

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)

AND

SHRI SAKTIJIT DEY(JUDICIAL MEMBER)

I.T.A. No.2077/Mum/2019
(Assessment year 2009-10)

Deputy Commissioner of Income-tax, Cent.Circle 3(1), Mumbai	vs	M/s Sur Gems HW,4010 H Tower, Bharat Diamond Bourse BKC, Bandra (E), Mumbai-51 PAN : AAAFS2996R
(APPELLANT)		(RESPONDENT)

Appellant by	Shri T.S. Khalsa (DR)
Respondent by	Shri N.R. Agarwal

Date of hearing	21-01-2021
Date of Pronouncement	02/02/2021

ORDER

Per Saktijit Dey (JM),

This is an appeal by the revenue against order dated 28-01-2019 of learned Commissioner of Income Tax (Appeals)-51, Mumbai for the assessment year 2009-10.

2. The sole grievance of the revenue is with regard to the partial relief granted by learned Commissioner (Appeals) by restricting the disallowance made on account of bogus purchases to Rs.79,21,156/- as against disallowance of Rs.2,40,89,989/- made by the Assessing Officer.

3. Briefly, the facts are, the assessee, a partnership firm, is stated to be engaged in the business of importing rough diamonds and after polishing them, the assessee exports the

polished diamonds. For the assessment year under dispute, the assessee filed the return of income on 23-09-2009. A search and seizure operation u/s 132 of the Income Tax Act, 1961 of the Income-tax Act, 1961 was carried out in case of group concerns including the assessee. In course of search and seizure operation it was found that assessee has paid huge labour charges to various concerns in different assessment years. Further, rubber stamps of various concerns to whom labour charges were paid were found. In addition, the search party also found some digital evidence in form of prototype invoice bills from the desk top computer available in the office premises of the group. In course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of labour charges amounting to Rs.2,40,89,989/- paid to some parties, viz. Riash Exports; Atul B Savalia; Ghanshyam Rangparariya; Himmat Suchitra; and Naresh Kothiya. In response to query raised by the Assessing Officer assessee furnished party-wise details of labour charges including names, addresses, PAN, TDS details and payments made, copy of ledger TDS in the books of the assessee, copy of ledger accounts of labour charges, copy of import purchase invoices, copy of sales invoices, etc. In spite of the evidences furnished by the assessee, the Assessing Officer ultimately concluded that the assessee was unable to prove the genuineness of the labour charges paid to the concerned parties. Accordingly, he disallowed the amount of Rs.2,40,89,989/- and added this back to the total income of the assessee by treating it as unexplained expenditure u/s 69C of the Act. Assessee contested the above disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) observed that there cannot be any doubt that the assessee is carrying on business of importing rough diamonds and exporting polished diamonds. He observed, for polishing the diamonds, the assessee has to incur labour charges. Therefore, he was of the view that payment of labour charges by the assessee cannot be doubted. However, as regards the quantum of labour charges paid, learned Commissioner (Appeals) extrapolating ratio of labour charges to the amount of imported rough diamonds worked out at 3.91% for Assessment Year 2016-17, wherein the search action had taken place, held that reasonable quantum of labour charges which can be allowed to the assessee is at Rs.1,61,68,833/-. Accordingly, he disallowed the balance amount of Rs.79,21,156/-.

4. Being aggrieved with the aforesaid decision of learned Commissioner (Appeals), the revenue is before us.

5. We have considered the rival submissions and perused the materials on record. The learned Counsel for the assessee has submitted before us that while deciding assessee's appeal against the addition sustained by learned Commissioner (Appeals) for the very same assessment year, the Tribunal in ITA 1822/Mum/2019 dated 28-12-2020 has deleted even the partial disallowance sustained by the first appellate authority. Therefore, the issue is squarely covered by the decision of the Tribunal. The learned Departmental Representative also accepted the aforesaid factual position. As we find from record, assessee's appeal contesting the part disallowance sustained by learned Commissioner (Appeals) for Assessment Year 2009-10 came up for consideration before the Tribunal along with a bunch of other appeals relating to subsequent assessment years on 03-12-2020. While disposing of these appeals, in a consolidated order dated 28-12-2020, the Tribunal has deleted the addition of Rs.79,21,156/- sustained by learned Commissioner (Appeals) holding as under:-

“7. After hearing both the parties and perusing the material on record, we observe that in this case the search was conducted on the Sur Gem group on 18.11.2015 of which the assessee was a group concern and no incriminating material was seized with the exception of some rubber stamps and proto type bills relating to the labour contractors. We note that during the course of search action the statement of Ms.Falguni Malkan CFO and Mr.Saket Mehta were recorded and it was explained to the search party that these proto type bills and rubber stamps belonged to the labour contractors who were rendering skilled services to the assessee but are not educated to do the paper work and therefore the bills are prepared at the behest and at the request of these labour contractors and payments are made accordingly. We also note that payment to the labourers were made by account payee cheques after deduction of TDS and also that these labourers filed their bank statements and PAN cards with the department. It was also explained that the labour charges were paid for cutting and polishing of the diamond which are imported in raw form and exported after finishing. We also find merit in the contentions of the Ld.A.R. that books of accounts were not rejected and therefore the estimation can not be done to make the disallowance on account of labour charges and therefore, the disallowance on account of labour charges is wrong. The Ld.CIT(A) has partly allowed the appeal of the assessee by estimating and extrapolating the labour charges at 9.9% based on the figures of 2015-16 which appears to be incorrect as the labour charges as explained during the course of hearing depend upon the rough diamond to be

finished. Moreover, no incriminating material was found during the course of search qua the labour charges. In the present case, we notice that the addition is purely made by the AO on conjecture, surmises and by making extrapolation without bringing any material on record. The Ld.CIT(A) has just partly sustained addition @3.9% of value of diamond towards labour charges paid in 2015-16 which is unfair and can not be sustained as no extrapolation is allowed while making disallowance which has on the basis of proofs and evidences gathered. Even the labour contractors have confirmed during the course of recording their statements by Investigation Wing after search that they have to depend on the staff of the assessee for preparation of lab our bills as they are uneducated though rendering skilled services to the assessee. Therefore, we are not in agreement with the conclusion drawn by the Ld.CIT(A) and accordingly, set aside the order of Ld.CIT(A) and direct the deletion of addition of labour charges. Ground Nos.3,4 &5 are allowed.”

6. In view of the aforesaid decision of the Tribunal in assessee’s own case for Assessment Year 2009-10 (supra), effectively, the present appeal of the revenue has become infurctuous. Accordingly, we dismiss the grounds raised by the revenue.

7. In the result, appeal is dismissed.

Order pronounced in the Open Court on this 02/02/2021.

Sd/-

sd/-

(PRAMOD KUMAR)	(SAKTIJIT DEY)
VICE PRESIDENT	JUDICIAL MEMBER

Mumbai, Dated : 02/ 02/2021.
Pavanan, Sr.P.S (on contract)