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

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 525/JP/2025
निर्धारण वर्ष/Assessment Year : 2012-13

Devika Buildestate Pvt. Ltd. LIC Jeevan Nidhi Building, Ambedkar Circle, Bhawani Singh Road, Jaipur	बनाम Vs.	ITO, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD9974H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Vinod Kumar Gupta, CA
राजस्व की ओर से/ Revenue by : Sh. Gautam Singh Choudhary, Addl. CIT
सुनवाई की तारीख/ Date of Hearing : 09/07/2025
उदघोषणा की तारीख/Date of Pronouncement: 21/07/2025

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the assessee dissatisfied with the order of the Commissioner of Income Tax (Appeals)-11, Mumbai [for short CIT(A)] dated 28/01/2025 for assessment year 2012-13. The said order of the ld. CIT(A) arise as against the order dated 23.03.2015 passed under section 143(3) of the Income Tax Act, 1961 [for short Act] by the Assistant Commissioner of Income Tax, Circle-5, Jaipur [for short AO].

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

"The order passed by the CIT(A) is bad in law as well as on facts on following grounds: -

1. The Ld. CIT(A) has erred in law and on facts by upholding the order passed by the Assessing Officer (AO) without providing a proper and reasonable opportunity to the appellant. The appellant had furnished all relevant documentary evidence to substantiate the claim of professional fees, but the AO failed to consider the submissions judiciously and mechanically disallowed the expense.

2 The Ld. CIT(A) erred in confirming the disallowance of professional fees amounting to 27,00,000/- without appreciating that the consultant was engaged for a technical study of the land, a necessary and legitimate business expense.

3. The Ld. CIT(A) incorrectly held that the expenditure lacked corroborative tangible evidence and was not clearly defined, while the AO arbitrarily deemed it unrealistic and excessive. The AO further erred by comparing the professional fees with the assessee's turnover, linking it to the specifics of the work performed, and concluding that it constituted 20% of total sales. However, consultancy fees are determined by the nature of work, expertise, and deliverables, not the turnover. Technical studies and evaluations are integral to real estate and land development, essential for assessing feasibility, regulatory compliance, and business prospects. The department has no authority to question the commercial wisdom of the assessee, and business decisions made for commercial expediency cannot be interfered with unless proven to be fictitious or non-genuine.

4. The AO disallowed the expense merely because notices issued under section 133(6) to third parties were not served or remained unverified. However, the appellant had furnished confirmation letters and other supporting documents, including financial statements and audit reports, which were arbitrarily ignored.

5. The payment was made through proper banking channels, and TDS was duly deducted and deposited, proving the authenticity of the transaction. The mere absence of third-party verification cannot be the sole ground for disallowance when primary evidence has been provided.

6. The Ld. CIT(A) failed to appreciate that penalty proceedings under section 271(1)(c) were initiated mechanically without recording proper satisfaction. Mere disallowance of an expense does not attract penalty unless the claim was false or made with the intent to evade tax.

7. The appellant reserves the right to add, modify, alter, or delete any of the above grounds at the time of hearing."

3. Succinctly, the fact as culled out from the records is that the assessee filed his return of income on 30.09.2012 declaring income at Rs. NIL/-. The case of the assessee was taken up for scrutiny u/s 143(3) of the Act. Statutory notice u/s 143(2) of the Act, dated 23.09.2013 was issued and served upon the assessee on 24.09.2013. Upon change of incumbent fresh notice u/s 143(2) and 142(1) of the Act along with a questionnaire was issued on 09.10.2014. and served upon the assessee. Information u/s 142(1) of the Act was called for vide questionnaire dated 09.10.2014 and thereafter from time to time. The assesses's representative attended hearings and filed details/information. The information/detail(s) so filed and books of account produced by the assessee were examined on a test-check basis. The assessee company is engaged in the business of Real Estate such as purchase, sell consolidation of land and related activities. The Company had entered into Principal Agreement with M/s. Rajasthan Land Holdings Ltd. (RLHL) on 19th September, 2008, whereby it has been engaged as land consolidator for acquisition and transfer of land situated in specified areas. Since incorporation the company has purchased land on behalf of RLHL and for which amount has been received from RLHL as per the terms of the agreement. On perusal of the books of accounts, ld. AO noticed that the assessee had debited expense in P&L A/C on account of

Professional Fees paid. The expense under the head seems unrealistic and excessive on the grounds that a company having total sales of Rs. 1,41,00,000/- pays professional fees to the various agencies to the tune of Rs.27,00,000/-. In this regard a specific query was made to the assessee asking him the nature of services rendered for payment made and to provide full address of parties to whom commission has been paid. The CA/AR of the assessee submitted the details which are placed on record. However, in regard to services rendered he only submitted that the services are in nature of land development charges which is a very vague and unclear detail of services. It neither clarifies what work was done neither justifies payments amounting to 20% of the total sales, in the business of real estate or related businesses. The ld. AO based on the details filed issued notices u/s 133(6) of the Act to these parties. However all the notices returned with the remarks of either not found or not available or unclaimed. Now the return of notices itself creates a doubt about the payments made. If the notices are send to the addresses based on the bills generated by these concerns against which payments have been made by the assessee, the question of non found or not available, does not arise. Further, the assessee has contended that he has deducted TDS on the payments made to these concerns and all payments are made by cheque.

These itself is not sacrosanct. Deduction of TDS does not make a payment genuine. Mere furnishing of the particulars is not enough. Moreover, payment by cheque is neither sacrosanct nor can it make a non-genuine transaction as genuine. Thus, ld. AO based on that fact and placing reliance on certain decision made the disallowance of the amount of Rs. 27,00,000/- paid by the assessee.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:

> 5. Observation
> 5.1 With respect to Ground No 1, the appellant claims that the Assessing Officer hastily passed the order without giving adequate opportunity. However, records indicate that sufficient notices were issued under sections 143(2) and 142(1) of the Income Tax Act as well as personal hearing was also granted. It is noticed that specific queries have been raised on this issue by the AO and independent inquiries u/s 133(6) was conducted by the AO before finalising the assessment. As per Assessment Order dated 23.03.2015 and on the basis of the submission made by the appellant before the concerned AO, notices u/s 133(6) of the IT Act, 1961 were issue to the concerned parties for the veracity of the fact related to the confirmation of professional fees. However, during the assessment proceedings all notices returned with the remarks of either not found or not available or unclaimed. This fact was confronted to the AR and in response the confirmation letters were filed by him on behalf of the parties concerned. Also, it was claimed by the AR that TDS have been deducted on all the transactions and thus allowable. The same have not been accepted by the AO which is justified, as veracity of the documents remained unsubstantiated due to lack of third-party confirmation, in view of and hence ground taken by appellant regarding non-compliance cannot be attributed to procedural deficiencies doesn't hold.

5.2 Ground 2 relates to disallowance of professional fees of Rs. 27,00,000.

In this ground the appellant asserts that the professional fees were legitimate expenses for land development services. However, the following points rebut this claim.

1. The services rendered were not clearly defined or corroborated with tangible evidences, despite opportunities given by the concerned AO

2 Notices under Section 133(6) to the recipients were returned undelivered. further raising doubts about the genuineness of the transactions.

(iii) Merely producing TDS certificates or making payments through banking channels does not substantiate the genuineness of expenses, as held in judicial decision in case of Sumati Dayal v. CIT (214 ITR 801).

The appellant's reliance on simply a confirmation letter which itself was submitted by the appellant is insufficient, as these letters were not independently verifiable and lacked corroborative documentation like agreements or reports detailing the services provided which has not been produced.

5.3 Ground 3: With respect to this ground where appellant claims that Issuance of notices under Section 271(1)(c) was mechanical and unjustified. This ground of appeal is consequential in nature and thus no separate adjudication is required.

6. Decision

Ground No. 1: This ground of appeal is dismissed discussed in para 5.1

Ground No. 2: This ground of appeal is dismissed as discussed in para 5.1 and 5.2.

Ground No. 3: This ground is not adjudicated as it is consequential in nature.

Ground No. 4: This ground has not been used, hence does not need further adjudication.

7. In the result, the appeal is dismissed.

5. As the assessee did not find any favour, from the appeal so filed before the ld. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, ld. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

> 1. Appellant is a Company, filed its Income Tax Return u/s 139(1) of the Income Tax Act (hereinafter referred to as 'Act') on 30.09.2012 declaring loss of Rs. 21,07,865.
>
> 2. Thereafter, the case of the appellant was selected for scrutiny u/s 143(3) and a notice in this regard was issued on 24.09.2013. Further, notices u/s 143(2) and 142(1) of the Act were issued and in compliance thereto, appellant submitted required documents/ information.
>
> 3. Subsequently, order u/s 143(3) of the Act was passed on 23.03.2015 wherein addition of Rs. 27,00,000/- was made, alleging that the professional fees paid by the appellant of Rs. 27,00,000/- is excessive and despite the clear explanations and proof of genuineness, the addition was made.
>
> 4. Aggrieved with the order, the appellant preferred an appeal before Ld. CIT(A). Whereas the Ld.CIT(A) confirmed the AO order in its entirety.
>
> 5. Aggrieved with the order of Ld.CIT(A), the appellant preferred an appeal before Hon'ble bench.
>
> Ground of Appeal No. 1
>
> The Ld. CIT(A) has erred in law and on facts by upholding the order passed by the Assessing Officer (AO) without providing a proper and reasonable opportunity to the appellant. The appellant had furnished all relevant documentary evidence to substantiate the claim of professional fees, but the AO failed to consider the submissions judiciously and mechanically disallowed the expense.
> Ground of Appeal No. 2
> The Ld. CIT(A) erred in confirming the disallowance of professional fees amounting to Rs. 27,00,000/- without appreciating that the consultant was

engaged for a technical study of the land, a necessary and legitimate business expense.

Ground of Appeal No. 3

The Ld. CIT(A) incorrectly held that the expenditure lacked corroborative tangible evidence and was not clearly defined, while the AO arbitrarily deemed it unrealistic and excessive. The AO further erred by comparing the professional fees with the assessee's turnover, linking it to the specifics of the work performed, and concluding that it constituted 20% of total sales. However, consultancy fees are determined by the nature of work, expertise, and deliverables, not the turnover. Technical studies and evaluations are integral to real estate and land development, essential for assessing feasibility, regulatory compliance, and business prospects. The department has no authority to question the commercial wisdom of the assessee, and business decisions made for commercial expediency cannot be interfered with unless proven to be fictitious or non-genuine.

Ground of Appeal No. 4

The AO disallowed the expense merely because notices issued under section 133(6) to third parties were not served or remained unverified. However, the appellant had furnished confirmation letters and other supporting documents, including financial statements and audit reports, which were arbitrarily ignored.

Ground of Appeal No. 5

The payment was made through proper banking channels, and TDS was duly deducted and deposited, proving the authenticity of the transaction. The mere absence of third-party verification cannot be the sole ground for disallowance when primary evidence has been provided.

Findings of Ld.AO: (Page 2 of Assessment order dated 23.03.2015)

"On perusal of the books of accounts, it was found that the assessee had debited expenses in P&L A/c on account of Professional fees paid. The expenses under the head seems unrealistic and excessive on the grounds that a company having total sales of Rs. 1,41,00,000 pays professional fees to the various agencies to the tune of Rs. 27,00,000/-. In this regard a specific query was made to the assessee asking him the nature of services rendered for payment made and to provide full address of parties to whom commission has been paid. The CA/AR of the assessee submitted the details which are placed on record. However, in regard to services rendered he only submitted

that the services are in nature of land development charges which is very vague and unclear details of services. It neither clarifies what work was done neither justifies payments amounting to 20% of the total sales, in the business of real estate or related businesses.

On the basis of submissions made by the assessee, notices u/s 133(6) of the IT Act, 1961 were issued to these parties. However, all the notices returned with the remarks of either not found or not available or unclaimed. Now the return of notices itself creates a doubt about the payments made. If the notices are send to the addresses based on the bills generated by these concerns against which payments have been made by the assessee, the question of non found or not available, does not arise.

Further, the assessee has contented that he has deducted TDS on the payments made to these concerns and all payments are made by cheque. These itself is not sacrosanct. Deduction of TDS does not make a payment genuine. Mere furnishing of the particulars is not enough. Moreover, payment by cheque is neither sacrosanct nor can it make a non-genuine transaction as genuine.

……..

Any expenditure to be an allowable expenditure u/s 37(1), the money paid must be paid out wholly and exclusively for the purpose of the business or profession. The veracity of the expenses debited as discussed above, the nature and purpose for business cannot be proved until and unless the services rendered are justified and proven."

Findings of Ld. CIT(A): (Para 5.2 on Page No. 5 of the order u/s 250 dated 28.01.2025)

"In this ground the appellant asserts that the professional fees were legitimate expenses for land development services. However, the following points rebut this claim:

1. The services rendered were not clearly defined or corroborated with tangible evidences, despite opportunities given by the concerned AO.

2. Notices under Section 133(6) to the recipients were returned undelivered, further raising doubts about the genuineness of the transactions.

(iii) Merely producing TDS certificates or making payments through banking channels does not substantiate the genuineness of expenses, as held in judicial decision in case of Sumati Dayal v. CIT (214 ITR 801).

The appellant's reliance on simply a confirmation letter which itself was submitted by the appellant is insufficient, as these letters were not independently verifiable and lacked corroborative documentation like agreements or reports detailing the services provided which has not been produced."

Brief Facts:

1. The Appellant is engaged in the real estate business, had a principal agreement with M/s Rajasthan Land Holdings Ltd. (RLHL) entered on 01.09.2008, whereby it has been engaged as land consolidator for acquisition and transfer of land in specified areas. Since incorporation, the company had purchased land on behalf of RLHL.

2. During the year appellant procured the professional services in relation to development and acquisition related issues of land from three entities namely Nimbus Industries Limited, M/s Arena Trading (P) Ltd and M/s Hetu Investment & Trading Limited, making payments of Rs. 9,00,000 each, totaling Rs. 27,00,000.

3. The Ld. AO disallowed the professional fees of Rs. 27,00,000, primarily on the grounds that notices issued under section 133(6) to the recipient parties were returned undelivered marked as “not found”, “not available”, “unclaimed” and the Ld. AO found the explanations and evidences regarding the nature of services rendered to be vague and insufficient.

Common Submission:

A. Submission of Tangible Evidences:

1. The Ld. CIT(A) in its order has alleged that the services rendered were not corroborated with tangible evidences. However, it is humbly submitted that comprehensive tangible evidences were furnished before the lower authorities in support of the professional services expenses of Rs. 27,00,000, including:

a. Confirmation from the service providers
b. Bank statements reflecting the receipts from the appellant for the services rendered
c. Copies of ITR-V
d. Audited Financial Statements
e. Statutory Auditor certificates in the case of Nimbus Industries Limited and Arena Trading (P) Limited.

It is pertinent to note that no discrepancies or deficiencies were pointed out in any of these documents, nor was any adverse material brought on record by the authorities. The doubts raised by the CIT(A) are, therefore, without any substantive basis and appear to be mere conjecture, unsupported by the evidence on record. We are hereby once again enclosing confirmations from the

service providers along with their ITR-V, Bank Statements reflecting receipts and Statutory Auditor certificates for your kind perusal. [PBP 1 to 14]

2. Furthermore, the Ld. CIT(A)'s observation that *"the confirmation letter which itself was submitted by the appellant is insufficient, as these letters were not independently verifiable"* is misplaced. The confirmation letters are on the official letterheads of the respective companies and are duly signed by their authorized signatories. In the case of Nimbus Industries Limited and, M/s Arena Trading (P) Ltd, the transactions have also been confirmed by their statutory auditor. These confirmations are independently verifiable and establish the genuineness of the transactions. The Ld. AO has not brought any material on record to suggest that the confirmations provided by the service providers are not genuine. Furthermore, all service providers have duly claimed the TDS deducted by the appellant in their respective Income Tax Returns, which have been filed by them independently. The receipts from the appellant have been duly reflected in their returns, and the corresponding TDS has been claimed, as is evident from the copies of ITRs enclosed at PBP 10 to 12. Hence, the doubts raised are, therefore, unfounded and without any substantive basis.

B. <u>Non-Compliance of Notice u/s 133(6) of the Income Tax Act, 1961 by the providers of service:</u>

1. The Ld. AO issued notices under section 133(6) to the land development service providers, namely Nimbus Industries Limited, M/s Arena Trading (P) Ltd, and M/s Hetu Investment & Trading Limited. However, these notices were returned with remarks such as "not found," "not available," or "unclaimed."

2. However, the appellant has obtained confirmation letters from all three entities, enclosed at PBP 1 to 3, duly signed by their authorized signatories, confirming the provision of land development services and payment of taxes on the gross receipts. Additionally, the statutory auditor of Nimbus Industries Limited and, M/s Arena Trading (P) Ltd has also provided a confirmation in this regard, enclosed at PBP 13 to 14.

3. It is pertinent to note that Section 133(6) empowers the AO to call for information for the purposes of the Act. However, non-service or non-compliance by the third party does not automatically render the transaction as non-genuine or unexplained, especially when the appellant has discharged its onus. In support of this position, reliance is placed on the following judgments:

➢ The Hon'ble Supreme Court in the case of Anis Ahmad & Sons vs. CIT, Kanpur, 167 Taxman 84 (SC), wherein it was held:

"The appellant-assessee could not be held responsible for non appearance of those five traders to whom the summons were issued by the Assessing Authority, as they are residing outside the State of U.P. For non appearance of those traders, no adverse inference ought to have been drawn by the authorities below and the appellant-assessee has led satisfactory evidence that its business is only that of the Commission Agent and not 'a Trader' dealing in the goods"

➢ Hon'ble Supreme Court in the case of CIT, Orrisa Vs. Orrisa Corporation (P) Ltd [1986 AIR 1849], dated 19.03.1986, held as under:

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

➢ Hon'ble Bombay High Court in the case of CIT Vs. M/s Orchid Industries Pvt. Ltd. [INCOME TAX APPEAL NO. 1433 OF 2014], dated 05.07.2017, held as under :

"The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party, such as PAN of all the creditors along with the confirmation, and their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has produced the entire record regarding issuance of shares, i.e., allotment of shares to these parties, their share application forms, allotment letters, and share certificates, as well as the books of account. The balance sheet and profit and loss account of these persons disclose that they had sufficient funds in their accounts for investing in the shares of the Assessee. In view of this voluminous documentary evidence, the mere fact that those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in the case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case."

➢ Hon'ble ITAT Mumbai in the case of Sonicwall Technology System India Pvt. Ltd. Vs ACIT [ITA no.3860/Mum./2019], held as under:

"However, at the same time, when the assessee has provided all the information available with it regarding the transaction, merely on the basis that the entity has not responded to notice issued under section 133 (6) of the Act the transaction cannot be doubted and be treated as non-genuine, particularly when the same has been entered into with entities which are well-known Hotel chains in India. It is also not the claim of the Revenue that these entities are not in existence or the documents furnished by the assessee are bogus. Thus, in the peculiar facts of the case, we find no basis in upholding the addition by the AO merely on the basis that only 2 out of 17 parties failed to respond to the notice issued under section 133(6) of the Act. Accordingly, we direct the AO to delete the addition of Rs. 22,43,401. As a result, grounds No. 2-6 raised in assessee's appeal are allowed."

- Hon'ble ITAT, Ahmedabad in the case of ITO vs. Ms Goodfarm Rearing, Ahmedabad, dated 01.04.2025, [ITA No.1081/Ahd/2023]

"4.2. The CIT(A) agreed with the assessee and held that the addition was based merely on suspicion and non-compliance under section 133(6) of the Act, without bringing any adverse material on record to rebut the documents filed by the assessee. The CIT(A) also relied on several judicial precedents, including those of the Hon'ble Gujarat High Court in the case of CIT v. Pankaj Dyestuff Industries (I.T. Ref. No. 241 of 1993), holding that capital introduced by a partner cannot be assessed as unexplained income in the hands of the firm if the partner is a taxpaying entity. Accordingly, the CIT(A) deleted the addition of Rs.8,00,00,000/- under section 68 of the Act…..

…..

……

9. We have carefully considered the rival submissions of both the parties and perused the orders of the lower authorities, along with the supporting materials placed before us. The issue in dispute relates to the addition of Rs.8,00,00,000/- made under section 68 of the Income-tax Act, 1961, being capital contribution by one of the partners; namely, Goodfarms Calfcare LLP, which was deleted by the CIT(A).

……

9.2. The AO, however, proceeded to make the addition solely on the basis that the said partner, Goodfarms Calfcare LLP, failed to respond to the notice issued under section 133(6) of the Act. The AO did not point out any defect or inconsistency in the evidences submitted by the assessee-firm. In our considered view, such non-response by a third party, without more, cannot form the sole basis for invoking section 68 of the Act in the hands of the firm when all other documentary evidences have been placed on record.

The learned CIT(A), after carefully examining the submissions and facts, rightly concluded that the assessee had discharged the initial onus cast under section 68 of the Act. He noted that the failure of the partner to respond to a notice under section 133(6) of the Act was not communicated to the assessee and, even otherwise, does not ipso facto establish that the capital is unexplained. We agree with the CIT(A)'s finding that in absence of any adverse material brought on record by the AO, the burden shifts

on the Revenue to rebut the evidence furnished by the assessee, which has not been done in the present case."

4. The appellant's responsibility is to provide the necessary details and evidence regarding the transaction. Once this is done, the onus shifts to the AO to bring contrary evidence on record. Non-compliance of notice u/s 133(6) due to reasons beyond the appellant's control cannot be a ground for disallowance.

5. The objective of issuing notice u/s 133(6) is to verify the genuineness of the transaction. Where confirmation letters from the concerned parties are already on record and TDS has been claimed, this objective stand fulfilled. Disallowance of expense solely on the ground of non-compliance of notice u/s 133(6) is not legally sustainable.

6. The contention of the Ld. CIT(A) in confirming the addition made by the Ld. AO, on the ground that *"notices under Section 133(6) to the recipients were returned undelivered, further raising doubts about the genuineness of the transactions"*, is untenable in light of the confirmation letters submitted by the service providers.

C. <u>Financial Capacity of Service Providers Established Through their Income Tax Returns</u>

1. Copies of the Income Tax Returns (ITRs) of the service providers are placed on record at PBP 10 to 12. As per the ITRs for A.Y. 2012-13, the gross total income declared by each service provider is as follows:

Name of Service Provider	Gross Total Income Declared in ITR for A.Y. 2012-13 (Rs.)
Nimbus Industries Limited	45,64,452
M/s Arena Trading (P) Ltd.	11,53,465
M/s Hetu Investment & Trading Limited	34,64,500

2. The above figures clearly demonstrate that each of the service providers possesses sufficient financial capacity to render services of this amount. Once the assessee has furnished the PAN, ITR, and confirmation of the parties, and their financial capacity is established, no adverse inference can be drawn merely on the quantum of the transaction.

3. Accordingly, the genuineness and creditworthiness of the service providers stand established, and there is no basis to doubt their ability to provide services of the value in question.

D. Irrelevance of Turnover in Determining Allowability of Professional Fees:

1. The Ld. AO has erred in comparing the professional fees paid by the assessee to its turnover, observing that such fees constituted approximately 20% of total sales, and questioning the necessity and quantum of these expenses in relation to turnover. This approach is fundamentally flawed for the following reasons:

1.1. It is important to note that the appellant is engaged in acquisition of land as intermediate facilitator to RLHL. It is relevant to note that in such kind of activities if one buyer goes to market for pooling an acquisition of land at one instance prices goes up, therefore, for economic and commercial expediency, it is a practice in the market to pursue acquisition of land through various different entities. Furthermore, in India the highest legal complexities prevail in revenue records of the land title for which skilled professionals are required. Land development services are indeed required for these smaller land acquisitions.

1.2. Professional fees are determined by the nature, complexity and scope of the services rendered. They are not, and cannot be, benchmarked against the turnover of the appellant. In the present case, the appellant is in the business of real estate wherein he procured the services of land development which is an integral part of this business. Land Development services are crucial because they ensure that land is legally, physically, and economically ready for its intended use. They help in maximizing land value, minimizing risks, and ensuring that the project complies with all statutory and technical requirements. These services are essential and may often require significant resources and skills, irrespective of turnover of the appellant.

1.3. The Ld. AO may examine the nature of services to ensure their genuineness, but cannot question the business necessity or the rationale behind availing such services, as long as they are incurred wholly and exclusively for business purposes. All the necessary documents are already furnished to Ld. AO which gives the proof of incurrence of expense.

1.4. It is a settled legal principle that the revenue cannot sit in judgment over the commercial wisdom of the assessee. The Supreme Court in S.A. Builders Ltd. v. CIT (2007) 288 ITR 1 (SC) held that the Revenue cannot question the

necessity or expediency of a business decision, provided the expenditure is incurred for business purposes and is not found to be bogus or fictitious.

"We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman."

Similarly, in CIT v. Walchand& Co. Pvt. Ltd. (1967) 65 ITR 381 (SC), the Supreme Court held that the reasonableness of the expenditure has to be judged from the point of view of the businessman and not the AO.

1.5. The department cannot substitute its own judgment for that of the assessee in matters of business expenditure. Unless the AO brings on record material to show that the expenditure is not genuine or is excessive and unreasonable having regard to the fair market value, the claim cannot be disallowed merely because the AO considers it high in relation to turnover.
CIT v. Dalmia Cement (Bharat) Ltd. (2002) 254 ITR 377 (Del): The Delhi High Court held that the AO cannot question the commercial expediency of the assessee's decision unless there is evidence of collusion or non-genuineness.

2. In the present case, the professional fees were paid for genuine business services, duly confirmed by the service providers. The Ld. AO's comparison of these fees to turnover is misplaced and contrary to settled law. The allowability of such expenditure must be judged on the basis of necessity and genuineness, not its proportion to turnover.

3. It is respectfully submitted that the disallowance of professional fees on the ground that they are high in relation to turnover is not legally sustainable. The AO may examine the nature and genuineness of the services, but cannot question the commercial wisdom or necessity of the expenditure, which is a prerogative of the assessee.

E. Payment Through Proper Banking Channel

1. All payments for the services in question have been made through proper banking channels, and tax has been duly deducted at source. The genuineness of the transaction is further established by the fact that the payments are traceable in the bank statements enclosed at PBP 4 to 9 and are subject to TDS compliance.

2. It is a settled position in law that when payments are made through banking channels, duly supported by documentary evidence and TDS has been deducted, the genuineness of the transaction cannot be doubted unless there is concrete evidence to the contrary. In this regard we rely on the following judgements:

- Hon'ble Gujarat High Court in the case of Deputy Commissioner Of Income-Tax vs Rohini Builders [[2002]256ITR360(GUJ)], dated 19.03.2001, held as under:

"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee -from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78."

- Hon'ble Gujarat High Court in the case of ITO Vs. Shanti Enterprises [TAX APPEAL NO. 485 of 2008], dated 10.06.2016, held as under:

"It is rightly found by the tribunal that the assessee has duly discharged its burden of proof. In the case of Deputy Commissioner of Income Tax v. Rohini Builders reported in 256 ITR 360, amounts were received by the assessee by account payee cheques and initial burden of proving the credits was discharged. It is held that the assessee need not prove the source of the credits and the fact that the explanation was not satisfactory would not automatically result in deeming amounts as income of the assessee. Therefore, in our view, the view taken by the Tribunal is just and proper and it is not required to be interfered with. In that view of the matter, question posed for our consideration is answered in favour of the assessee and against the department. Accordingly, this Tax Appeal is dismissed. "

➢ Hon'ble ITAT, Kolkata in the case of ACIT Vs. M/s. Sreeleathers, [I.T.A. No. 254/Kol/2020], dated 05.02.2021, held as under:

".....the fact that all the lender companies are regular income tax assessee's & having PAN as well as their ROC details were brought to the notice of AO & their respective balance sheet shows that all of them have enough creditworthiness to lend the amounts in question to assessee and the assessee had squared up the loan transaction with all these lenders (except 15 Lakhs) and all the payments/TDS were made & payments were made through banking channel, the addition made by AO was untenable and therefore the Ld. CIT(A) rightly deleted the addition which action is confirmed. And therefore Revenue appeal is dismissed. "

F. Disallowance of expenditure without rejection of Books of Account

Without prejudice to the foregoing submissions, it is respectfully submitted that the Ld. AO, in his assessment order, has not invoked the provisions of section 145(3) of the Income Tax Act to reject the appellant's books of accounts. This clearly indicates that the Ld. AO did not find any discrepancies or defects in the books of accounts maintained by the appellant. In the absence of such rejection, any disallowance of expenditure is not sustainable in law and is liable to be deleted in its entirety. In this regard we place our reliance on following judgements:

➢ The Hon'ble ITAT Bangalore in the case of DanayyaShavaputrayya Math D S Math Vs ACIT[ITA No. 1286/Bang/2024] Vide its order dated 08.08.2024 held that:

"9. We have heard the rival submissions and perused the materials available on record. The main reason for disallowance is that the expenditure is that this expenditure is only supported by self-made vouchers and there was every chance of inflating the expenditure. However, we find that assessee's books of accounts are duly audited by qualified Chartered Accountant u/s 44AB of the Act. The books of accounts of assessee have not been rejected by the ld. AO. Without rejecting the books of accounts, the ld. AO cannot make any adhoc disallowance of any expenditure.

9.2 Further, Hon'ble jurisdictional High Court in the case of CIT Vs. Konkan Marine Agencies (313 ITR 308) held as under:

"Held, dismissing the appeal, that taking into consideration the assessee's business and the prevailing practice in the trade, whereby payments had to be made by firms like the assessee in order to ensure that the work of handling goods was done within reasonable time and emergency operations of cargo handling were done beyond working hours, such payments were made either through labour or workers' union. It could not be considered to be prohibited by law. The assessee could not be expected to take receipts from individual workers or make payment by way of cheques. The payment was made by the assessee for business purposes and the expenditure had been incurred in the

ordinary course of business. Therefore, the deduction was allowable by way of business expenditure."
9.3 In view of the above precedents, we are inclined to hold that the adhoc disallowance is not justified without rejecting the books of accounts of the assessee. Accordingly, the grounds of assessee are allowed."

- The Hon'ble ITAT Raipur in the case of Shri Sandeep Kumar Dhamejani vs. ACIT [ITA No. 292/RPR/2023] vide its order dated 17.05.2024 held that:

"12. On a thoughtful consideration of submission of the assessee and case laws pressed before us to support the contentions assailed by the Ld. AR, we are of the considered opinion that in the present case since the various disallowances are made on the basis of presumptive inferences by the Ld. AO without mentioning any logic for such estimations. Furthermore, while making such disallowances the books of accounts of the assessee were not rejected under the provisions of section 145(3). It shows that the books results of the assessee were disturbed by the Ld. AO without rejecting the books which are the foundation of such books results. The order of the Ld. AO is silent about the defects in the books of the assessee, thus, the additions made on estimated basis under the best judgment assessment are arbitrary in absence of any plausible reason to justify such estimation.
17. In result, the additional ground raised by the assessee regarding estimated additions / disallowances without rejection of books of accounts is held as allowed in favour of the assessee."

- The Hon'ble Delhi High Court in the case of PCIT Vs Forum Sales Pvt. Ltd. [ITA 862/2019], dated 01.03.2024, held as under:

".....
24. The series of judgments referred to hereinabove clearly allude to the settled position of law that the books of account have to be necessarily rejected before the AO proceeds to the best judgment assessment upon fulfilment of conditions mentioned in the Act. The underlying rationale behind such an action is to meet the standards of correct computation of accounts for the purpose of a more transparent and precise assessment of income. Therefore, any pick and choose method of rejecting certain entries from the books of account while accepting other, without an appropriate justification, is arbitrary and may lead to an incomplete, unreasonable and erroneous computation of income of an assessee. "

Ground of Appeal No. 6

The Ld. CIT(A) failed to appreciate that penalty proceedings under section 271(1)(c) were initiated mechanically without recording proper satisfaction. Mere disallowance of an expense does not attract penalty unless the claim was false or made with the intent to evade tax.

Ground of Appeal No. 7

The appellant reserves the right to add, modify, alter, or delete any of the above grounds at the time of hearing.

Submission:

General in Nature, hence not pressed.

In view of above, the appellant most humbly prays for justice.

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records :

Sr. No.	Particulars	Page No.
1	Copies of confirmation letters from M/s Hetu Investment & Trading Limited, M/s Arena Trading (P) Ltd., and Nimbus Industries Limited (hereinafter referred to as "the Service Providers') regarding professional receipts.	1-3
2	Copies of Highlighted extracts from the bank statements of the Service Providers, evidencing the receipts from the appellant for services rendered.	4-9
3	Copy of ITR-V of the service providers	10-12
4	Copies of confirmation letters from the statutory auditors of M/s Arena Trading (P) Ltd and Nimbus Industries Limited.	13-14

7. The ld. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee business of the assessee is land aggregator and thereby he has to give the fees to the professional for undertaking to help the transaction happened. The assessee has submitted for the transaction confirmations, ITR and the bank statement wherein the payment made and received were reflected. The

payees are corporate entity and how can they become **"not found or not available or unclaimed"** which the basis for making the addition by the ld. AO. Merely notices u/s. 133(6) remained unserved no addition can be made in the hands of the assessee. The assessee in addition to the confirmation, Form no 16 and bank statement also filed a Chartered Accountant certificate certifying that the payee accounted for that income and therefore, the taxing the same transaction at two time is not correct.

8. The ld DR is heard who relied on the findings of the lower authorities and more particularly relied on para 5.2 of the order of the ld. CIT(A) and thereby he supported the orders of the lower authority.

9. We have considered the rival contention and perused the orders of the authorities below and the material placed on record by both the parties. Ground no. 6 raised by the assessee being premature and there is no grievance which arise from the order of the ld. CIT(A) and therefore the same is not required to be adjudicated. Ground no. 7 is general and therefore, that is also not required to be adjudicated.

Now the balance five ground raised relates to the one issue of disallowance of Rs. 27,00,000/- made by the ld. AO and confirmed by the

ld. CIT(A). The brief facts related to this issue are that the assessee is engaged in the real estate business, had a principal agreement with M/s Rajasthan Land Holdings Ltd. (RLHL) entered on 01.09.2008, whereby it has been engaged as land consolidator for acquisition and transfer of land in specified areas. Since incorporation, the company had purchased land on behalf of RLHL. For the year under consideration the assessee obtained the professional services in relation to development and acquisition related issues of land from three entities namely Nimbus Industries Limited, M/s Arena Trading (P) Ltd and M/s Hetu Investment & Trading Limited, making payments of Rs. 9,00,000 each, totaling Rs. 27,00,000. The Ld. AO disallowed the professional fees of Rs. 27,00,000, primarily on the grounds that notices issued under section 133(6) to the recipient parties were returned undelivered marked as “not found”, “not available”, “unclaimed” and the Ld. AO found the explanations and evidence regarding the nature of services rendered to be vague and insufficient. When the matter was carried before the ld. CIT(A) he confirmed the action of the ld. AO on the following reasons;

> 1. The services rendered were not clearly defined or corroborated with tangible evidences, despite opportunities given by the concerned AO
>
> 2 Notices under Section 133(6) to the recipients were returned undelivered. further raising doubts about the genuineness of the transactions.

3 Merely producing TDS certificates or making payments through banking channels does not substantiate the genuineness of expenses, as held in judicial decision in case of Sumati Dayal v. CIT (214 ITR 801).

Before us the ld. AR of the assessee submitted the claim of the assessee is evidenced by the following evidence placed on record;

a. Confirmation from the service providers
b. Bank statements reflecting the receipts from the appellant for the services rendered
c. Copies of ITR-V
d. Audited Financial Statements
e. Statutory Auditor certificates in the case of Nimbus Industries Limited and Arena Trading (P) Limited.

It is pertinent to note that no discrepancies or deficiencies were pointed out in any of these documents, nor was any adverse material brought on record by the authorities. Even the same transaction thereby cannot be taxed twice. The ld. AO added that amount merely on the reason that notice issued u/s. 133(6) was not served. CIT(A) confirmed the addition merely based on that aspect and stated that merely TDS deducted and bank payment does not prove the transaction as genuine.

Here now the issue rest the assessee has discharged his onus casted upon him by following the law and placed on various evidences on record

which were not controverted or proved to be wrong. Even the entity whose payment is claimed are corporate and therefore, merely that notice remained unserved the payment cannot be said to be non genuine merely the notice u/s. 133(6) was not served. The view which we take is supported by the decision of apex court in the case of Anis Ahmad & Sons vs. CIT, Kanpur, 167 Taxman 84 (SC), wherein the apex court held that:

> "The appellant-assessee could not be held responsible for non appearance of those five traders to whom the summons were issued by the Assessing Authority, as they are residing outside the State of U.P. For non appearance of those traders, no adverse inference ought to have been drawn by the authorities below and the appellant-assessee has led satisfactory evidence that its business is only that of the Commission Agent and not 'a Trader' dealing in the goods"

Even a similar view is taken in the case of CIT, Orrisa Vs. Orrisa Corporation (P) Ltd [1986 AIR 1849]. Based on these observations ground no. ground no. 1 to 5 raised by the assessee are allowed.

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

Order pronounced in the open court on 21/07/2025.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 21/07/2025
*Ganesh Kumar, Sr. PS

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

1. The Appellant- Devika Buildestate Pvt. Ltd., Jaipur
2. प्रत्यर्थी/ The Respondent- ITO, Jaipur
3. आयकर आयुक्त/ The ld CIT
4. आयकर आयुक्त(अपील)/The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 525/JP/2025)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar