

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 3379/MUM/2023 (A.Y: 2015-16)

Diya Exports 201, Chandramani Apartment Opp. Cosmos Bank, Hanuman Road Vile Parle (East), Mumbai - 400057 PAN: AAHFD6932H	v.	DCIT – Central Circle (1) Pratishtha Bhavan M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vijay Kumar Biyani
Department Represented by	:	Smt Mahita Nair
Date of conclusion of Hearing	:	16.04.2024
Date of Pronouncement	:	19.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal filed by the assessee is preferred against the order of Learned Commissioner of Income-Tax (Appeals)-47, Mumbai dated 07.08.2023 [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2015-16.

2. The solitary grievance of the assessee is that the Ld. CIT(A) erred in confirming the disallowance of ₹.53,37,680/- on account of labour charges.

3. Briefly stated the facts of the case are that the, assessee electronically filed its return of income on 30.09.2015 declaring total income of ₹.11,99,590/-. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served on the assessee. The assessee's business activities are Import / Export / Manufacturer of diamonds. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has paid labour charges to various persons. Assessee was asked to furnish details of labour charges. On perusal of the details, the Assessing Officer found that the assessee has paid labour charges to 24 parties on whom notices under section 133(6) of Income-tax Act, 1961 (in short "Act") were issued. However, notices issued to five (5) parties were returned unserved with postal remarks "incomplete address / not known / unknown". The Assessing Officer proceeded to disallow the labour charges paid to these five parties.

4. Assessee carried the matter before Ld. CIT(A) and submitted necessary details but the Ld. CIT(A) was of the opinion that the genuineness of the payment has not been established by the assessee and confirmed the assessment.

5. Before us, counsel for the assessee vehemently stated that, the details furnished by the assessee were transmitted to the Assessing Officer by the Ld. CIT(A) calling for remand report but there is no mention of any remand report in the findings of the Ld. CIT(A). It is the say of the counsel that the Ld. CIT(A) has completely ignored the true facts.

6. Ld. DR strongly supported the findings of the Assessing Officer and read the operative part of the assessment order and the order of the First Appellate Authority.

7. We have carefully considered the orders of the authorities below and have also gone through the documentary evidences brought on record in the light of the Rule 18(6) of the I.T.A.T Rules.

8. On perusal of the documents, we find that the assessee has filed response to the remand report submitted by the Assessing Officer but

surprisingly there is not even a whisper of the remand report in the order of the Ld. CIT(A).

9. Considering the facts in totality, in the interest of justice and fair play, we deem it fit to restore the entire quarrel to the file of the Assessing Officer. The assessee is directed to furnish all the necessary evidences in support of labour payments to the impugned five parties and the Assessing Officer is directed to examine the same and decide the issue afresh after affording a reasonable opportunity of being heard to the assessee.

10. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 19th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 19.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum