

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.827/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Royal Group of Developers,  
3, Second Floor Vimal Villa,  
Wing-E, Plot No. 1, Sector-6,  
Moshi, Pune-412105

PAN : AAQFR7161P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,  
Ward – 8(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas Bora  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 23-10-2023  
घोषणा की तारीख / Date of Pronouncement : 26-10-2023

**आदेश / ORDER**

**PER S.S. GODARA, JM :**

This assessee's appeal for assessment year 2018-19 arises against the CIT(A)/National Faceless Appeal Centre ("NFAC")'s DIN and order No.ITBA/NFAC/S/250/2022-23/1044801427(1) dated 18-08-2022, in proceedings u/s. 250 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance raised in the instant appeal that both the learned lower authorities have erred in law and facts in disallowing its labour and contractual payments of Rs.56,54,925 involving the three corresponding recipients, we note that the CIT(A)'s lower appellate discussion to this effect reads as follows:

*"7.2 Finding:*

*a) The gist of this addition/disallowance is outlined in paras 2(b) to 2(d) of this order. The undersigned has gone through the assessment order and written submissions filed by Appellant. These GDA are discussed and decided in the following paras of this order.*

*b) Appellant had filed confirmations from these three parties. Copy of their ITRs for AY-2018-19 were not filed for the reason that their income is below the taxable limit. Appellant contended that these payments were made through banking channels. AD issued notices u/s 133(6) to these parties but none of these three parties filed any reply to the notices issued u/s 133(6) of the Act. The AD also analyzed the N. P rate of Appellant and quantum of labour charges incurred vis a vis Turnover and total expenses for AY-2017-18 to AY-2019-20. AD concluded that these fluctuation in NP rate for the reason that there was inconsistency in quantum of expenditure incurred on labor charges. In view of these facts the AD disallowed the following expenses:*

<i>M/s. Aam Enterprises</i>	<i>Rs.46,00,610/-</i>
<i>M/s. Shankar Enterprises</i>	<i>Rs.10,04,415/-</i>
<i>Shankar Kuruwas</i>	<i>Rs.50,500/-</i>
	<b><i>Rs.56,54,925/-</i></b>

*c) There was no compliance to the notices u/s 133(6) issued to these three parties and these three parties had not filed their ITRs for AY -2018-19 inspite of the fact that they received huge payments from Appellant during AY -2018-19. In absence of credible documentary evidences in support of genuineness of these transactions with the above stated three parties the AO had no option but to draw an adverse inference in this regard.*

*d) Onus was on the Appellant to prove the genuineness of its claim of labor charges paid. However, it failed to discharge its primary responsibility of proving the genuineness of these transactions. Merely, payments are made through banking channels is not sufficient to accept the claim of Appellant. Therefore, the verification of the parties u/s 133(6) was required in this matter by the AO but these parties failed to respond to the notices issued u/s 133(6) of the Act. These three parties failed to verify' these transactions in response to notices issued by the AO u/s 133(6) of the Act. These three parties had received such heavy payments from Appellant in AY-2018-19 but had not filed their ITRs for AY-2018-19 for the reason that their income was below taxable limit. Mere payment through banking channel is not sufficient but at the same*

*time the verification of these transactions by these parties in response to notices u/s 133(6) was also required to prove the genuineness of these transactions. However, this has not been proved in the case of Appellant.*

*e) All the above facts prove that labor expenses debited by Appellant of Rs. 56,54,925/- are not verifiable in view of non compliance of notices issued u/s 133(6) of Act and non filing of ITRs for AY-2018-19 by these three parties inspite of receiving such heavy payments from Appellant in AY-2018-19. Thus, the disallowance of expenses made by the AO of Rs.56,54,925/- is sustainable in the eyes of law and same is hereby upheld/ confirmed.*

*f) Res Judicata has been defined u/s 11 of the Code of Civil procedure 1908 wherein it is stated that no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties has been heard and finally decided by the Court. This principle of Res Judicata is not applicable to Taxation matters. The view taken in anyone assessment period will not be final and conclusive for subsequent assessment period. It is a settled position of law that issues already concluded in earlier proceedings could be reopened in subsequent proceedings for another period of time if emerging fresh materials give a new dimension to matter. In the present case the AO issued notices u/s 133(6) to these three parties which was not complied with. The non application of the doctrine of res judicata in tax matters is based on the fact that assessment for each year is distinct and separate since the Finance Act which alone supports the assessment is sanctioned only for a particular year by legislature.*

*7.3 In view of the facts and discussion outlined in para 7.2 of this order the disallowance made by the AO of Rs.56,54,925/- out of labor charges is hereby upheld GOA no. 1 to 6 are dismissed.”*

3. Learned Counsel vehement argued in favour of the assessee's substantive grounds that the impugned disallowance deserves to be deleted in light of the clinching facts that the assessee has been carrying a single real estate development project, it had paid these charges by way of account payee cheques after duly deducting TDS, similar claim(s) already stand allowed in earlier assessments, the recipients supportive confirmations have been filed before the lower authorities and the mere fact that these three parties have not filed return is only for the reason that their respective taxable incomes fall below the statutory limit under the provisions of the Act. Mr. Bora sought to buttress the point that the assessee's impugned expenditure has been wholly and exclusively incurred for the purpose of business and thus already allowed u/s. 37 of the Act.

He had further quoted a catena of case laws as well as support of assessee's pleadings.

4. The Revenue has drawn strong support from the CIT(A) forgoing discussion affirming the impugned disallowance.

5. We have given our thoughtful consideration to the forgoing rival stand and see no reason to accept either party's submissions in entirety. This is for the precise reason that it was assessee's bounden duty to substantiate the impugned expenditure by way of leading all cogent evidence that it had actually incurred contractual expenditure in lieu of availing labour charges. This is indeed coupled with the fact that the department is also not to be able to rebut the assessee's forgoing vehemently submissions as it has placed reliance on technical aspects of the matter only. We thus observe that although the assessee has filed its supportive details, the same are not sufficient to substantiate the claim.

6. Faced with this situation, we are of the considered view that a lumpsum disallowance of the impugned sum involving Rs.56,54,925/- to the extent of Rs.10,00,000/- only would be just and proper with a rider that the same shall not be treated as a precedent. We make it clear that we have restricted the impugned disallowance to Rs.10,00,000/- only keeping in mind the clinching fact that the Revenue has not been able to dispute execution of the contractual/labour services in principles, although not substantiated at the assessee's behest. The assessee partly succeeds in its sole substantive grievance to the tune of Rs.46,54,925/- in very terms. Necessary computation shall follow as per law.

7. We further note that the assessee's instant appeal suffers from 29 days delay in filing stated to be attributable to various justifiable reasons which have gone un-rebutted from Revenue's side. We thus quote Collector Land Acquisition Vs. MST Katiji (1987) 167 ITR 471 (SC) holding that all such technical aspects must make way for the cause of substantial justice to condone the same.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 26<sup>th</sup> October, 2023.

Sd/-  
(G.D. Padmahshali)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Godara )  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> October, 2023.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune