

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.401/PUN/2015  
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Devgiri Engineering,  
B-5, Sonal Residency,  
Ideal Colony,  
Kothrud Road,  
Pune – 411 038  
PAN : AAFFD6124R

Vs. DCIT,  
Central Circle-2(1),  
Pune

(Appellant)

(Respondent)

Appellant by  
Respondent by

Shri Kishor Phadke  
Shri Pankaj Garg &  
Shri Sudhendu Das

Date of hearing 06-03-2019  
Date of pronouncement 07-03-2019

आदेश / ORDER

PER R.S.SYAL VP :

This appeal filed by the assessee is directed against the order passed by the CIT(A)-12, Pune on 22-01-2015 in relation to the assessment year 2010-11.

2. The only grievance raised in the memorandum of appeal is against the confirmation of addition of Rs.1,84,71,000/- made by the Assessing Officer (AO) on protective basis on sharing of irregular expenditure incurred.

3. Briefly stated, the facts of the case, as recorded in assessment order, are that a search in the case of Shraddha Group, engaged in carrying out irrigation contracts, was conducted on 08-09-2010. Pursuant to it, a consequential search was carried out in the cases of NNK Constructions, Uniglory Infra Projects Pvt. Ltd., Shri Sopan D. Patil and Devgiri Engineering (the assessee in question) vide a single warrant on 17-09-2010 at the premises located at Room No.102 and 103, B-Wing, Parmar Trade Centre, Sadhu Vaswani Chowk, Pune – 01. The AO has recorded that Uniglory Infra Projects Pvt. Ltd. was a sub-contractor of Shraddha Group and Shri Sushil Agarwal of Uniglory Infra Projects Pvt. Ltd. was associated with NNK Constructions, Shri Sopan D. Patil and the assessee in some way or the other. A bundle of loose papers containing 33 pages was seized from the searched premises, that is, 102-103, B-wing, Parmar Trade Centre, Pune, which is the office of NNK Constructions (Sh. Nanak Krishnani is its proprietor) and the assessee-Devgiri Engineering (Sh. Murlidhar Bubaji is its partner). Sh. Sopan D. Patil got a contract in Sangamner from the Irrigation Department and such work of Sangamner Project was sub-contracted to the assessee. The AO issued notice u/s.153A of the Act, in response to which the assessee originally filed return

declaring total income of Rs.79,72,750/-, which was subsequently revised to Rs.1,65,84,140/-. The additional income of Rs.86,11,390/- was mainly on account of bogus purchases. The assessment was finally completed at a total income of Rs.3,50,55,140/- thereby making an addition of Rs.1,84,71,000/- on protective basis towards the share of the assessee in unaccounted income of Rs.307.84 lakh in 60 : 40 ratio. The Id. CIT(A) sustained the action of the AO, against which the assessee has come up in appeal before the Tribunal

4. We have heard both the sides and gone through the relevant material on record. It has been recorded above that search was carried out in the case of Sh. Sopan D. Patil and the assessee apart from others vide a single warrant. Such search was pursuant to the search in the case of Shraddha Group. Page 14 of the loose documents recorded certain payments made by the assessee to Sh. Sushil Agarwal. The AO observed that a sum of Rs.307.84 lakh was paid to Sh. Sushil Agarwal for illegally procuring contracts on behalf of the assessee and other related parties, such as, Sh. Sopan D. Patil. On the basis of such document showing payment of Rs.307.84 lakh to Sh. Sushil Agarwal, Sh. Sopan D. Patil surrendered his share of 40% as additional income by submitting

that the remaining 60% pertained to the assessee. It is this 60% of Rs.307.84 lakh, being a sum of Rs.1,84,71,000/-, which has been added in the hands of the assessee on protective basis, though substantive addition was made in the hands of Sh. Sopan D. Patil for a sum of Rs.307.84 lakh. We have passed an order in the case of Sh. Sopan D. Patil in ITA Nos.902 & 903/PUN/2015. A copy of such order has been placed on record by the Id. AR. Relevant discussion has been made in para 18 onwards of the order. It has been recorded in the order that a sum of Rs 307.84 lakh was given to Sh. Sushil Agarwal, out of which Sh. Sopan D. Patil accepted his share of 40% as unaccounted income and the remaining 60% as paid by the assessee. The Tribunal in the order has held that a sum of Rs.307.84 lakh was paid to Sh. Sushil Agarwal as bribe for procuring contracts for the assessee and Sh. Sopan D. Patil. 40% share of Sh. Sopan D. Patil has been held to be chargeable to tax in his hands. Now it is the remaining 60% which has been added by the AO on protective basis in the hands of the assessee. In view of our detailed discussion made in the case of Sh. Sopan D. Patil, it is crystal clear that the assessee along with Sh. Sopan D. Patil paid a sum of Rs.307.84 lakh to Sh. Sushil Agarwal for procuring contracts from Maharashtra Government in an illegal manner. As

40% of this amount has been held to be chargeable to tax in the hands of Sh. Sopan D. Patil, the remaining 60%, i.e. Rs.1,84,71,000/-, is held to be chargeable to tax in the hands of the assessee on substantive basis.

5. The ld. AR submitted that making of an addition on protective basis in the hands of the assessee at Rs.1.84 crore is not in accordance with law. To buttress his contention he relied on the judgment of Hon'ble Supreme Court in the case of *Lalji Haridas Vs. ITO (1961) 43 ITR 387 (SC)*.

6. We do not find any weight in the arguments advanced on behalf of the assessee. It is a simple matter that a sum of Rs.307.84 lakh was admittedly paid to Sh. Sushil Agarwal both by Sh. Sopan D. Patil and the assessee in question out of their undisclosed sources of income. The AO added both the amounts in the hands of Sh. Sopan D. Patil on substantive basis. To the extent Sh. Sopan D. Patil claimed that 60% was borne by the assessee, the AO made addition of Rs.1.84 crore on protective basis in the hands of the assessee. There is no infirmity in the action of the AO in making addition on protective basis in the hands of the assessee to the extent of Rs.1.84 crore. The Hon'ble

Supreme Court in *Lalji Haridas (supra)* has categorically held that where it appears to the income-tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and *prima-facie* that income may have been received either by A or B or by both together, it would be open to the relevant income-tax authorities to determine the said question by taking appropriate proceedings both against A and B. Applying the said analogy to the facts of the instant case, there was a payment of Rs.307.84 lakh out of undisclosed sources both by the assessee and Sh. Sopan D. Patil. Since Sh. Sopan D. Patil claimed that his share was 40%, which position was not accepted by the AO, who held that the entire payment was from his undisclosed sources of income, he made an addition for the full amount on substantive basis in his hands. To protect the interest of the Revenue, the AO made an addition to the extent of 60% on protective basis in the hands of the assessee. No infirmity can be found in the action of the AO.

7. As the Tribunal has upheld the addition of Rs.123.13 lakh in the hands of Sh. Sopan D. Patil, the remaining amount of Rs.184.71 lakh out of payment of kickbacks of Rs.307.84 lakh made to Sh. Sushil Agarwal for procuring contracts from

Maharashtra Government in an illegal manner, has to be sustained in the hands of the assessee. We, therefore, uphold the action of the authorities in making the addition of Rs.184.71 lakh in the hands of the assessee, which now stands converted to substantive basis.

8. The assessee has raised additional ground which reads as under :

“The appellant contends that telescoping benefit of undisclosed income declared by the appellant and Mr. N.N. Krishnani ought to be granted against the protection addition of Rs.1,84,71,000/- arising from the statement and assessment of Mr. Sopan D. Patil. Appellant contends that declarations made by various parties covered in the search ought to be considered in tandem with each other since all the parties were working in togetherness.”

9. Since the additional ground raises a pure question of law, we are, therefore, admitting the same and taking it up for disposal on merits. Through this additional ground, the assessee is seeking telescoping of the income offered for taxation in respect of accommodation entries into the addition of Rs.184.71 lakh. Similar issue was also raised in the appeal of Sh. Sopan D. Patil. Relevant discussion has been made from para 20 onwards. The Tribunal noticed the percentage of purchases to contract receipts and observed that the assessee, in fact, procured some material at

lower price and inflated the purchase costs with accommodation entries. After considering the judgment of Hon'ble Gujarat High Court in *Vijay Trading Company Vs. ITO (2016) 388 ITR 377 (Guj.)*, the Tribunal restricted the addition at 25% of the bogus purchases. Thereafter, it considered that both the unaccounted outflow and unaccounted inflow cannot be subjected to tax. It is higher of the two which can be included in the total income. Considering the factual position in that case, the Tribunal found that the inflow of unaccounted income generated by producing accommodation bills was Rs.130.88 lakh as against which the share of that assessee in Rs 307.84 lakh at Rs.123.13 lakh was already offered for taxation. It was finally held that the remaining amount of Rs.7.75 lakh (Rs.130.88 – Rs.123.13) should be charged to tax.

10. Adverting to the facts of the instant case, we have held above that the assessee paid a sum of Rs.184.71 lakh to Sh. Sushil Agarwal as his 60% share which is liable to be included in his total income. The share of the assessee in generation of unaccounted income by procuring accommodation bills is required to be considered at 25% of inflated purchase bills in accordance with the directions given by the Tribunal in the case of Sh. Sopan D. Patil.

It is, therefore, held that only the excess of unaccounted expenditure or unaccounted income over and above the other, should be further charged to tax. The computation of unaccounted income generated by procuring accommodation bills should be determined by the AO in the light of the directions given in the case of Sh. Sopan D. Patil. We, therefore, remit the matter to the file of the AO to this extent and direct him to decide it accordingly after giving an opportunity of hearing to the assessee.

11. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 07<sup>th</sup> March, 2019.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 07<sup>th</sup> March, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-03-2019	Sr.PS
2.	Draft placed before author	06-03-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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