

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH, PATNA**

**Before Sh. N. K. Saini, AM and Sh. Sudhanshu Srivastava, JM**

**ITA No.179/Pat./2012, Asstt. Year: 2009-10**

DCIT, Circle-3, Gaya	Vs	M/s Ramiya Construction P. Ltd., Gaya.
(APPELLANT)		(RESPONDENT)
PAN No. AACCR8512P		

**AND**

**ITA No.188/Pat./2012, Asstt. Year : 2009-10**

M/s Ramiya Construction P. Ltd., Gaya.	Vs	ACIT, Range-3, Gaya.
(APPELLANT)		(RESPONDENT)
PAN No. AACCR8512P		

**Assessee by : Shri Nishant Maitin,C.A.**

**Revenue by : Smt. Archana Sinha, Sr. S.C.**

<b>Date of Hearing : 14.03.2018</b>	<b>Date of Pronouncement :16 .03.2018</b>
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**ORDER**

**Per Sudhanshu Srivastava, JM:**

These are Cross Appeals pertaining to Assessment Year 2009-10. ITA No.179/Pat./2012 is the Department's Appeal against order dated 25.04.2012 passed by the Ld. CIT (Appeals), Dhanbad whereas ITA No.188/Pat./12 is the Cross Appeal by the assessee.

2. The brief facts of the case are that the assessee firm is mainly engaged in the business of construction of road and dam etc. The return of income was filed declaring a total income of Rs.65,10,630/-. The case was selected for scrutiny manually and during the course of assessment proceedings, the AO observed that the assessee had claimed labour charges payment of Rs.5,04,34,851/-. As per the details submitted by the assessee before the AO, the AO observed that the assessee had made payments to ten persons who had also been shown as sundry creditors in the balance sheet by the assessee. The assessee was required to show cause as to why the amount of labour charges debited in the profit and loss account should not be disallowed u/s40 (a) (ia) of the Act for failure to deduct tax at source. In response the assessee submitted before the AO that the ten persons were mates whose services were used by the assessee to make payments to more than five thousand labour employed in the execution of work on daily basis. It was submitted that these ten persons were not contractors and, therefore, there was no obligation on the part of the assessee to deduct tax at source. However, the AO did not accept the contentions of the assessee

and proceeded to make at disallowance of Rs.5,04,35,851/- u/s40 (a) (ia) of the Act. The AO further required to the assessee to confirm the details of sundry creditors and notices u/s133 (6) of the Income tax Act, 1961 were issued to the five sundry creditors which were returned un-served by the postal department. The AO held that the balances pertaining to these five sundry creditors remain unexplained and proceeded to make an addition of Rs.62,69,820/- to the income of the assessee. The assessment was completed at an income of Rs.6,32,16,300/-.

2.1 Aggrieved, the assessee approached the Ld. CIT (A) who deleted the addition of Rs.5,04,35,851/-pertaining to disallowances u/s40(a) (ia) of the Act. The Ld. CIT (A) also deleted an amount of Rs.12,46,800/-out of the addition on account of sundry creditors.

2.2 Now the department is in appeal against the deletion of Rs.50,43,585/- on account of assessee's failure to deduct tax at source and relief of Rs.12,46,800/- given on account of sundry creditors.

2.3 The assessee is in appeal against the action of the Ld. CIT (A) in upholding the disallowance to the extent of Rs.50,23,020/- in respect of unexplained sundry creditors.

3. At the outset, the Ld. AR submitted that the assessee's appeal was barred by limitation by six days. It was submitted that the delay was attributable to the illness of the assessee. It was prayed that the delay be condoned and the appeal be admitted for hearing.

4. In response, the Ld. Sr. Standing Counsel for the Department opposed the assessee's petition for condonation of delay.

5. We have heard the rival submissions and have also perused the material on record. We are satisfied that the illness of the assessee prevented him from filing the appeal within the prescribed time limit. Accordingly, we deem it fit to condone the delay.

6. The Ld. Sr. Standing Counsel for the Department submitted that the Ld. CIT (A) had allowed relief to the assessee in respect of the disallowance made u/s 40(a) (ia) of the Act without appreciating the facts of the case. It was submitted that the Ld.

CIT (A) had accepted the assessee's contention that the ten persons through whom the payments were made, were not contractors without examining the issue in detail. Similarly in respect of the addition pertaining to trade creditors, the Ld. Sr. Standing Counsel submitted that the Ld. CIT(A) had deleted the amount of Rs.12,46,800/- without considering the observations of the AO in this regard and, therefore, both the deletions need to be reversed.

7. In response the Ld. AR placed reliance on the findings of the Ld. CIT (A) in respect of the departmental appeal and in respect of the assessee's appeal, the Ld. AR vehemently argued that the Ld. CIT (A) had not properly considered the submissions and evidences submitted by the assessee in this regard.

8. At this juncture, both the parties, on being enquired by the Bench expressed their willingness for both the appeals being restored to the file of the AO for adjudication *de novo*.

9. Since both the parties have agreed to both the appeals being restored to the file of the AO, we remit both the files to the AO with a direction to examine and adjudicate the two issues *de novo* after giving proper opportunity to the assessee.

10. In the result, both the appeals are allowed for statistical purposes.

(Order Pronounced in the Court on 16/03/2018)

Sd/-  
( **N.K. Saini** )  
**ACCOUNTANT MEMBER**

Sd/-  
( **Sudhanshu Srivastava** )  
**JUDICIAL MEMBER**

**Dated: 16 /03/2018**  
s.sinha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**