

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR CHOUDHARY, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2790/Mum/2023
(A.Y. 2018-19)**

J.M. Mhatre Infra Private Limited, Plot No. 492, Sahakar Nagar, Market Yard, Panvel – 410206	Vs.	Assistant Commissioner of Income-tax, Central Circle-1, 6 th Floor, Room No. 10, Road No. 16-Z, Ashar I.T. Park, Wagle Industrial Estate, Thane (W)- 400 604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AACCJ2959E		
Appellant	..	Respondent

Appellant by :	Rajiv Khandelwal
Respondent by :	Ankush Kapoor

Date of Hearing	14.12.2023
Date of Pronouncement	29.01.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-11, Pune, dated 31.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. *The Commissioner of Income-tax (Appeals)-11, Pune (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income-tax, Central Circle1, Thane (hereinafter referred to as the Assessing Officer) in making an addition of Rs.56,04,344 being alleged bogus sub-contract charges debited to the profit and loss account.*

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition of Rs.56,04,344, being alleged bogus sub-contract charges inasmuch as he has not

correctly appreciated the facts of the case in its entirety and hence, the impugned addition of Rs.56,04,344 is bad in law and needs to be deleted.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the Assessing Officer and the CIT(A) have not brought anything on record to dispute the work carried out by the appellants and hence, the disallowance made by the Assessing Officer and upheld by the CIT(A) is bad in law and needs to be deleted.

Without prejudice, the appellants contend that on the facts and in the circumstances of the case and in law, since the Assessing Officer and the CIT(A) have not disputed the quantum of work carried out by the appellants, the disallowance made by the Assessing Officer and upheld by the CIT(A) is on a higher side, not commensurate with the facts of the case and the business of the appellants.

2. *The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance of a sum of Rs.1,16,82,953, being interest paid on unsecured loans obtained from Alka Securities Limited and others on the ground that the said unsecured loans are arising out of an arrangement which is not genuine and therefore, the interest paid on such unsecured loans cannot be considered as genuine.*

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance of Rs.1,16,82,953 inasmuch as he has not correctly appreciated the facts of the case in its entirety and hence, the impugned disallowance of Rs.1,16,82,953 is bad in law and needs to be deleted.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance of Rs.1,16,82,953 inasmuch as the arrangement resulting in the unsecured loans is arising out of order of the NCLT dated 09.07.2021 and is genuine; the CIT(A) has brought nothing on record to prove that the same is non-genuine and hence, the impugned disallowance of Rs.1,16,82,953 is bad in law and needs to be deleted.”

2. The fact in brief is that return of income declaring total income of Rs.85,32,38,690/- was filed on 30.09.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 08.05.2019. A search and seizure action u/s 132 of the Act was carried out on the business and residential premises of the Mhatre Group of cases including the assessee on 20.09.2017 M/s J.M Mhatre Infra Pvt. Ltd. The assessee is a leading civil contractor in Panvel region and it

has completed many civil contracts for construction of roads, bridges etc. In the case of the assessee it was found from the search action that assessee has been claiming sub-contract charges in the profit and loss account, these sub-contract charges were paid for labour engaged at its various sites and also at quarry and stone crushing units. It was also noticed that assessee has been recording bogus sub-contract charges in its books of account. The sub-contractors were the relatives or employees of the assessee. The bank account of sub-contractors were credited with the amount paid as sub-contract charges and immediately thereafter the amount was withdrawn in cash. The assessing officer stated that similar issue has been discussed in the order passed for assessment year 2012-13 to 2017-2018 in the cases of the assessee after considering the incriminating documents seized during the course of search, detail filed by the assessee, statement of the assessee and other persons the following conclusion were drawn.

- i. That the Measurement Book is maneuvered so as to ostensibly provide virtual reality to the bogus sub-contract charges.*
- ii. That the Measurement Book is prepared only for record in the case of bogus sub-contractors with the main purpose to ensure that the staff in general in the company [JMMIPL] does not know of the bogus accommodation entries carried out by company [IMMIPL] in its books*
- iii. That the normal procedure in the case of genuine sub-contractor is followed in maintaining the Measurement Book in the case of bogus sub-contractor.*
- iv. That in the case of genuine sub-contractors Measurement Book is prepared on the basis of actual work completed, whereas in the case of non-genuine sub-contractor, Measurement Book is prepared as per convenience as required*
- v. That in the case of bogus contracts there is no work order issued, since, no actual work is carried out by them.*
- vi. That the bank accounts are opened in the case of bogus sub-contractors from whom pre-signed cheques are obtained, which are then used by the company [JMMIPL] to withdraw the cash from these accounts whenever required.*
- vii. That Shri Janardhan Moru Mhatre after perusing the books of accounts and consulting his in-house Chartered Accountant has confirmed that all*

the sub- contractors as mentioned in Q.30 of his statement [refer the statement affixed above), have not done any contractual work and have been used by the company [JMMIPL] to inflate the expenses. He unequivocally has confirmed that each and every such contractor is bogus.

- viii. That Shri Janardhan Moru Mhatre has gone on to explains and agreed that either the bogus sub-contractors were the employees of the company [JMMIPL] or their relatives*
- ix. That with respect to the remarks "Adjustment party as per Gagan', it is explained by Shri Jandhan Moru Mhatre that these are non-genuine sub-contractors [bogus sub-contractors], which are managed by Shri Gagan Koli, accountant of the assessee company.*
- x. that bogus sub-contract charges have been booked in the last 6 years and he declare the same during the search action as the income of the assessee for respective years*
- xi. That all the bogus sub-contractors have admitted to have not performed any contractual work for JMMIPL, but have in connivance with JMMIPL, indulged into providing bogus entries in the form of sub-contract charges.*
- xii. Bank accounts of the alleged sub-contractors are in the same bank i.e Bank of Baroda, Panvel Branch, where the bank account of assessee company is operated. These bank accounts are operated and managed by the assessee company. Significantly, the assessee company came forward as introducer to open these bank accounts in the same bank i.e Bank of Baroda, where the assessee company has its bank account.*
- xiii. Returns of income of the alleged sub-contractors have been uploaded by the assessee company as is evident from presence of same IP addresses in their returns of income as is appearing in the assessee company's and its directors returns of income. This too indicates that the returns of income of the alleged sub-contractors are prepared and filed by the assessee company*
- xiv. Almost all the sub-contractors have denied to have carried out any contractual work for the assessee company They have also admitted that only the amount was credited in their bank account, which was subsequently withdrawn in cash by the employees of the assessee company after obtaining blank signed cheques from them."*

3. From the aforesaid conclusions the AO stated that assessee has recorded the bogus expenditure in the form of sub-contract charges so as to inflate the expenditure with ultimate motive to reduce the profits and evade taxes there on. Therefore, the assessing officer concluded that the entire expenditure booked by the assessee in respect of sub-contractor was purely bogus. The assessing officer found that in

assessment year 2018-19 assessee has claimed following expenses in case of the sub-contractor:

<i>Sr. No.</i>	<i>Name of the sub-contractor</i>	<i>Amount involved [in Rs.]</i>
1.	<i>Abhishekh Nadgeri</i>	<i>21,49,637</i>
2.	<i>SubhashChavan</i>	<i>6,34,113</i>
3.	<i>Usha S. Jadhav</i>	<i>15,09,849</i>
4.	<i>Pramod S. Patil</i>	<i>2,66,666</i>
5.	<i>Sachin C. Chaudhari</i>	<i>2,09,916</i>
6.	<i>Santosh C. Chavhan</i>	<i>6,79,103</i>
7.	<i>Sarita Rohidas Thakur</i>	<i>1,55,060</i>
	<i>Total</i>	<i>56,04,344</i>

All the above sub-contractor excluding Smt. Sarita Rohidas Thakur (Prop. Of M/s Sarita Construction) were also treated as bogus for the A.Y. 2012-13 to 2017-18. In the case of sub-contractor Smt. Sarita Rohidas Thakur assessment u/s 143(3) of the Act was made in her case and the amount of Rs.1,55,060/- has been added on protective basis for the A.Y. 2018-19 by treating the same as bogus. After considering the aforesaid facts and findings the assessing officer has added the amount of Rs.56,04,344/- to the total income of the assessee by treating it as bogus sub-contract charges booked for inflating the expenditure and reducing the profits.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us the ld. Counsel submitted that similar issue on identical facts for the assessment years 2012-13 to 2017-18 has been considered by the ITAT, Mumbai in the case of the assessee itself vide ITA No. 1663/Mum/2023 to 1670/Mum/2023 dated 22.09.2023 wherein such disallowance was restricted to 4.5% of sub-contract receipts.

6. On the other hand, the ld. D.R supported the order of lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above we have perused the decision of coordinate bench of Mumbai as referred above by the ld. Counsel. The relevant operating part of the decision is reproduced as under:

“29. We have heard both the parties at length and perused the relevant finding given in the impugned order as well as material placed on record before us. In the assessments which have been passed post search u/s. 153A/143(3), the issue is with regard to booking of bogus sub-contracting charges to inflate expenses or to appropriate cash. The ld. Assessing Officer has held that subcontract charges are bogus based on various reasons as has been discussed in the foregoing paragraphs. In sum and substance, his finding is based on; firstly, list of sundry creditors found during the course of search where in the names of various sub-contractors and against their names it has been remarked as “adjustment party as per Gagan” and on enquiry it was found that these sub-contractors are providing bogus entries to the assessee company and Shri Gagan Koli, a key employee of the assessee company who was looking after the payment of the subcontractors was handling the cash generated from such adjustment of sub-contract charges; secondly, the statement on oath of Shri Gagan Koli, wherein he has admitted and explained the modus of booking of bogus sub-contractor charges. Thirdly, statement on oath of J.M. Mhatre, MD of the assessee company who too have admitted to book bogus sub-contract charges for inflating expenses. Lastly, statement on oath of various subcontractors and other persons who also corroborated the same fact coupled with other enquiries. Thus, on these facts it stands concluded that assessee did debited few of subcontract charges to generate cash. However, most of the subcontract charges has been found to be genuine for which no addition has been made.

30. However, the case of the assessee has been that, assessee is working on a huge projects for construction of roads on contract awarded by government and various projects for various Government agencies, for which it requires huge manpower and many sub-contractors to execute the work. The contract work awarded has all the clause of material and labour and rates and work to be executed and labours engaged have to be paid in cash as they are working on different sites and often on daily wages. Assessee had stated that by making the payments to the sub-contractors by cheque, the same were entirely used for making the payments to various labourers at various sites while construction activity is going on. Looking to the volume of the labours involved and requirement for the payment of making in cash, this modus operandi was adopted by the assessee, that some of its employees were enrolled as subcontractor to whom assessee used to pay cheques and they used to encash it for making the payments at various sites at remote areas. These sub-contact charges are purely linked to carrying out contract work only and this method was adopted for the disbursal of cash payments to labours and to avoid so many vouchers and details. Since construction activities in the remote areas are highly unorganized, therefore, it was very difficult for the assessee to maintain and detailed and voluminous paper records for such labour so as to put for full verification. It was stated that, this was the precise reason that the books of accounts have always been rejected and profits have been estimated in the case of contracting and sub-contract receipts. It was also explained before the

authorities below that assessee has resolved to this pivot and decided to generate cash through employees of the relatives wherein at least there is a trail of payment made for the labours in cheque. The ld. Counsel has also tried to explain as to why these were required to be made in cash and also he has pointed out that in the books, assessee has reduced substantial payments in cash in the books to the labourers at various sites and this has been achieved so only through this mode. He pointed out that from F.Y.2010-11 to F.Y.2016-17, the ratio of cash payment to the labour have reduced from 51-60% to 12.5%, despite contract receipts have been increased multi fold over the period of time. It has been pointed out that after the search, assessee has continued this payment made to sub-contractors through cheque and taking back cash from them to make the payments of labourers against the quantum of cash payments have increased substantially. This goes to show that the entire modus operandi was adopted only to reduce the cash expenses in the books and also not its construction activity suffer by making the payment to the labourers in cash.

31. This explanation from the records and circumstances seem to be plausible and we accept that sub-contract charges were booked to generate cash to make payments to labourers. The submission of the assessee cannot be brushed aside completely because looking to the nature of business and the manner of conducting business specially when huge construction activities are carried out in remote areas and it is unskilled labour intensive work which is highly disorganized. It is a well known fact that labourers demand the wages in cash on daily basis or short periodic basis. It is also a matter of fact that in the case of the assessee, in earlier years, the payment of labour charges in cash was huge which was done by withdrawing from the bank account and making self-made voucher payments and due to payment made in cash and getting it verified fully to the satisfaction of the ld. AO / Income Tax department was difficult resulting into estimation of profit and rejection of books of account. Assessee introduced this mode where few subcontractors are appointed on papers, and they shall be given the amount in cheques and after withdrawing the cash from their bank accounts would disburse to the labourers. It is also a matter of record that assessee has also actually sub-contracted most of the work and payment has been made for which there is no dispute except in the cases of few sub-contractors who were out of employees and the relatives of the employees through whom assessee has rotated cash for making the payments to the labourers.

32. One very important fact which has to be seen that the assessee is a Government contractor and in the tender document assessee has to complete the contract work as per the given specification and strictly according to the quantity of materials to be consumed and the quality of the material to be used and how much work is to be done. Every contract work has its own percentage of material used and labour work involved. The said tender document elaborates the whole quality and quantity and the price rate. Once the assessee executes the work and after the inspection of the work and the quality audit by the concerned Government department, assessee is given the payment. Even the profit on the contract is also determined at the level of tender document. Further, no where it has been brought on record or by any enquiry that during these years the percentage of labour expenses has reduced or it is not in parity with tender documents or the work awarded to the assessee has not been done by the assessee. If the work has been carried out in accordance with the contractual agreement and tender document, then one has to see if the work has been done then how much is the cost with regard to the labour expenses.

Whether assessee has done the correct approach or has taken the dubious route by routing the payment of the labourers to the sub-contractors is immaterial. It can only entail rejection of books of account and estimating profit rate. Fact of the matter which is to be seen is here that, whether assessee has executed the work and whether has made the payment to the various subcontractors and the labourers for getting the work done. If the entire sub-contract charges are to be disallowed, then the gross profit rate or net profit rate of the assessee will go multi-fold which is much more than tender document and also in this line of business such a huge quantum of profit is not comparable.

33. Before us, ld. Counsel has tried to demonstrate that if in all the years this sub-contract charges are added, the net profit rate in various years will go very high and the gross profit itself will increase multifold. First of all he pointed out that as per the books the net profit on all the contract receipts and other receipts is ranging from 5.43% to 7.32 % in AYS. 2012-13 to 2017-18. But if a sub-contact charges which has been added by the AO is included then net profit goes to 8.68 % to 14.65% in these years. Already assessee in its return of income filed u/s 153A, assessee has shown 8% net profit and has declared much higher income than original return of income. If on this further addition is made the net profit rate will go even higher. For instance:

*A.Y. 2012-13- 11.52%
A.Y. 2013-14- 12.67%
A.Y. 2014-15- 8.78%
A.Y. 2015-16- 17.55%
A.Y. 2016-17- 14.69%
A.Y. 2017-18- 13.19%*

Ld. Counsel has also submitted a chart, wherein he has given the details of various receipts, direct expenses, gross profit ratio as per the books, indirect expenses, net profit shown in the books of accounts and if these sub-contractor charges are added, the resultant gross profit as well as net profit would be as under:-

34. From the above it could be seen that the net profit in various years is ranging from 7.77% to 14.95%. The assessee in the return of income filed in response to notice u/s.153A had shown net profit rate of 8% in the contract receipts to factor in the sub-contract charges; and 4% from sub-contract receipts. The impact of this addition, if made on the net profit rate of 8% which is already more than declared in the books of account is more, then as stated above the net profit rate in these years will increase furthermore, viz., A.Y. 2012-13- 11.52%; A.Y. 2013-14- 12.67%; A.Y. 2014-15- 8.78%; A.Y. 2015-16- 17.55%; A.Y. 2016- 17- 14.69%; and in A.Y. 2017-18- 13.19%. This is more than, what has been estimated in earlier years. In the regular appeal for A.Y.2013-14 and 2014-15 we have estimated 9% on contract receipts and 4.5% on sub-contract receipts. Such estimation applicable for regular assessments will also apply here. As held above in the regular assessment appeals for A.Y.s 2012-13, 2013-14 and 2014-15, we have applied 9% on the direct contract receipts and 4.5% on sub-contract receipts. Accordingly, for these years also we are applying net profit rate of 9% on the direct contract receipts.

35. We also hold that addition made by the AO separately for some of sub-contract charges will get subsumed in the net profit rate of 9%. We have already held that this sub-contact charges was ultimately was part of contract work

executed by the assessee, albeit ultimately accommodation of subcontract charges was to generate cash to be utilised for payment of wages. Looking into the fact that assessee did carry out the work during the year as per the awarded contract, both as the main contractor and also have got the work done through subcontractor, the bogus sub-contract charges shown by the assessee would be a part of the business and expense. At the most net profit on the bogus sub-contract charges can be added to the net profit declared, because it is part of the contract work carried out by the assessee and if these sub-contract charges are treated to be bogus, then it means that assessee has tried to suppress profit from its contract business. In such a situation the best recourse would be to estimate the net profit rate in all these years instead of making separate addition of the subcontract charges over and above the net profit shown in the books of accounts. Thus we hold that estimate of 9% as held above is far reasonable to factor in the sub-contract charges added by the AO. Accordingly, assessee gets part relief and now instead of net profit on direct contract receipts declared at 8% in the return filed u/s 153A, it will be 9% and separate addition as held will get subsumed.

36. In so far as appeals for A.Y.2012-13, 2013-14 & 2014-15 is concerned, there is no addition are tinkering with the accounts of the sub-contract charge by the ld. AO and therefore, in these years this is not the issue at all.

37. Now coming to the issue of bogus sub-contract charges for A.Y.2015-16, 2016-17 and 2017-18, the facts leading to the additions made by the ld. AO are exactly same. In these years also we are applying net profit rate net profit rate of 9% on the direct contract receipts. In these years also assessee in the return of income filed u/s.153A has disclosed the net profit @ 8%. Here also, finding given above will apply mutatis mutandis that these sub-contract charges were in fact directly related to carrying out the contract work undertaken by the assessee and again there is no finding that assessee has not incurred labour expenses in proportionate to earlier years. The reason for applying the net profit rate we have already held that subcontract charges are in fact part and parcel of contract work and the modus operandi of sub-contract charges was to reduce the cash expenses in the books of account of labourers and to give back the amounts paid to the sub-contracts in cheque to ultimately making payment to the labourers in cash as per discussion made above. Thus, these sub-contract charges at the most can be said to be in the nature of inflating expenses and reducing the profit. In this year also estimation of net profit would cover up all these expenses of bogus sub-contract charges. Accordingly, we direct the ld. AO to apply net profit rate on 9% direct contract receipts for A.Y. 2015-16, 2016-17 and 2017-18 and consequently, this issue is partly allowed.....

.....

4. Further, in para 37 also we hold that for the A.Y.2015-16 to 2017-18 net profit rate of 9% is applied on direct contract receipts and 4.5% on sub-contract receipts.”

8. Respectfully following the decision of the coordinate bench as referred supra on similar facts and issue of sub-contract charges we direct the assessing officer to restrict the disallowance to the extent of 4.5% of sub-contract receipts for the reason as discussed in the finding

of the ITAT order. Therefore, ground no. 1 of the appeal of the assessee is partly allowed.

Ground No.2: Disallowance of Rs.116,82,953/- being interest paid on unsecured loan:

9. During the course of assessment the assessing officer noticed that assessee has debited an amount of Rs.182,31,15,911/- under the head 'interest to others'. From the details filed the AO noticed that out of the aforesaid total interest the interest of Rs.162,94,076/- has been debited in respect of the following persons:

Sr. No.	Name of the party	Interest (amount in Rs.)
1.	Alka Securities Ltd.	3,64,271
2.	Alka Securities Ltd.	43,90,924
3.	Alka Securities Ltd.	70,255
4.	Aidos Trades Ltd.	1,08,779
5.	Aidos Trades Ltd.	15,51,543
6.	Aidos Trades Ltd.	3,04,717
7.	Mahesh Kothari Share & Stock Brokers Pvt. Ltd.	1,32,708
8.	Mahesh Kothari Share & Stock Brokers Pvt. Ltd.	15,99,656
9.	Mahesh Kothari Share & Stock Brokers Pvt. Ltd.	2,09,299
10.	Alka Commodities Ltd.	5,44,097
11.	Alka Commodities Ltd.	20,09,445
12.	Alka Commodities Ltd.	3,97,259
13.	Aidos Trade Ltd.	15,51,543
14.	Aidos Trade Ltd.	1,08,779
15.	Alka Commodities Ltd.	5,44,097
16.	Alka Commodities Ltd.	20,09,445
17.	Alka Commodities Ltd.	3,97,259
	Total	1,62,94,076

The assessing officer stated that during the search action conducted in the case of the assessee company it was found that balance in respect of sundry creditors were transferred to Alka Security Ltd, Alka Commodity Ltd., AIDOS Trade Limited and Mahesh Kothari Share & Stock Broker Pvt. Ltd. which was shown under the head 'unsecured loan'. Further the assessing officer found that following sundry creditors

were appearing in the books as arrangement without having done any contractual work for the assessee:

Sr. No.	Name of the company [sundry creditor]
1.	Takeshi Marketing P. Ltd.
2.	FND Logistics P. Ltd.
3.	Aster Merchantile P.Ltd.
4.	Ashwin Trading P. Ltd.
5.	JMDE packaging & Realities Ld.
6.	Saloni Express P.Ltd.
7.	Tanvi Express Logistics Solutions P. Ltd.
8.	Adios Trade Limited
9.	Pushpanjali Enterprises
10.	Radhaswami Infracon & Engineers
11.	Shubham Steel Traders
12.	M.N. Enterprises

10. The AO stated that the similar issue has been discussed in the assessment order for the A.Y. 2015-16 to 2016-17. The assessing officer stated that amount booked by the assessee in respect of the aforesaid persons in assessment year 2015-16 and assessment year 2016-17 has been added back to the total income of the assessee company in those years treating it to be bogus in nature being only in the form of accommodation entries. Therefore, the AO treated the amount outstanding in the account of the aforesaid parties transferred by the assessee company to Alka Security Ltd, Alka Commodity Ltd., AIDOS Trade Limited and Mahesh Kothari Share & Stock Broker Pvt. Ltd. shown under the head unsecured loan as accommodation entries. Accordingly, interest amount of Rs.162,94,076/- debited by the assessee company was disallowed and added to the total income of the assessee company.

11. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

12. During the course of appellate proceedings before us the assessee submitted that assessee has filed ledger account of the above parties evidencing payment of interest and loan amount through account payee

cheques along with bank statement during the assessment proceedings. The Id. Counsel also submitted that one of the lender namely Alka Commodities Ltd. also approached NCLT for recovery of loan amount and NCLT has passed order dated 09.07.2021. The Id. Counsel referred the copy of agreement made with the aforesaid five parties placed in the paper book evidencing payment made by the such parties to the assessee, ledger account of the lenders dues settlement agreement dated 30.04.2018, petition filed by the Alka Commodity Ltd. before the NCLT and the order passed by the NCLT Mumbai on 09.07.2021 etc.

13. On the other hand, the Id. D.R supported the order of lower authorities.

14. Heard both the sides and perused the material on record. During the course of assessment the assessing officer found that unpaid bogus sub-contract expenses booked in the name of various entities:

Sr. No.	Name of the company [sundry creditor]
1.	Takeshi Marketing P. Ltd.
2.	FND Logistics P. Ltd.
3.	Aster Merchantile P.Ltd.
4.	Ashwin Trading P. Ltd.
5.	JMDE packaging & Realities Ld.
6.	Saloni Express P.Ltd.
7.	Tanvi Express Logistics Solutions P. Ltd.
8.	Adios Trade Limited
9.	Pushpanjali Enterprises
10.	Radhaswami Infracon & Engineers
11.	Shubham Steel Traders
12.	M.N. Enterprises

Thereafter the outstanding amount payable to aforesaid sub-contractor were transferred to the accounts of M/s Alka Securities Ltd., AIDOS Trades Ltd., Mahesh Kothari Share & Stock Broker Pvt. Ltd. and M/s Alka Commodities Ltd. as unsecured loan. The assessing officer stated that these sub-contractors have not carried out any work for the assessee company and the whole amount booked in the name of these entities were bogus. Since, assessing officer treated the bogus sub-

contract amount transferred in the name of 4 other entities as referred above in the form of unsecured loan was arrangement and not considered as genuine.

14.1. In this regard, we have perused the ledger account of these four M/s Alka Securities Ltd., AIDOS Trades Ltd., Mahesh Kothari Share & Stock Broker Pvt. Ltd. and M/s Alka Commodities Ltd. placed in the paper book showing that amount due from the assessee from the sub-contractor as referred above were transferred to the aforesaid lender against which these lenders have provided loan to the assessee through the banking channel as referred in their ledger account.

14.2 We have further perused the copy of dues settlement agreement placed in the paper book with the aforesaid four lenders wherein detail of work awarded to the sub-contractor along with amount of the sub-contract and the detail of payment received and the amount due to the sub-contract were mentioned. It is incorporated in the agreement that assessee has converted the outstanding due payable to the sub-contractor in the form of unsecured loans through the aforesaid four parties because of shortage of working capital and due to challenge of outstanding dues approximately of Rs.450 crores of the assessee company. Therefore, the assessee company was not in a position to make payment to the sub-contractors for the contract work carried out by them. In view of this, arrangement for payment of outstanding on behalf of the assessee company was made with the aforesaid four lender parties for the amount due to the sub-contractors. In the agreement details of work completed by the sub-contractors and amount due to such sub-contractors were mentioned. The terms of settlement were also mentioned in Article 6 of the agreement.

14.3 Further one of the lender M/s Alka Commodities Ltd. who has made payment to the sub-contractors has also filed petition before the

National Company Law Tribunal after referring the terms of the agreement that assessee company has defaulted in paying due to the said company. Further, the assessee has also placed on record the copy of the order of the NCLT dated 09.07.2021 demonstrating that the matter was settled between the parties, and the petition was disposed off as settled.

14.4 The aforesaid facts and material placed on record evidencing that assessee has executed agreement with the 4 parties to clear the dues of the sub-contractor for which the assessee has defaulted in making the payment because of shortage of working capital funds. The material placed on record substantiate that aforesaid lender parties have cleared the outstanding dues payable to the sub-contractors and the assessee company has paid interest on the amount of unsecured loan payable to these lenders as per the terms and conditions of the agreement.

14.5 The AO has not brought any relevant material on record to controvert and disproved the evidences and clam of interest expenditure incurred by the assessee in respect of unsecured loan amount. Therefore, we consider that decision of Id. CIT(A) in sustaining the disallowance of interest payment made by the assessing officer purely on presumption basis without disproving the relevant supporting evidences brought on record by the assessee is not justified. Therefore, this ground of appeal of the assessee is allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.01.2024

Sd/-
(Narendra Kumar Choudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 29.01.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.