levy and collect due taxes, issue raised by assessee was to be restored to file of Assessing Officer to examine it afresh and decide in accordance with law- Held, yes

This additional amount of income comes to Rs. 16,82,284/- and has been disclosed by way of revised computation filed in the course of assessment proceedings. This is over and above the income disclosed in the regular/revised return. The same is considered as acceptable. The balance addition of Rs. 1,76,41,574/- Is therefore, directed to be deleted.

These grounds of appeal are treated as partly allowed.”

8. The revenue feeling not satisfied with the finding of the Id. CIT(A) carried this matter by filing an appeal before this tribunal on the grounds as stated here in above.

8.1 The Id. DR representing the revenue has relied upon the detailed finding of the Id. AO as recorded in the scrutiny report of the Id. AO forwarded vide Id. DR submission dated 18.10.2021. The Id. DR also relied

upon the detailed submission containing the background of the case and comments on the issue involved vide submission dated 02.05.2022. These are reiterated here in below:

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| 1. | <p>Brief History/Background of the case</p> <p>In this case the assessee filed his ROI u/s 139(1) of the Act on 28.05.2012 declaring income of Rs.8,13,700/- which was processed u/s 143(1) 22.03.2014. Thereafter notice u/s 148 of the Act was issued to the assessee on 08.03.2016 after seeking prior approval and recording the reasons as under-</p> <p><i>"On Perusal of the assessee records, it notices that the assessee has received interest on arbitration receipts of Rs.1,39,44,881/- which has credited in capital account, but he has not pay tax thereon or he did not disclose such receipts as revenue receipts. Further, he has received contract receipts of Rs.58,46 714/- and the same has shown in P&L account, out of which he has transferred of Rs.53,78 977/- in his capital a/c without forming part of his total income. Thus, it is a clear that the assessee has capitalized Such sums without paying a single penny as a tax thereon.</i></p> <p>In view of the above facts and circumstances, such income i.e. Rs.1.93,23,858 (Rs 1,39,44,881+ Rs 53,78,977) to the extent of such receipts which is not forming part of his total income, has escaped assessment should be chargeable to tax under section 147 of the Income-Tax Act, 1961. Therefore, have reason to believe that the assessee has concealed the particulars of his income for the above-mentioned year. Therefore, notice under section 148 of the Income-Tax Act, 1961 is to be issued for initiating the escaped assessment proceedings under section 147 of the Act."</p> <p>Thereafter, assessment proceeding was completed at total income of Rs 2,01,37,560/- on 28.12.2016 by making addition of Rs.1,93,23,858 (Rs.1,39,44,881+ 58,46,714 Rs.4,67,737) treating entire receipts of Rs.58,46,714/- as contractual arbitration awards receipts and Rs 1,39, 44,881/-as interest on arbitration awards receipts.</p> |
| 2. | <p>Brief Facts of the case</p> <p>"Assessment in this case was completed u/s 143/147 28.12.2015 at an Income Rs. 2,01,37,560/- asagainst income of Rs.8.13,697/-declared by the assessee in his return.</p> <p>1 Assessee declared total income of Rs.8,13,697/-in his return filed on 28.05.2012. Later on, it was observed that the assessee received interest of Rs.1,39,44,881 on arbitration receipts and credited the same in capital account without paying any tax thereon. It was further observed that assessee received contract receipts of Rs.58,46,714/- and the same was shown in P&L account out of which (Rs.53,78,977/- was transferred to capital account without forming part of his total income. Accordingly, to bring the receipts to tax, notice u/s 148 of theAct was issued and proceedings u/ 147 were initiated.</p> <p>2. During the assessment proceeding, AO observed that the assessee had declared receipt of Rs 58,46,714/- and declared net income of Rs 4,67,737/- u/s</p> |

44AD of the Act on such receipt. it was further observed that interest receipts of Rs. 1,39,44,881/ were not declared. The AO in this regard, after following the assessments made in this case for AY 2004-05 and 2006-07 and the decision of the Hon'ble Tribunal for AY 2006-07 in case of the assessee, holding the following made addition of Rs.1,93,23,858/-.

“.....9.2 The assessee did not produce any books of account with its supporting bills & vouchers regarding expenditures which may be considered in term of provisions of section 44A of the Act against business receipts i.e. arbitration receipts including Interest received on such arbitration receipts during the course of assessment proceedings. The assessee stated that those bills & vouchers were not traceable due to being for old years. He further stated that there is no relevance for the same as admittedly books were rejected and net profit rate was applied. It is not found acceptable. As such, these receipts and its expenditures were not part of such books. As such, an expenditure for which no details filed or not entered in books of account is not allowable as per proviso to section 69C of the Income-Tax Act, 1961.

9.3 That the assessee has also stated to consider his interest receipts of Rs.1,39,44,881/- as business receipts held by the Apex Court in the decision of Govinda Choudhary & Sons 1993 203 TA 881 (SC) and income is to be of Rs.11,85,314/- as per revised computation filed on 14.06.2016 The assessee's contention regarding to treat business receipts is acceptable However, his contention regarding to treat income of Rs.11,85,314/- against such interest receipts of Rs. 1,39,44,881/- is not acceptable. As the assessee did not furnish and/or explain for incurring any expenditure Against such interest receipts. Moreover, it is pertinent to mention here that Interest receipts of the assessee on compensation/enhances compensation is being deemed to be the income of the year in which received under the provisions of section 145A(b) of the Act. In the instant case of the assessee, he has received interest of Rs.1,39,44,881/- an arbitration receipts of Rs 58,46,714/- & security refunds of Rs 3,62,059/- during the year under consideration is legally treated as income of the assessee for the same year-

9.4 In the original ITR of the assessee for the year under consideration, he has not declared his taxable income from interest receipts on his arbitration awards, which was become final vide the Hon'ble Apex Court's decision dated 16.08.2011 in SLP CC Nos. 11111 & 11112/2011 arisen out of order dt. 17.12.2009 in SBCMA No. 608/209 of the Hon'ble High Court of Rajasthan at Jodhpur. The same entire interest receipts were capitalized by the assessed in his original ITR, hence, the escapement assessment proceedings were initiated in the assessee's case. Later on, he filed revised computation of income on 14.06.2016 is not found having any strength to treat as acceptable Whereas, he has filed copy of original R on 06.04. 2016 with requesting to treat the same ITR in response to the notice u/s 148.

9.6 I have gone through the all decisions on which the assessee is relied, it noticed that the facts of the assessee's case is defer from their facts. Therefore, the same is not to be applied in the assessee's instant case. The facts and circumstances of the assessee's instant case is related to his own cases assessed and decided for AYS 2004-05 & 2005-07. It is pertinent to mention here that the Hon'ble ITAT's decision in the assessee's case for AY 2006-07 is final as the Hon'ble High Court dismissed the assessee's petition against it. It is also directed the Hon'ble ITAT for A.Y. 2004-05 to assessee as finality of the case for AY, 2006-07 by the Hon'ble High Court. In all of these cases, the receipts are identically same in nature. Thus, the Hon'ble (ITAT's decisions are clearly applicable and the same & hereby applied in the instant case of the assessee.

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| | <p>10. In view of the facts and circumstances of the assessee's instant case as discussed hereinabove in the assessment order, therefore, I am of opinion that the assessee's entire receipts as contractual arbitration awards receipts of Rs.58,46,714/- and as interest arbitration awards receipts of Rs 1,39,44,881/- are treated as income of the assessee against the income of Rs 4,67,737/- shown by the assessee in his original ITR dated 28.05.2012. Accordingly, an addition of Rs. 1,93,23,858/- (Rs.58,46,714/+ Rs.1,39,44,881/- Rs.4,67,737/-) is hereby made to the total income of the assessee for the year under consideration.</p> |
| 3 | <p>CIT(A):</p> |
| | <p>3. The Id CITIA) upheld the reopening of the case u/s 148 of the Act but restricted the addition to Rs.16,82,284/- by applying net profit rate 8.5% of Rs.1,97,91,595(58,46,714+1,39,44,881) by following the decision of Hon'ble Rajasthan High Court In this case for AY 2006-07 wherein the Hon' ble Court has directed to allow the expenses in the same year in which arbitration receipts have been brought to tax. The CIT(A) has observed as under:</p> <p>"In the present case also, therefore the entire receipts of contract & interest amounts covered by the award pertaining to the A. Ys. 1989-90 & 1990-91 will be considered as business receipts only. Now coming to the issue of what amount out of the above required to be taxed, firstly it is clear from the High Court order for A.Y. 2006-07 in the appellant's own case (on which ITAT order reversed by High Court as referred above, the A.O. had relied), the entire income could not be brought to tax.</p> <p>The issue will then arise as to whether any expenses were there in respect to the same? Although the appellant in the course of the proceedings did mention about legal travelling expenses which the A.O. did not consider in absence of nexus with the arbitration award, but in any case the analogy is that these awards pertained to works done for A. 1989.90 &1990.91 & only reflected in the return for AY 2017-13 because they were received in financial year 2011- 12, when the matter of award was finalized by the Apex Court. Various Tribunals & High Courts have opined that in the case of contractors, estimation of income on such arbitration awards was a reasonable view on facts involved.</p> <p>In the present case also, it is observed that on the regular receipts for AY 1989-90 & 1990-91, the department had resorted to rejection of books of accounts u/s 145. Since the receipt of award is from those very contracts & related books rejected by the department then & estimating the profits, the contract & the interest awarded are also deemed to be of the same character & whatever be the receipt it was duly covered by the Net Profit rate on the same as applied & finalized earlier in the first round of assessment proceedings.</p> <p>The contract as well as Interest award only partake the character of business receipts in the present case and were awarded on disputes & delay caused in regular course of contract works, the primary business of the assessee.</p> <p>As regards the revised computation of the assessee filed in the course of assessment proceedings, it has been held by higher judicial forums that if a revision is done in the income before the completion of assessment proceedings, there is no bar against it being accepted (at least at appellate level).</p> <p>In view of the discussion made above on the facts involved & in law, I am of the view that the contract as well as interest receipts awarded to the appellant totaling to Rs 1,93,23,858/- were in the nature of business receipts & deserved to be assessed as such. In the background of these pertaining to the AY's for which books of the appellant were rejected u/s 145 & net profit rate estimated, I am of the opinion that the same net profit rate of 8.5% shall be applicable on these receipts as well...</p> <p>This additional amount of income comes to Rs.16,82,284/- and has been disclosed by way of revised computation filed in the course of assessment</p> |

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| | proceedings. This is over and above the income disclosed in the regular/revised return. The same is considered as acceptable. The balance addition of Rs. 1,76,41,574/- is therefore, directed to be deleted." |
| 4. | AO's comments:- |
| | The decision of the Id.CIT(A) is not acceptable. The decision of the Hon'ble High Court in AY 2006- 07 was based on the fact that the expenses incurred on contract work were not being reflected in audit report for the year in which the work was executed and hence, the expenses were allowed in the same year in which arbitration receipts were declared by the assessee. In the year under consideration, no such finding has been given by the Id.CIT(A). Further, the decision of the Hon'ble High Court in AY 2006-07 was not further challenged due to the fact that the tax effect involved was below prescribed limits. The AO has clearly held that the assessee did not produce any evidence regarding non-claiming of expenses in relevant year. It has been further held by the AO that the expenses in the year under consideration may not be allowed in view of the proviso of Section 69C of the Act even though the expenses were not claimed in the year of work. |

| Format-B | | | | | | | |
|----------|---|--------------------|---|------|------------|---------|---------------|
| A.Y. | Action taken by AO u/s 143(1) or any other | Nature of addition | CIT(A), reasons for deleting the addition | ITAT | High Court | Remarks | AO's comments |
| 1989-90 | Record Not traceable. | | | | | | |
| 1990-91 | Record Not traceable. | | | | | | |
| 1991-92 | Record Not traceable. | | | | | | |
| 1992-93 | Record Not traceable. | | | | | | |
| 1993-94 | Record Not traceable. | | | | | | |
| 1994-95 | Record Not traceable. | | | | | | |
| 1995-96 | Record Not traceable. | | | | | | |
| 1996-97 | Record Not traceable. | | | | | | |
| 1997-98 | Record Not traceable. | | | | | | |
| 1998-99 | Record Not traceable. | | | | | | |
| 1999-00 | Record Not traceable. | | | | | | |
| 2000-01 | Record Not traceable. | | | | | | |
| 2001-02 | Record Not traceable. | | | | | | |
| 2002-03 | Record Not traceable. | | | | | | |
| 2003-04 | Record Not traceable. | | | | | | |
| 2004-05 | Details of this A.Y. are attached. | | | | | | |
| 2005-06 | Refund at Rs.(-)66,020/- was raised u/s 143(1) dated 28.02.2016 | | | | | | |
| 2006-07 | Details of this A.Y. are attached. | | | | | | |
| 2007-08 | Refund at Rs.(-)32,890/- was raised u/s 143(1) dated 14.03.2009 | | | | | | |
| 2008-09 | Details of this A.Y. are attached. | | | | | | |
| 2009-10 | Details of this A.Y. are attached. | | | | | | |
| 2010-11 | Refund at Rs.(-)2,36,720/- was raised u/s 143(1) dated 04.10.2011 | | | | | | |
| 2011-12 | Refund at Rs.(-)77,280/- was raised u/s 143(1) dated 30.12.2011 | | | | | | |
| 2012-13 | Details of this A.Y. are attached. | | | | | | |
| 2013-14 | Refund at Rs.(-)7,220/- was raised u/s 143(1) dated 18.01.2014 | | | | | | |

| A.Y 2004-05 | |
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| 1 | <p><u>Action taken by AO u/s 143(1) or any others</u></p> <p>Return of income filed on 01.11.2004 at Rs.10,60,745/-. Thereafter order u/s 143(3) passed on 05.12.2006 at total income of Rs.60,72,122/- by making total addition of Rs 50,11,377/-. Details of the same are described in next point.</p> |
| 2. | <p>Nature of additions</p> <p>A. Order u/s 143(3) passed on 05.12.2006 by making following additions</p> <p>1. Disallowance out of labour expenses Rs.2,00,000/-, 2. Disallowance out of tractor hire charges Rs.70,000/-, 3. Disallowance out of drilling and blasting expenses: Rs.25,000/ 4. Disallowance out of telephone & Mobile exp. Rs</p> |

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| | <p>22,721/- 5 Disallowance out of diesel exp. Rs.50,000/-, 6. Disallowance out of depreciation on cars Rs.69,047/-, 7. Disallowance out of depreciation on motor cycle Rs.709/-, 8. Disallowance out of depreciation on Mob phones Rs.1,814/-, 9. Addition on a/c of low house hold withdrawals Rs.24,000/-, 10, Disallowance of interest expenses Rs.3,83,111, 11. Addition on a/c of accrued interest on NSCs Rs.9,575/- 12. Undeclared contract receipt Rs.5,71,422/, 13.Bogus current liability/ undeclared receipts Rs.35,83,978/-.</p> <p>B. The AO passed set-aside order u/s 143(3)/254 on 21.07 2008 of the Hon'ble ITAT order dated 31.03.2008 in ITA No.1003/IP/2007 as under</p> <p>1. Addition of Rs.5,71,422/- by holding entire contract receipt of Rs.6,24,983/- is to be taxed as income received by way of arbitration award.</p> <p>C. As per Order of Hon'ble ITAT dated 18.03.2016 in ITA No.329/IP/2015 and decision of Hon'ble High Court for AY. 2006-07 the AO passed order u/s 143(3)/254/set-aside dated 21.12.2017 as under-</p> <p>1. Deleted the addition of Rs.4,65,212/- confirmed by the CIT(A) as per Hon'ble High Court decision for A.Y. 2006-07.</p> |
| 3. | <p><u>CIT(A) reasons for deleting the addition:</u></p> <p>A. CIT(A) order dated 07.11.2007 (355/2006-07)</p> <p>1. Deleted the addition of Rs.2 lac considering Hon'ble ITAT, Jaipur's decision in appellant's case for A.Y. 2001-02.</p> <p>2. Disallowance reduced to 10% instead of 20% which comes to Rs.11,361/- instead of Rs.22,721/-</p> <p>3. Confirmed disallowance on diesel Rs.30,000/- Instead Rs.50,000/-, depreciation on vehicle at Rs 53,704/- instead of Rs.69,047/-, Depreciation on motor cycles Rs.355/- instead Rs.709/-, Depreciation on mobile phone at Rs 1,135/- instead of Rs.1,814/-</p> <p>4. Deleted the addition of Rs.3,83,111/- considering the ITAT decision for A.Y. 2001-02 and 2003-04.</p> <p>Out of above balance addition was confirmed by CIT(A) in his appellate order.</p> <p>Details of the same are as under:</p> <p>1. Disallowance out of tractor hire charges Rs.70,000/-, 2. Disallowance out of drilling and blasting expenses Rs.25,000/-, 3. Addition on a/c of low house hold withdrawals Rs.24,000/-, 4. Addition on a/c of accrued interest on NSCs Rs.9,575/-, 5. Undeclared contract receipt Rs.5,71,422/-, 6.Bogus current liability/ undeclared receipts Rs.35,83,978/-.</p> <p>B. Against order u/s 143(3)/254 dated 21.04.2008 of the AO. CIT(A) passed order on 28.01.2015 in appeal No 2895/2008-09 as under-</p> <p>1. Confirmed the addition of Rs.4,65,212/- out of Rs.5,71,422/- stating that the assessee failed to produce any evidence regarding claim of proportionate expenses and deleted the addition of Rs. 76,210/- (refund of security deposit) and Rs.30,000/-(reimbursement of litigation expenses)</p> |
| 4. | <p>ITAT</p> <p>A. Against the order of CIT(A) dated 07.11.2007 the assessee filed appeal before Hon'ble ITAT. The Hon'ble ITAT vide passed order dated 31.03.2008 in ITA No.1003/JP/2007 as under:</p> <p>1. Restrict the disallowance at Rs 35,000/ out of Rs 70,000/- made on account of Tractor hiring charges and Rs 12,500/- out of 25,000/- made on account of</p> |

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| | <p>drilling and blasting expenses.</p> <p>2. Deleted Rs.355/- made on account of depreciation on motorcycle.</p> <p>3. Set aside the addition of Rs.5,71,422/- made on contract receipt to verify as to whether the expenses incurred by the assessee relating to the award related to assessment year 1993-94.</p> <p>4. Deleted the addition of Rs 35,83,978/-stating that assessee was rather trustee of the said amount pending adjudication of appeal preferred by the State Government against that disputed amount.</p> <p>B. Against the order dated 28.01.2015 in appeal No.2895/2008-09 of CITIAL the assessee filed appeal before Hon'ble ITAT. The Hon'ble ITAT passed order on 18:03 2016 in ITA No 379/IP/2015 as under:</p> <p>1. The Hon'ble ITAT set-aside the issue to the AC and directed him to decide the case on the basis of decision of Hon'ble High Court on similar facts and circumstance for A.Y. 2006-07.</p> |
| 5. | <p>High Court</p> <p>1. (DBIT No:825/2008 dated 13.04.2016) Dismissed the revenue appeal in view of the circular 21/2005 de 10.12.2015 of CBDT, Delhi as the tax effect involved in these cases is below the stipulated monetary limit</p> |
| 6. | Remarks:- No further appeal was recommended in this case. |
| 7. | AO's comments. No further appeal was recommended in this case due to below tax effect and case not falling also exceptions of circular No.21/2015 dated 10.12.2015 of CBDT, New Delhi. |
| A.Y. 2006-07 | |
| 1 | <p><u>Action taken by AO u/s 143(1) or any other:-</u> In this case the assessee filed his ROI u/s 139(1) of the Act on 02.07.2006 declaring Income of Rs.9,15,268/- which was processed u/s 143(1) on 28.11.2006</p> |
| 2. | <p>Nature of addition: Assessment u/s 143(1) of the Act was completed on 12.12.2008 at Rs.39,18,220/- by making total addition at Rs.30,02,950/ Details of the additions are as under: 1. Capital contribution Rs 2,17,141/, 2 Unexplained credit at Rs.10,500/-, 3. Diesel expenses at Rs.11,56,314/-, 4. Purchase of material like stone and rubble, sand and gritt at Rs.3,96,580/-, 5. Arbitration Award receipts at Rs.8,13,194/ 6. Telephone & Mobile expenses at Rs 16,651, 7. Depreciation on Cars and Motorcycle at Rs.22,680/-, 8.Vehicle Insurance expenses at Rs 2,948, 9. Labour payment at Rs.2,00,000/-, 10, Payment in contravention of 40A(3) at Rs 1,66,942/-.</p> |
| 3 | <p>CIT(A), reasons for deleting the addition:- The Id CIT(A) vide order dated 24.06.2009 in appeal No.392/2008-09 has decided the case as under:- <u>Deleted the additions:</u> 1. Diesel expenses at Rs.11,56,314/-, 2.Arbitration Award receipts at Rs.8,13,194/, 3Purchase of material like stone and rubble, sand and gritt at Rs.3,96,580/-, 4.Depreciation on Cars and Motorcycle at Rs 22,680/-, 5.Vehicle insurance expenses at Rs.2,948/-, 6.Labour payment at Rs.2,00,000/-, 7.Payment in contravention of 40A(3) at Rs. 1,66,942/-. <u>Confirm the addition:</u> 1.Unexplained credit at Rs.10,500/-, 2.Telephone & Mobile expenses at Rs.16,651/- 3.Capital contribution Rs.2,17,141/-(partly accepted)</p> |
| 4. | <p>ITAT The Hon'ble ITAT in ITA No.837/JP/097 dated 15.12.2010 confirmed the addition of Rs.8, 13,194/-made by the AO on account of arbitration Award receipts.</p> |
| 5. | <p>High Court The Hon'ble Rajasthan High Court, Jaipur in DBIT Appeal No.19/2011 dated 30.08.2017 has allowed the appeal of the assessee and set aside the order of the tribunal and has upheld the order of the CIT(A) in view of the judgment of</p> |

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| | Hon'ble Supreme Court in the case of Govinda Chaudhary & Other 203 ITR 881 High Court decisions. |
| 6. | Remarks: No further appeal was recommended for filing SLP before the Hon'ble Supreme Court. |
| 7. | AO's comments: No further appeal for filing SLP before the Hon'ble Supreme Court was recommended due to below tax effect and as per the audit report the expenses were not claimed and therefore only net profit rate was to be applied. |
| A.Y 2008-09 | |
| 1. | AY 2008-09 <u>Action taken by Du/s 14311) or any others</u> ROI at income of Rs.3,16,040/- filed on 30.09.2008. Order u/s 143(3) dated 14.05.2010 at Rs.7,55,353/-. Thereafter case was re-opened u/s 147 and completed assessment u/s 147/31/147 dated 26.12.2013 at total income of Rs.1,46,66,330/-. By making the addition as mentioned in point no.2 |
| 2. | <u>Nature of addition</u> 1. Receipt of Arbitration at Rs.91,59,305/- 2. Accrued interest on FDRs at Rs.7,55,642/- 3. Expense of payment disallowance u/s 40(a)(ia) at Rs.39,96,030/-. |
| 3. | <u>The CIT(A), reasons for deleting the addition:- The CIT(A) in appeal No.426/2013-14 dated 23.10.2014 passed order as under:-</u> 1. Deleted the addition of Rs.91,59,305/- as per order of Hon'ble ITAT in A.Y. 2004-05 (ITA No.1003/IP/2007) in which ITAT state that the assessee was not under the absolute ownership of the assessee and AO was not justified in treating the same as income of the assessee. 2. Deleted the addition of Rs.7,55,642/- stating that in the original assessment order, AO added FDR interest of Rs.6,23,298/- over and above net profit estimated @ 10% of the turnover 3. Deleted the addition of Rs.39,96,030/- considering the case of Vector Shipping Services Pvt. Ltd. 357 ITR 642 (All) in which SLP was dismissed by Hon'ble Supreme Court stating that the section 40(a)(ia) are applicable only when the amount is payable and not when the amount is already paid. |
| 4. | <u>ITAT:-</u> The Hon'ble ITAT vide its order in of Revenue appeal of ITA No. 11/1P/201528.02.2017 passed order as under:- 1 Dismissed the appeal on the issue of deleting the addition of Rs.91.59,305/- by CIT(A), stating that matter is pending adjudication on merits before the Hon'ble Rajasthan High Court for Arbitration receipts and the assessee cannot be regarded as income which has accrued unless and until the proceedings relating to arbitral award attains finality. 2. Dismissed the appeal on the issue of deleting the addition of Rs.755542/- by CIT(A). stating that we do not see any infirmity in the order of Id.CIT(A) in deleting of Rs.7,55,642/ |
| 5. | <u>High Court:-</u> High Court: 1. The Hon'ble High Court in DBIT Appeal No 210/2017 dated 06.11.2017 dismissed revenue appeal on addition of Rs 91 59,305/- stating that taking into account the observations made by the Supreme Court in Ghanshyam (HUF) (supra) in para no. 35 where the court held that in view of provisions of section 155(16), the receipt of enhanced compensation is liable to be taxed in the year of receipt, and in view of decision of Bombay High Court in DSL Enterprises (P) Ltd. vs. Mrs. N.C. Chandrate, ITO as quoted above, the amount of Rs.91,59,305/- credited on escalation head has rightly been shown in the balance sheet as liability. |
| 6. | Remarks:- As per record further SLP filed before Hon'ble Supreme Court on the issue |
| 7. | AO's comments: As per record further SLP filed before Hon'ble Supreme Court on the issue. |
| A.Y 2009-10 | |

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| 1 | Action taken by AO u/s 143(1) or any other:- Return of income filed on 10.10.2009 at Rs.3,12,462/-, Order u/s 143(3) passed on 25.11.2011 at total income of Rs.4,60,916/-by making following additions: |
| 2. | Nature of addition: 1. Disallowance of interest paid at Rs.1,48,454/- other than business. |
| 3. | CIT(A), reasons for deleting the addition:- No appeal |
| 4. | ITAT |
| 5. | High Court |
| 6. | Remarks: |
| 7. | AO's comments: |
| A.Y 2012-13 | |
| 1. | Action taken by AO u/s 143(1) or any other In this case the assessee filed his ROI u/s 139(1) of the Act on 28.05.2012 declaring income of Rs.8,13,700/ which was processed u/s 143(1) on 22.03.2014. Thereafter notice u/s 148 of the Act was issued to the assessee on 08.03.2016 after seeking priorapproval and recording the reasons. |
| 2. | Nature of addition: Assessment u/s 143(3) of the Act was completed on 28.12.2016 by making addition of Rs.1,93,23,858/ (Rs 58,46,714/+ Rs.1,39,44,881/- Rs 4,67,737/-) entire receipts of contractual arbitration awards of Rs.58,46,714/- and interest at Rs.1,39,44,881/- on arbitration awards treating as income of the assessee. |
| 3. | CIT(A) reasons for deleting the addition The Id CIT(A) vide his order dated 21.02.2018 upheld the reopening of the case u/s 148 of the Act but restricted the addition to Rs.16,82,284/- by applying net profit rate 8.5% of Rs.1,97,91,595(58,46,714+1,39,44,881) by following the decision of Hon'ble Rajasthan High Court in this case for AY 2006-07 wherein the Hon'ble Court has directed to allowthe expenses in the same year in which arbitration receipts have been brought to tax. |
| 4. | ITAT Appeal is pending before Hon'ble ITAT. |
| 5. | High Court NA |
| 6. | Remarks: |
| 7. | AO's comments:- Appeal is pending before Hon'ble ITAT. |

8.2 In addition, the Id. DR submitted that the assessee has not disclosed the award amount consist of contract amount of Rs. 58,46,714/- and interest of Rs. 1,39,44,881/- in the return of income filed for the year under consideration. The assessee also in response to notice u/s. 148 offered only 8 % of the amount of the contract receipts. The action of the assessee is not voluntary. The assessee also not produced details of the expenditure incurred to support the contentions while offering the income on estimate basis. The Id. DR relying the order of the ITAT in the case of the assessee submitted that the fact of the case in the year 2006-07 is different because in that year the assessee has shown the income and not given the details of

the expenses and tribunal has not allowed the deduction of expenses based on the facts which the jurisdictional high court has reversed. Whereas in the year under consideration the assessee has not shown the receipt as well as the interest amount in the year under consideration and therefore, the assessee cannot take the benefit of the decision of the Rajasthan High Court as the facts in that year and in this year are different. The Id. DR also submitted that Id. CIT(A) has not given the clear finding that even though there is no support of the claim of the expenditure how the income can be assessed on estimate basis, as the assessee has not established any expenditure by placing on record the nexus of income viz a viz the expenditure incurred to earn that income. Thus, the assessee failed to explain how the expenditure on estimate basis is allowable against the contract receipts as well as on the interest part. The assessee even though called for not produced the books of accounts and the vouchers as called for by the AO and the Id. CIT(A) has granted the relief without dealing with this contention of the AO. Based on these arguments Id. DR supported the order of the assessing officer and prayed to sustained the addition made by the AO.

9. Per contra, the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

“1. That the Late assessee respondent was an individual and was regularly filing his Income tax returns for past various years declaring therein income from civil construction work, interest, etc.

1.1. That during the year under consideration the assessee respondent got his books of accounts audited on 25.04.2012 and thereafter had filed his income tax return on 28.05.2012 declaring therein total income at Rs. 8,13,700/-.

1.2. That during the year under consideration the assessee respondent had received a sum of Rs. 58,46,714/- and interest thereon at Rs. 1,39,44,881/- totaling Rs. 1,97,91,595/- on account of arbitration award towards work executed by the assessee respondent in the Assessment Year 1989-1990 & 1990-1991 out of which a sum of Rs.

4,67,737/- was disclosed by the assessee respondent as income liable to be taxed during the year under consideration.

1.3. That subsequent to disposal of objections the assessee respondent filed revised computation of income vide letter dated 14.06.2016 increasing the total income from contractual receipts to a sum of Rs. 16,82,284/- as against Rs. 4,67,737/- (increased by Rs. 1214547) as was declared in the return filed originally. Thus, revised computation of income was Rs. 25,04,440/- and paid due tax and interest thereon.

2. The assessee was granted contracts (i) concerning the excavation of Anandpuri Canal from RD 780M to 3390M; and (ii) concerning the construction of Annas Syphon for Anandpuri Canal at RD 3330M. The said works were executed. Bills were submitted. Claims were made. But rejected. Part of the payment was received during the assessment years 1989-90 and 1990-91. Bills as accepted by the department and for which payment was received, were shown as receipts for the said assessment years and assessed to income-tax.

2.1 For the assessment year 1989-90, the book results were not accepted. It was found that net profit rate is 1.48%. But a net profit rate of 10 % was applied. Being aggrieved, appeal was preferred by the assessee. Hon'ble Commissioner of Income-tax (Appeals) by order dated 09.11.1994 upheld net profit rate of 8.5%. The revenue preferred second appeal before the Income-tax Appellate Tribunal. The Hon'ble Income-tax Appellate Tribunal dismissed appeal of the Revenue vide order dated 20.9.2001 and upheld application of net profit rate of 8.5%. Cross-objections filed by the assessee was also dismissed. The applicability of rate of 8.5% on contract receipts became final and binding on the assessee and the Revenue.

2.2 For the assessment year 1990-91, the return of income was filed on 26.10.1990. The Id. Assessing Officer found that the net profit rate on total contract receipts is 1.06%. He found the books of account defective, applied provision of sec. 145(1) of the Act after application of net profit rate of 11% by order dated 13.11.1991. Being aggrieved, appeal was preferred. The Commissioner of Income-tax (Appeals), Ajmer in Appeal No.948/91-92 by order dated 13.2.1992 applied net profit rate of 8.5%. The Revenue preferred ITA No.1145/JP/92 before the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur but did not challenge the applicability of net profit rate of 8.5% against 11% applied by the Id. Assessing Officer. The assessee also did not challenge the applicability of 8.5% on net contract receipts. Thus, the finding as to application of net profit rate of 8.5% on contract receipts became final and binding on the assessee as well as the Revenue. The department's appeal was dismissed by the Hon'ble Tribunal on 16/3/1998.

2.3. It may also be mentioned that for the Assessment Year 1986-87 the learned Assessing Officer applied net profit rate of 8% by Order dated 25.3.1988.

2.4. Thus, it is apparent and patent on the face of the record that book results for the above stated assessment years 1989-90 and 1990-91 were not accepted and it was finally held that net profit rate of 8.5% need be applied on the contract receipts. Income was assessed more than returned income.

3. On account of non-acceptance of the bills and claims made/submitted in respect of excavation of Anandpuri Canal dispute arose between the assessee and the State of Rajasthan through the Executive Engineer, DISTY DN No.2 LMC, Mahi Pariyojana, Banswara and the Hon'ble District Judge, Banswara vide his order no. 92/268 dated 8.6.1992 appointed Shri K.C. Jain, retired Superintending Engineer, Irrigation as sole arbitrator to arbitrate in the matter of disputes.

3.1. Similarly in respect of Annas Syphon for Anandpuri Canal, similar dispute arose between the assessee and State of Rajasthan through Executive Engineer –Anandpuri Canal Division Mahi Pariyojna – Bagidora Distt Banswara and the Hon'ble District & Sessions Judge, Banswara vide his order No. Civil/92/496 dated 29.7.1992 appointed Shri K.C. Jain, retired Superintending Engineer, Irrigation as sole arbitrator to arbitrate in the matter of disputes. The sole arbitrator examined the facts, scrutinized the

supporting material placed by the parties and ultimately made two separate awards on 12.3.1997. In terms of the award, following amount was awarded:

Details of Award of Anandpuri Canal work:

| | |
|--|--------------|
| Refund of Security Deposit | 1,00,639.00 |
| Compensation, extra items and for items disputed | 8,32,148.00 |
| Interest: | |
| A. 7.12.89 to 15.7.92 | 4,20,101.00 |
| B. 16.7.92 to 12.3.97 | 7,59,887.00 |
| C. 13.3.97 to 3.5.2010 | 11,03,320.00 |
| Grand Total | 32,16,095.00 |

Details of Award of Annas Syphon Works:

| | |
|---|----------------|
| Refund of Security Deposit | 2,61,420.00 |
| Compensation, excavation, extra items and Extra rate etc. | 50,14,566.00 |
| Interest: | |
| A. 1.5.91 to 11.11.92 | 14,21,755.00 |
| B. 12.11.92 to 12.03.97 | 39,99,266.00 |
| C. 13.3.97 to 3.5.2010 | 62,40,552.00 |
| Grand Total | 1,69,37,559.00 |

The total amount of two awards - Rs. 2,01,53,654/-

3.2. The State challenged the said awards before the Hon'ble Rajasthan High Court Jodhpur vide SB CMA No. 608/2009 & 612/02009 the Hon'ble Rajasthan High Court by interim order dated 17.12.2009 have made them Rule of Court in both the cases and with these judgments of Hon'ble High Court the assessee approached to DJ Banswara Court with a request to get the decretal amount deposited in court. But the State approached in Hon'ble Supreme Court against the Judgment of Hon'ble High Court Jodhpur dated 17.12.2009 vide SLP no.15609 & 15610 of 2010 for both the cases, in which, Hon'ble Supreme Court mentioned in its decision dated 20.09.2010 that "After some arguments, counsel for the petitioners seeks permission to withdraw these SLP's stating that the Petitioner may file review before the Hon'ble High Court Jodhpur" Thus the SLP's were dismissed vide Hon'ble Supreme court order dated 20.09.2010.

3.3. On upon this, department filed review petition in Jodhpur High Court under order 47 CPC for review of Judgment dated 17.12.2009 for both the cases vide SB-CRP No.5998/2010 & 5999/2010 which was also rejected vide Hon'ble High Court Jodhpur order dated 10.11.2010 with the remark, "that present review petitions are liable to be dismissed on merits, even if delay, in filing of the same was to be condoned. Accordingly the delay in filing of review petition is condoned, but the review petitions are dismissed on merits."

3.4. Before the Judgment of review petition filed by the department issued by Hon'ble High Court Jodhpur the department have deposited the draft of Rs.1,69,37,559/- for Anas Syphon work and a draft of Rs.32,16,095/- deposited against the work of Anandpuri Canal work on 01.11.2010 in the Hon'ble DJ Court Banswara for which assessee requested to Hon'ble DJ Court Banswara to release the said amounts as deposited by the department but Hon'ble DJ Court Banswara did not release the amount by saying that the department has already filed review petition in Hon'ble High Court Jodhpur and advised to wait up to decision which is indicated in the note sheet of Hon'ble DJ Court Banswara of dated 19.11.2010 for Anas Syphon work and similar for Anandpuri Canal Work.

3.5. After Hon'ble High Court Jodhpur decision of dated 10.11.2010, on review petition filed by the department, the Hon'ble DJ Court Banswara demanded from the assessee that the payment can only be released if the assessee submit affidavit/undertaking that if any further orders from any of the courts comes, the same

will be refunded / deposited back again by the claimant as mentioned in Note Sheet of dated 19.11.2010.

3.6. On this assessee submitted 2 No. affidavit / undertaking for each case as per instructions of the Hon'ble DJ Court Banswara on 20.11.2010 and the amount/ DD was collected accordingly on 20.11.2010.

4. The State Government again preferred SLP in Hon'ble Supreme Court after the judgment of Hon'ble High Court Jodhpur on Review petition dated 10.11.2010 vide SLP no.11185 & 11186/2011 which was based on the previous order of Hon'ble Jodhpur High Court dated 17.12.2009 which was finally decided by Hon'ble Supreme court on dated 16.08.2011 with the remark as *"Keeping the Question of Law Open, the Special leave petitions are dismissed on ground of Limitations"*

4.1. Hence with the final dismissal of the SLP's the amount of Rs.2,01,53,654/- became final receipt of the assessee for the year under assessment. It has to be considered for Computation of Income for the Assessment Year 2012-13 and has been considered while filing the return.

5. The gross amount of Rs.2,01,53,654/- constitute of the followings:

(A) Refund of the security deposits made by the assessee and shown as an asset in the balance-sheet from year to year – Rs.3,62,059/-

(B) Principal amount by way of compensation and for escalation, extra items, extra rates etc. – the contract receipts – Rs.58,46,714/-.

(C) Interest including pendentilite, pre-reference and pendentilite and for the succeeding period – Rs.1,39,44,881/-.

5.1. The income component of the said amount would be assessable as income for the relevant assessment years. We deal here under the taxability, if any, for the year under assessment:

(A) Security – No part of it is liable to be taxed as there is no element of income on refund of security deposit deposited earlier or withheld.

(B) Principal amount of compensation – it shall partake the character of contract receipts and its treatment should be the same as if it would have been received originally during the assessment years 1989-90 and 1990-91. The Legislatures finding that it is impossible for a contractor to maintain full proof books of account supported by vouchers, details etc. Section. 44AD was inserted for computation on presumption basis. Section 44AD was substituted by the Finance (No.2) Act 2009 with effect from 1.4.2011. It provides by way of an over-riding provision and as a special provision for computing profits and gains of business on presumption basis. As per Explanation (a) an individual is an eligible assessee. Under the Explanation (b), 'eligible business' means (i) any business except the business of plying, hiring or leasing goods carriages and whose total turnover or gross receipts in the previous year does not exceed an amount sixty lac rupees.

(C) Interest has been allowed by the Arbitrator on equity, ex-gratia and of discretion. It is not statutory or in terms of the agreement. Its nature is revenue receipt attributable to and incidental to contract business carried on by the assessee and it bear the same character as business receipts.

6. Position of expenditure relating to receipts:

6.1. The second part of the receipts to the tune of Rs. 58,46,714/- pertain to works executed by the assessee in Assessment Year 1989-90 & 1990-91 but was not paid in those Assessment Years. Further it is submitted it was because of these facts and nature of the case that the books of accounts were rejected and income was determined in Assessment Year 1989-90 & 1990-91 by way of NP rate application of

8.5%. NP rate of 8.5% as submitted by the assessee in the revised computation of income should be applied because of once the books of accounts are rejected by the assessing officer while completing the assessment and after rejecting the books net profit rate is applied then there is no relevancy of the books of accounts, bills, vouchers and expenses related to the execution of works for the A.Y. 1989-90 & 1990-91. Further it is submitted that it was because of these facts and nature of the case that the books of accounts were rejected and income was determined in A.Y. 1989-90 & 1990-91 by way of NP rate application of 8.5%. Further now it is more than 17 years and the assessee has not and is not expected and is not statutorily required to preserve the old books and records. He has satisfied the Arbitrator by acceptable material and amount was awarded and upheld upto the Supreme Court. Hence now non-production of bills and vouchers and books of those years is of no consequence.

6.2. As explained and detailed above the major part of the receipt is on account of interest of Rs. 1,39,44,881/-. The receipts of interest are a fallout of the long delay of 20-22 years in settling the matters. Therefore it would be unbecoming on the part of the department to press to the assessee for submitting details of expenses on such receipts which are impossibility. Although it was only by pursuing the case before courts and assessee had to spend time, money for engaging the advocates etc. that he ultimately succeeded. The interest has been paid as compensation for delay and is of the character of contract receipts to be assessed by way of rate application.

7. Thereafter the Id. Assessing Officer has passed reassessment order dated 28.12.2016 and at page 47-51 given the reasons for confirming the addition of Rs. 1,93,28,858/-, on perusal whereof it is noticed that for the following reasons, the addition is made:

9.1. Reliance has been placed upon Hon'ble ITAT's observation for A.Y. 2006-2007 in assessee's own case order dated 15.12.2010

9.2. Expenditure for which no details provided, nor entered in books are disallowable as per proviso to section 69C of the Act.

9.3. Though the interest income is treated as income from business, however the same is treated as taxable in the year of receipt in light of section 145A(b) of the Act.

9.4. The revised income is not acceptable since assessee has already stated that original return be treated as return filed in compliance to notice u/s. 148.

9.5. Legal expenses claimed by the assessee has no nexus with the outcome of judgment passed by the Hon'ble Apex Court.

9.6. The facts of judgements relied upon by the assessee are distinguishable and assessee's facts are similar to the one as were involved in A.Y. 2004-2005.

| Para No. | AO Reasoning | Assessee's Submissions |
|----------|--|---|
| 9.6. | The facts of judgements relied upon by the assessee are distinguishable and assessee's facts are similar to the one as were involved in A.Y. 2004-2005 | <ul style="list-style-type: none"> • Addition was made by the Id. Assessing Officer • Addition was sustained by the Hon'ble CIT(A) • Matter was remanded by the Hon'ble ITAT back to the Id. Assessing Officer • Addition was again made by the Id. Assessing Officer • Addition was partly deleted by the Hon'ble CIT(A) • Matter was left undecided by the Hon'ble ITAT by its order dated 18.03.2016 with the following observation: <i>Since the identical issue was decided by the Coordinate Bench for A.Y. 2006-2007 has already been challenged before Hon'ble Jurisdictional High Court and the Hon'ble High Court has also framed question of law in the case of the assessee, which is pending for disposal. When similar issue already is before the Hon'ble Court, we set aside the issue to the Assessing Officer and direct him to decide the case on the basis of decision of Hon'ble High Court on similar facts and circumstances. Accordingly we set aside the matter of the Id. CIT(A).</i> |
| 9.1. | Reliance has been placed upon Hon'ble ITAT's observation for A.Y. 2006-2007 in assessee's own case order dated 15.12.2010 | <ul style="list-style-type: none"> • Addition was made by the Id. Assessing Officer • Addition was sustained by the Hon'ble CIT(A) • Matter was remanded by the Hon'ble ITAT back to the Id. Assessing Officer • Addition was again made by the Id. Assessing Officer • Addition was deleted by the Hon'ble CIT(A) • Addition was sustained by the Hon'ble ITAT in department's appeal • Addition was subsequently deleted by the Hon'ble Jurisdictional High Court in {DBITA 19/2011 dated 30.08.2017} by holding as under: <i>8. We have heard counsel for the parties.</i> <i>8.1 From the record it is very clear that the assessee while submitting his credential before the AO relied on the audit report for the A.Y. 1990-91 & 1993-94 which he alleged to have not claimed expenses. However, no finding has been arrived by the AO and if we look at the average which has been applied by the AO and tribunal, the same are not consistent. In that view of the matter, we are of the opinion that while considering the statement for A.Y. 1990-91 & 1993-94, the AO ought not to have been given finding whether the expenses are claimed or not instead of deciding the issue which is not relevant and simply deducted the amount which is claimed in the income.</i> <i>8.2 In our considered opinion, CIT while considering the same has rightly held the profit rate and allowed the claim of the appellant as reproduced hereinabove. The tribunal has committed serious error in concluding that subsequent years expenses which are claimed ought not to be allowed in the relevant year.</i> <i>8.3 In view of the decision of the Supreme Court and other High Court decisions, the income which has been incurred in the year 2006-07 is required to be allowed as expenses were not claimed in the earlier year. Since, no finding arrived by the AO whether the</i> |

| | | |
|------|---|--|
| | | <p><i>expenses are claimed or not for the A.Y. 2004-05.</i></p> <p><i>8.4 Taking into consideration the above, the issue is answered in favour of the assessee and against the department.</i></p> <p><i>9. The appeal stands allowed.</i></p> |
| 9.2. | Expenditure for which no details provided, nor entered in books are disallowable as per proviso to section 69C of the Act | <p>It is submitted that <i>the same was inserted for the first time by Finance (No. 2) Act, 1998 w.e.f. 01.04.1999 and hence the same is not applicable for the relevant year 1989-1990 & 1990-1991 for which the award pertains.</i></p> |
| 9.3. | Though the interest income is treated as income from business, however the same is treated as taxable in the year of receipt in light of section 145A(b) of the Act | <p>It is submitted that the same pertains to compensation or enhanced compensation relating to acquisition of properties whereas the instant case nowhere falls under the definition of compensation but the same pertains to award granted under contractual difference between the contracting parties.</p> <p>For ready reference: Explanatory Circular issued for Finance (No. 2) Act, 2009 is reproduced as hereunder:</p> <p><i>46. Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation</i></p> <p><i>46.1 The existing provisions of Income Tax Act provide that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, the Hon'ble Supreme Court in the case of Rama Bai vs. CIT (181 ITR 400) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers.</i></p> <p><i>46.2 With a view to mitigate the hardship, section 145A is amended to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it was received, irrespective of the method of accounting followed by the assessee.</i></p> <p>Hon'ble Supreme Court in the case of Rama Bai v. CIT (1991) 181 ITR 400 had held: <i>Whether interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1894 cannot be taken to have accrued on the date of the order of the Court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of lands till the date of such order - Held, yes</i></p> <p>Kindly appreciate that the compensation and interest granted for acquisition of land involves section 23,</p> |

| | | |
|--|--|---|
| | | 23(1A), 23(2), 28, 34 of Land Acquisition Act, 1894, whereas the instant case involves a situation wherein simpliciter business difference were there and which were settled ultimately by invoking the provisions of Arbitration & Conciliation Act and thus both the terms are not comparable at all. |
|--|--|---|

8. That the Id. CIT (Appeal), Kota while allowing the appeal of the assessee gave the findings as under:

As regards Ground of appeal no. 8 to 14 (Except 10 & 11), objecting to treating of gross receipts as income by the A.O. when these pertained to A.Y. 1989-90 & 1990-91 where the books were already rejected by the A.O. u/s 145 & profit estimated, it is apparent that though the facts are as above, however the A.O.'s stand on this has to be seen in the light of department's earlier stand.

On his part the assessee, in the course of reassessment proceedings filed a revised computation offering an addition 0.5% above the originally returned income (accepted by the department with income of Rs. 4,67,737/-) and on the interest portion @ 8.5% amounting to Rs. 11,85,314/- thus revising his total income to Rs. 16,82,284/- & passing the additional tax & interest thereon voluntarily.

The fact involved was that the assessee received an amount of Rs. 32,16,195/- as award for Anandpuri Canal Work & Rs. 1,69,37,559/- for Annas Syphon Work vide order of Supreme Court in SLP No. 11185-86 of 2011 (order dt. 16/08/11) in civil suit filed against the irrigation department. The amount of award became final as it was finally decided by Apex Court dismissing the irrigation department's appeal on limitation. The award constituted refund of security, compensation, extra & disputed items & interest etc.

Since the award was pertaining to A.Y. 1989-90, the assessee referred to the order in that year's assessment proceedings mentioning rejection of books there & application of N.P. rate @ 10% (against 1.48% shown by him) by the A.O., which was upheld by CIT(A) upto 8.5% and also confirmed by ITAT.

For the A.Y. 1990-91, similarly the books were also rejected and N.P. rate of 11% adopted by the A.O. which was again reduced by CIT(A), Ajmer to 8.5% which on this Ground was not challenged by the department before ITAT, hence on N.P. rate it became final.

The A.O. in this assessment order has held that the interest was compensatory in nature hence covered u/s 145A(6) of the IT Act, 1961. Further, in the absence of any evidences in support of any claim of expenses incurred to earn these amounts, since all the expenses had been duly considered in the originally filed returns, no further claims were allowable & for that reason argument of applying percentage as profit on this receipt was not allowable.

He relied on the order for A.Y. 2004-05 where award for contract related to A.Y. 1993-94 was received where a similar stand had been taken by the assessee & rejected by the department. The ITAT in that case set aside the matter on verification of expenses. In the second round the ITAT mentioned that the identical issue was decided by the Bench for A.Y. 2006-07 and challenged before the High Court & was pending disposal. Hence, they again set aside the issue to the A.O. to decide the same on the basis of

High Court decision (setting aside order of CIT(A) who had allowed part relief to the assessee).

The issue decided in A.Y. 2004-05 which was referred by ITAT was regarding verification of claim of expenses against the reward (claimed in A.Y. 1993-94 or not). The ITAT treated the entire contract receipt as income of the assessee. Hence in A.Y. 2006-07 also the A.O. took the same stand & held that since the assessee could not prove with documentary evidence that expenses pertaining to A.Y. 1993-94 & 1990-91 were not claimed in those years, the entire arbitration receipts were liable to be brought to tax.

In further appeal, the ITAT reversing the order of CIT(A) held that the expenditure was not allowable even if incurred as it was never a part of audited P&L account for A.Y. 1990-91 & 1993-94.

The assessee explained in the present assessment under appeal here that receipts in A.Y. 2006-07 which pertained to two years did not contain contract related receipts to but for illegal termination of contract work. However in A.Y. 2012-13 the award receipts were related to contract works. He summarized the difference accordingly & mentioned that the ratio for A.Y. 2006-07 was not applicable here as in this year receipts pertained to A.Y. 1989-90 & 1990-91 when books were rejected & N.P. rate applied.

The A.O. has however, not considered the explanations of the assessee & held the entire receipt as taxable based on ITAT's order for A.Y. 2006-07 regarding claim of expenses & secondly on the interest receipts while agreeing that these were business receipts in view of Apex Court order in Govinda Chaudhary & Sons (1993) 203 ITR 881 (SC), he has not accepted rate application on the basis of no claim of expenses evidenced against these receipts. He has therefore also rejected the assessee's revised computation of income filed in the assessment proceedings as discussed earlier. He also rejected the claim of expenses of Rs. 26,29,000 for A.Y. 2011-12 to 2017-18 as legal expenses & Rs. 3,49,30/- for A.Y. 2001-02 to 2012-13 as travelling expenses since nexus of these with arbitration award could not be established & order of Apex Court was dated 16.08.2011 & this claim was made afterwards vide order sheet entry dated 16.12.16 (Page 49 & 50 of assessment order).

Since the A.O. has broadly relied on the ITAT's order in the appellant's own case for A.Y. 2006-07 in which the ITAT had mentioned that no claim of expenses will be allowable & as per the assessment order the appeal was then pending before the High Court, a reference is now needed to be made to the Rajasthan High Court order for the above year enclosed with the assessee's paper book. The appeal was decided on 30/08/17 in DB income tax appeal no. 19/2011 on the following issue:-

"Whether the Tribunal was justified in treating the entire income of Rs.8,13,194/- as income for the assessment year in question?"

The Hon'ble jurisdictional High Court at para 8.1 to 8.4 of the order held that "while considering the statement for A.Y. 1990-91 & 1993-94, the A.O. ought not to have been given finding whether the expenses are claimed or not instead of deciding the issue which is not relevant and simply deducted the amount which is claimed in the income."

The High Court opined that the CIT(A) had rightly held the profit rate and allowed the claim of the appellant. The Tribunal had committed serious error in concluding that subsequent year's expenses which are claimed ought not to be allowed in the relevant year.

In view of the decision of Supreme Court & other High Court decisions, the income which has been incurred in the year 2006-07 is required to be allowed as expenses were not claimed in the earlier year. Since no finding arrived by the A.O. whether the expenses are claimed or not for the A.Y. 2004-05.

Taking into consideration the above, the issue is answer in favour of the assessee and against the department.

The agreement of the High Court on the Apex Court decision in the case of CIT vs. Govind Chaudhary & Sons 203 ITR 881 (SC) & other High Court decisions cited to reach its findings mentioned above shows that while the income from interest & contract work were both revenue receipts & the interest being attributable to the contract receipts disputed (& received later) it was totally de hors the contract business and could not be from 'other sources' as the A.O. has also agreed here.

In the present case also, therefore the entire receipts of contract & interest amounts covered by the award pertaining to the A.Ys. 1989-90 & 1990-91 will be considered as business receipts only. Now coming to the issue of what amount out of the above required to be taxed, firstly it is clear from the High Court order for A.Y. 2006-07 in the appellant's own case (on which ITAT order reversed by High Court as referred above, the A.O. had relied), the entire income could not be brought to tax.

The issue will then arise as to whether any expenses were there in respect of the same? Although the appellant in the course of the proceedings did mention about legal & travelling expenses which the A.O. did not consider in absence of nexus with the arbitration award, but in any case the analogy is that these awards pertained to works done for A.Ys 1989-90 & 1990-91 & only reflected in the return for A.Y. 2012-13 because they were received in financial year 2011-12, when the matter of award was finalized by the Apex Court. Various Tribunals & High Courts have opined that in the case of contractors, estimation of income on such arbitration awards was a reasonable view on facts involved.

In the present case also, it is observed that on the regular receipts for A.Y. 1989-90 & 1990-91, the department had resorted to rejection of books of accounts u/s 145. Since the receipt of award is from those very contracts & related books rejected by the department then & estimating the profits, the contract & the interest awarded are also

deemed to be of the same character & whatever be the receipt it was duly covered by the Net Profit rate on the same as applied & finalized earlier in the first round of assessment proceedings.

The contract as well as interest award only partake the character of business receipts in the present case and were awarded on disputes & delay caused in regular course of contract works, the primary business of the assessee.

As regards the revised computation of the assessee filed in the course of assessment proceedings, it has been held by higher judicial forums that if a revision is done in the income before the completion of assessment proceedings, there is no bar against it being accepted (at least at appellate level).

In view of the discussion made above on the facts involved & in law, I am of the view that the contract as well as interest receipts awarded to the appellant totaling to Rs. 1,93,23,858/- were in the nature of business receipts & deserved to be assessed as such. In the background of these pertaining to the A.Ys for which books of the appellant were rejected u/s 145 & net profit rate estimated, I am of the opinion that the same net profit rate of 8.5% shall be applicable on these receipts as well.

THE ITAT CHANDIGARH BENCH 'B' in Mit Mohan Singh Kahlon v Deputy Commissioner of Income-tax 39 taxmann.com 145 (Chandigarh – Trib.) held-

Section 143, read with section 139, of the Income-tax Act, 1961 – Assessment - General [Revised computation of income] – Assessment year 2007-08 – Whether when a notice under section 143(2) has been issued and proceedings of assessment under section 143(3) are in progress, assessee can put forth any claim for deduction or exemption or relief, which was not claimed in return of income and same shall have to be considered by Assessing Officer – Held, yes – Whether similarly, in case assessee files and produces correct computation of his income, and can convince Assessing Officer that income disclosed in original return is not actually correct income and correct income is one which is being furnished during assessment proceedings, such a revised computation has to be considered and acted upon by Assessing Officer – Held, yes – Whether, therefore, where assessee had inadvertently offered higher income in his return but during assessment proceeding assessee filed revised computation of his total income to show that he had lower income than declared in return, Assessing Officer must compute income on basis of revised computation of income – Held, yes

THE ITAT MUMBASI BENCH 'F' in Furniture Concepts (I) Ltd. v Assistant Commissioner of Income-tax, Range-9 (1), Mumbai 64 taxmann.com 47 (Mumbai – Trib.) held –

Section 139 of the Income-tax Act, 1961 – Return of income (Revised computation) – Assessment year 2007-08 – Assessee filed its return declaring certain taxable income – Subsequently assessee filed revised computation wherein deduction was claimed on account of remission by bank under one time settlement – Assessee did not raise said

claim by filing a revised return because prescribed time for filing return had already elapsed – Assessing Officer refused to consider revised computation submitted by assessee – Whether since mandate of Constitution is to levy and collect due taxes, issue raised by assessee was to be restored to file of Assessing Officer to examine it afresh and decide in accordance with law – Held, yes

This additional amount of income comes to Rs. 16,82,284/- and has been disclosed by way of revised computation filed in the course of assessment proceedings. This is over and above the income disclosed in the regular/revised return. The same is considered as acceptable. The balance addition of Rs. 1,76,41,574/- is therefore, directed to be deleted.

Additional Comments of the Assessing Officer on CIT(A) order

| Page | Comments of AO | Remarks |
|------|--|--|
| 4 | <p>The decision of Honorable High Court in A.Y. 2006-07 was based on the facts that the expenses incurred on contract work were not being reflected in audit report for the Assessment year in which the work was executed and hence the expenses were allowed in the same year in which arbitration receipts were declared by the assessee.</p> <p>In the year under consideration no such finding have been given by the CIT Appeal further the decision of Honorable High Court in Assessment Year 2006 – 07 was not further challenged due to the fact that the tax effect involved was below the prescribed limits.</p> | <ul style="list-style-type: none"> • A.O. has clearly held that the assessee did not produce any evidence regarding non claiming of expenses in relevant year. It has been further held by the A.O. that the expenses in the year under consideration may not be allowed in the view of proviso of section 69C of the Act even though the expenses were not claimed in the year of work. • A.O. has himself stated in the assessment order that the facts of A.Y. 2006-2007 is identical in nature and are applicable. • The standing counsel of the department in her opinion dated 27.09.2017 has stated that <i>In my opinion no case for further appeal is made out since as per the Audit Report the expenses were not claimed and therefore only net profit rate was to be applied.</i> • Non-filing of appeal due to low tax effect does not make the order/judgment non-binding. |

9. The assessee wishes to place its reliance upon binding authorities which are squarely applicable in the instant case apart from assessee respondents' own matter now settled to rest by Hon'ble Rajasthan High Court:

- In CIT v. Govinda Choudhury & Sons. 203 ITR 881 the Hon'ble Supreme Court has held as under:

The assessee contended that the amount received by him by way of interest was really in the nature of damages and was not taxable as a revenue receipt. This contention was rejected by the Income-tax Officer as well as the Appellate Assistant Commissioner. Before the Tribunal, again, the assessee urged that the amount of Rs. 2,77,692 was not at all taxable in its hands. However, it also took an alternative contention that, even if it is treated as a trading receipt or as a revenue receipt, it should be treated as part of trading receipts accruing to the assessee from the contract. The assessee's assessment had been completed by applying a net profit rate of 10 per cent, to the trading receipts. The assessee's contention was that this amount of Rs. 2,77,692 should be treated as part of the trading 'receipts and that what was assessable in his hands as income was only 10 per cent, of this amount. The Tribunal did not accept either contention of the assessee. It held that the sum of Rs. 2,77,692 was a revenue receipt and not a capital receipt. It was also of the opinion that the amount of interest was fully taxable as "income from other sources" and that it had to be delinked from the other trading receipts for this purpose. This brings us to a consideration of the second question. The sum of Rs. 2,77,692 was received by the assessee as interest on the amounts which were determined to be payable by the assessee in respect of certain contracts executed by the assessee and in regard to the payments under which there was a dispute between the two parties. The assessee is a contractor. His business is to enter into contracts. In the course of the execution of these contracts, he has also to face disputes with the State Government and he has also to reckon with delays in payment of amounts that are due to him. If the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him. It would not be correct, as the Tribunal has held, to say that this interest is totally de hors the contract business carried on by the assessee. It is well-settled that interest can be assessed under the head "Income from other sources" only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In purview, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which; payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the; assessee under the awards and treated as "income

from other sources". The second question is, therefore, answered in favour of the assessee and against the Revenue.

- In CIT v. N.C. Kaladharan {ITA No.180 of 2002 decided on 31.01.2008 by Hon'ble Kerala High Court) which was confirmed in SLP (c) 5158/2009 decided on 23.02.2009} wherein it has been held as under:
3. The question raised is whether the estimation of income at 10% as fixed by the Commissioner of Income Tax (Appeals) and confirmed by the Tribunal applies to interest element of the award amount According to the Revenue, interest is entirely taxable as it is an addition to the contract amount. However, we find that the issue is covered by the decision of the Supreme Court in Commissioner of Income Tax v. Govinda Choudhury and Sons (203 ITR 881) wherein the Supreme Court held that the compensation as well as interest have to be treated as contract receipts. Since the issue raised is covered by the decision of the Supreme Court, we do not think there is any scope for considering the decision relied on by the learned counsel for the Revenue in United Construction Contractors v. Commissioner of Income Tax (1994) (1) KLT 880).

In light of above fact & submissions, it is thus kindly requested that the departments appeal be dismissed & the order passed by the Id. CIT(A) may be confirmed and upheld."

9.1 The Id. AR of the assessee also relied upon the following judgment to support the contentions so raised. The judgment relied upon are:

| SNo. | Particulars | Page No. | |
|------|--|--------------|--------------|
| | | From | To |
| 01 | Written submission before Hon'ble ITAT | 01 | 16 |
| 02 | Hon'ble Rajasthan High Court in Chandi Ram (Deceased) v. DCIT (2017) 11 TMI 1420 | 17 | 27 |
| 03 | Hon'ble Supreme Court in CIT v. Govinda Choudhary (1992) 4 TMI 8 | 28 | 29 |
| 03 | Hon'ble Kerala High Court in CIT v. N.C. Kaladharan (2008) 1 TMI 952 & Hon'ble Supreme Court in CIT v. N.C. Kaladharan (SLP No. 1956/2009 dated 23.02.2009 | 30 31 | 30 32 |
| 05 | Hon'ble ITAT, Jaipur Bench in ITO vs. Chandi Ram (ITA 95/JP/1995 dated 20.09.2001 for A.Y 1989-1990) | 33 | 36 |

9.2 The Id. AR of the assessee in addition to the written submission vehemently argued that the receipt is for the A.Y. 1989-90 & 1990-91. In those years the books of account of the assessee were rejected as it was the returned loss by the assessee. This is the reasons as the money / contract receipts was not received by the assessee. Based on that belief that income has already been taxed on presumptive basis there is no need to offer this income again which belong to the earlier year for which the tax has already been levied on presumptive basis rejected the loss offered by the assessee in those years and this fact is not controverted by the revenue. The assessee to buy the peace with the department has already offered the income based on the presumptive taxation based on the decision of the apex court in the case of Govinda Choudhury. The Id. AR of the assessee also submitted that case of the assessee fully covered from the detailed finding of the jurisdiction high court where in the court has held that considering the facts of the case on hand the assessee offering the income on presumptive basis was accepted and the decision of ITAT relied upon by the Id. DR is reversed by the Jurisdiction High Court and considering the period of 20-22 years involved and the receipt is related two years not disputed by the revenue the action of the assessee offering the

income on estimate basis be considered as full and true disclosure and the revenue did not controvert the finding of the jurisdictional High Court and has not placed on record any other contrary judgement having different finding of any other high court. Based on that he supported the detailed the order of the Id. CIT(A).

10. In the rejoinder the Id. DR submitted that the case of the A. Y. 2006-07 the assessee has offered the income on presumptive basis whereas in the year under consideration the assessee has not offered any income at all. Considering the receipt amount the assessee is out of the purview of the provision of section 44AD and in the absence of any details of the expenditure incurred by the assessee he supported the order of the Id. AO and prayed to uphold the same.

11. We have heard the rival contentions and perused the material placed on record and the decisions relied upon by the parties to drive home to their respective contentions, both the learned DR and the AR before us vehemently supported the order of the authorities below as favorable to them. The bench noted that the assessee collected the demand draft on 20.11.2010 and the same was deposited in the bank account and the assessee has shown his amount in the books of account of account ended

on 31.03.2011. The break up of this liability is as appearing in the audited account of the assessee (APB-118) and the other related notes to the audited accounts which reads as under:

- (a) The assessee has followed the Mercantile System of accounting and recognized income and expenditure on accrual basis.
 - (b) Assessee has not charged any Depreciation on fixed assets.
 - (c) Balance of Sundry Debtors, Creditors, Loans & Advances are subject to their confirmation.
3. Opening Balances is taken on the basis of Unaudited Balance sheet Provided to us duly signed by the Representative of the Assessee.
 4. A sum of Rs. 20153654/- was shown as a Liability as on 31.03.2011. The Special Leave petition filed by the state Government was dismissed by Hon'ble Supreme Court on dt. 16.08.2011.

Consequently the said amount was squared up in the following manner in the financial year 2011-12.

| | | |
|--|-----|-------------|
| Current Liabilities A/c | Dr. | 20153654.00 |
| To Security Deposit A/c | Cr. | 100639.00 |
| To Interest On Arbitration Receipt | Cr. | 13944881.00 |
| To Contract Receipts A/c | Cr. | 5846714.00 |
| To FDR A/c (Pledged with Ex. Eng. Mahi Agnst. S.D.) | Cr. | 150000.00 |
| To MD Vth | Cr. | 111420.00 |

5. Assessee has shown the amount of interest of Rs. 13944881/- on A/c of Arbitration as Capital Receipts and credited to Capital account.
6. On the Contract Amount Assessee declared the Profit of Rs. 467737/- u/s 44AD of Income Tax Act, 1961, which is not possible to verify.
Assessee has not produced any vouchers/Supporting bills for expenditure hence not examined.”

12. From the above it is evident that the assessee has even though the amount received in 2010-11 recorded the same income in the year under consideration i.e. 2011-12. Both the parties not disputed about the chargeability of the income the same is considered as chargeable to the

year under consideration i.e. F.Y. 2011-12, relevant to assessment year 2012-13.

13. The bench also noted that the assessee is aware that even though the assessee facing similar dispute in the past has not shown the interest income as business receipt and has considered it as capital receipt and credited to the capital account as per note no. 5 of the audited account in Schedule-IV. The bench also noted the assessee in the profit & loss account has offered only a sum of Rs. 58,46,714/- as contract receipt and offered profit @ 8 % and interest amount of Rs. 1,39,44,881/- shown as capital receipt.

14. The bench noted that in this appeal, revenue has challenged the action of the Id. CIT(A) in giving relief to the assessee to the extent of Rs. 1,76,41,574/- out of total addition of Rs. 1,93,23,858/-. The relief given by the Id. CIT(A) is after considering the estimated expenditure and considering the income as business receipts based on the detailed finding and after considering the judgment of the jurisdictional high court in the assessee's own case. The bench also noted that even though the amount received in 2010-11, assessee recorded the consequential income in the

year under consideration i.e. 2011-12 for which both the parties did not disputed about the chargeability of the income the same is considered as chargeable to the year under consideration i.e. F.Y. 2011-12, relevant to assessment year 2012-13. The bench also noted that the income in this case is not the interest on compensation or interest on enhanced compensation chargeable to tax as per provision of section 56(2)(viii) which is chargeable to tax on receipt of such interest irrespective of method of accounting followed by the assessee. But in this case the interest is on delayed payment of the contract amount executed by the assessee and as decided by the **apex court in the case of CIT Vs. Govinda Choudhury this interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him.** Even the Id. AO accepted the fact that the interest as income not from other source but from the profit and gains of business and profession head. In this case it is not disputed that the receipt in questions are related to A. Y. 1989-90 & 1990-91 wherein due to non receipt of contract amount, the assessee claimed loss which was refused in assessment proceedings and finally it has been decided for that year income @ 8.5% of the receipt in that years. The Id. AO while making the addition has broadly relied on the ITAT's order in assessee's own case for

A.Y. 2006-07 where the Bench held that no claim of expenses will be allowable and the matter was pending before the Hon'ble Rajasthan High Court. Subsequently, the Hon'ble Rajasthan High Court held that the Id. CIT(A) has rightly held the profit rate and Tribunal committed serious error in concluding that subsequent year's expenses which are claimed ought to have been allowed in the relevant year. Thus, considering that aspect of the matter in the present case the entire receipt of contract money and compensation on delayed payment as interest covered under the award pertaining to A.Ys. 1989-90 & 1990-91 is required to be considered as business income only. Now coming to the issue of as to what would be the amount to be considered as income out of the said business receipts, of course considering the decision of the assessee's own case wherein the A.Y. 2006-07 Bench has not accepted the profit estimate and the said finding was reversed by the jurisdictional High Court and thus, in the absence of contrary finding of challenging the order of Hon'ble High Court we have to respectfully considered the findings of the Hon'ble Jurisdictional High Court in assessee's own case that considering the facts of this case that originally the assessee has claimed loss in A.Y. 1989-90 & 1990-91 wherein the loss has been claimed for both the years, which was not considered, had it been considered the assessee would have taken as set

off of the same against subsequent year income. Considering this peculiar set of facts and direction of the Hon'ble Jurisdictional High Court in assessee's own case, we do not see any infirmity in the detailed finding of the Id. CIT(A). Based on these observations the appeal of the Revenue raising only one ground is dismissed.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 14/06/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/06/2023

*Ganesh Kumar

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

1. The Appellant- Income Tax Officer, Ward-1(1), Kota
2. प्रत्यर्थी / The Respondent- Lt. Sh. Chandi Ram, through L/H Smt. Sarla Devi, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 662/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar