

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI S RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2995/Mum/2022
(Assessment Year: 2013-14)

ACIT, Circle-14(1)(2) Room No. 455, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. D Ravilal Resource Management Pvt. Ltd. 18, Sorrel, Ghatkopar, Kiroli, Panthnagar, Ghatkopar (E), Mumbai-400 075
PAN/GIR No. AACCG 2374 E		
(Appellant)	:	(Respondent)
Assessee by	:	None
Revenue by	:	Smt. Mahita Nair
Date of Hearing	:	27.02.2023
Date of Pronouncement	:	26.04.2023

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The Revenue has challenged the order of the Id. CIT(A) in deleting the addition made by the A.O., pertaining to the cash payment made to labour contractors. The assessee hires contractors and also employs on daily basis and employs casual labours for site work on daily basis. The assessee filed its return of income in the impugned year dated 30.09.2013, declaring total income at Rs.2,03,89,620/-. The assessee's case was selected for scrutiny and the assessment order u/s. 143(3) of the Act dated 29.03.2016

was passed where the Assessing Officer (A.O. for short) determined the total income at Rs.4,16,74,400/- by making an addition/disallowance of Rs.1,16,78,598/- as non genuine labour charges alleged to be paid by the assessee.

3. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A).

4. The Id. CIT(A) deleted the impugned addition on payment of labour contractors for the reason that the alleged parties to whom payment was made was said to have participated in the assessment proceeding for A.Y. 2014-15 and where no adverse inference was drawn by the A.O. against the labour charges paid by the assessee. The Id. CIT(A) further stated that the impugned labour charges are related to the business of the assessee and are recurring in nature and were held to be genuine.

5. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

6. The learned Departmental Representative (Id. DR for short) for the Revenue contended that the assessee has failed to discharge the primary onus casted upon it and further contended that the identity, genuineness and creditworthiness was not proved by the assessee before the lower authorities. The Id. DR further contended that the Id. CIT(A) has merely relied on the assessment proceeding of A.Y. 2014-15.

7. We have heard the Id. DR and perused the material available on record. It is evident that the assessee has debited Rs.12,32,57,156/- in its profit and loss account under the head labour charges which details were called for by the A.O. during the assessment proceeding. The A.O. observed that Rs.4,80,30,935/- was paid in cash for which the assessee had filed bills/vouchers along with the name of the labourer, amount

paid and signature/thumb impression. The A.O. contended that the assessee had failed to furnish the addresses of the persons to whom labour charges were paid for which the assessee submitted that the labour required by the assessee was hired through Mukadam on daily basis and the labour was under the control of lead contractors. The assessee has also further stated that labour returns is also filed in the respective departments and that it was difficult to keep track of the addresses of all labourers as the assessee has taken services from 105 contractors for executing the civil works. The assessee further contended that the TDS was deducted for the payments made to them. It was observed that the A.O. had issued notice u/s. 143(3) to three contractors namely Shri Nathuram Naik – Rs.46,28,261/-, Shri Mahindra Kr. Sabar – Rs.36,72,593/- and Shri Amar Mandal – Rs.33,77,744/- where the said notices had returned unserved. The A.O. made adhoc disallowance at 20% out of the total labour charges of Rs.4,80,50,935/- and the same was added to the income of the assessee. The Id. CIT(A), on the other hand, had controverted the findings of the A.O. by stating that the above mentioned three contractors appeared before the A.O. during the assessment proceeding for A.Y. 2014-15 and that no adverse inference was drawn by the A.O. for that year. The Id. CIT(A) further held that these were expenditures incurred in assessee's business and thereby deleted the impugned addition. In our considered opinion, we deem it fit to remand this issue back to the file of the A.O. to give the assessee one last opportunity to present its case by furnishing the relevant evidences before the A.O. We hereby direct the A.O. to consider the submission of the assessee and the documentary evidences to support the claim of the assessee and thereby to decide the case on merits.

8. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 26.04.2023

Sd/-

(S Rifaur Rahman)
Accountant Member

Mumbai; Dated : 26.04.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai