

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 2735/MUM/2025 (AY: 2013-14)
(Physical hearing)

Harshit Diamond Private Limited BC-9021, 9 th Floor, G Block, Bharat Diamond Bourse, BandraKurla Complex, Bandra (East), Mumbai – 400051. [PAN: AAACH3908B]	Vs	ITO – 5(1)(4), Mumbai 5 th Floor, AayakarBhavan, M.K. Road, Mumbai – 400051.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri B.V. Jhaveri, Advocate
Revenue by	Shri Sanjeev Bhagat, Addl. CIT
Date of Institution	21.04.2025
Date of hearing	09.09.2025
Date of pronouncement	09.09.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Ld. CIT(A)/NFAC dated 28.02.2025 for assessment year (AY) 2013-14. The assessee has raised following revised grounds of appeal:

"1.01 The learned Assessing Officer has erred in disallowing expenses of Rs. 26,52,693/- towards labour job charges paid and adding the same to the total income of the Appellant Company on the ground that no genuine business has been done by the labour job contractors just because they withdrew cash from bank accounts on receipt of cheques from the Appellant Company and hence labour job charges paid by the Appellant Company to these parties remained unexplained.

1.02 The Appellant humbly prays that labour job charges expenses of ₹ 26,52,693/-being genuine, correct and legitimate business expenses be allowed and the addition made on this account be deleted and necessary relief be given to the Appellant Company.

2.01 The Assessing Officer has erred, both in law and in facts, in initiating penalty proceedings u/s. 271(1)(c) of the Act in spite of the Appellant Company providing all the details and particulars as called for by him.

2.02 The Assessing Officer has erred in issuing the notice u/s. 274 read with s. 271(1)(c) of the Act stating that it appears to him that the Appellant Company has concealed the particulars of its income or furnished inaccurate particulars of such income without specifically stating under which leg of the clause the penalty proceedings are initiated.

3.01 The Appellant craves to consider each of the above Grounds of Appeal without prejudice to each other and craves leave to add, alter, delete, amend and / or modify all or any of the above grounds of Appeal at the time or before the date of hearing."

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that assessee is engaged in importing rough diamonds and after cutting and polishing exporting such diamonds. During the year under consideration, the assessee incurred various labour expenses for cutting and polishing of diamonds. The assessee paid the labour charges to five labour contractors on account of cutting and polishing. The assessing officer during assessment issued notice under section 133(6). The notice to one of the labour contractor was not served. Ultimately reply was filed on behalf by all five contractors. The assessing officer also took adverse view on the ground that all the contractors have immediately withdraw the entire amount, soon after crediting such amount in their account. The Id. AR of the assessee submits that on all similar allegations, similar disallowance was made in appeal for A.Y. 2010-11. However, on appeal before Tribunal, entire disallowances were deleted. During assessment, the assessee furnished complete details of all the contractors. The Id. AR of the assessee by referring decision of Tribunal in ITA No. 5199/Mum/2016 dated 14.10.2018

for A.Y. 2010-11 would submit that facts for the appeal under consideration is exactly same, thus, the grounds of appeal raised by assessee is, in fact, covered in favour of assessee. The assessee submits that he has furnished copy of bills and vouchers of all the contractors. The amounts were paid through banking channel. Mere withdrawal of amount, which may be for legitimate business expenses by contractor cannot be said to be non-genuine payment and can be a basis for doubting the genuine business expenses. The assessing officer has not carried any independent investigation except doubting genuineness of expenses on mere assumption and presumption. The Id. AR of the assessee accepting the appeal and for allowing full relief to the assessee on the basis of decision of division bench of Tribunal in A.Y. 2010-11 in assessee's own case.

3. On the other hand, learned senior departmental representative (Id. Sr. DR) for the revenue supported the order of lower authorities. The Id. Sr. DR for the revenue submits that each year has to be considered separate and independent. The lower authorities have given clear finding while making such disallowances. Hence, he fully supports the order of lower authorities.
4. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on the decision of division bench in assessee's own case for A.Y. 2010-11 in ITA No. 5199/Mum/2016 (supra). I find that assessee has made payment through banking channel; the assessee has furnished copy of income tax return of all the contractors with their bills and vouchers. I find that the assessing officer has not carried out any independent investigation except

sending notice to said contractor under section 133(6). I find that all the notices were served except in one case namely Ashok K. Malani. Moreover, the reply was filed on behalf of Ashok K. Malani, though it was filed through assessee. All the payments were made through account payee cheque and the recipient has included such labour expenses in their return of income. I find that on similar set of fact, the division bench of Mumbai Tribunal in AY 2020-11 on similar set of facts in ITA No. 5199/Mum/2016 passed the following order:

"7. We have heard the rival contentions and perused the record. We have noticed earlier that the assessee is engaged in the business of manufacture and export of diamonds. The assessee purchased rough diamonds and getting it cut and polished before exporting/selling them. We noticed that the Assessing Officer has disallowed entire labour charges claimed by the assessee. The contention of the learned AR is that the assessee could not have manufactured the polished diamonds without incurring expenditure on cutting and polishing of rough diamonds. It is the submission of the assessee that it has carried out the work through six labour contractors. The Learned AR submitted that the assessee cannot have control over the business carried out by the labour contractors. The LAAR further submitted that the assessee has made payments by way of account payee cheques by duly deducting tax at source. He submitted that the Labour contractors, in turn, have failed to maintain proper records and hence they could not furnish explanation before Addi. DIT (Inv.). The Learned AR submitted that the assessee has been incurring these kinds of labour charges year after year and the same has been allowed by the Assessing Officer in past. Accordingly he submitted that there is no reason to suspect expenditure incurred by the assessee, as the assessee could not have exported the polished diamonds without incurring these expenses. The Learned AR also submitted that labour contractors have confirmed the receipt of labour charges both before the AG as well as before the ADIT (Inv). Before us the Learned AR has placed reliance on the decision rendered by the Coordinate Bench in the case of Zodiac JRD MKJ Ltd(supra). We notice that the co-ordinate bench has

considered an identical issue and has decided the same in favour of the assessee. For the sake of convenience, we extract below relevant observation made by the Coordinate Bench in the above said case.

4. This Issue was considered by the OT(A) in a detailed manner while disposing of the issue in the appeal filed for the assessment year 1997-98. The decision has been taken for the impugned assessment year on the basis of the decision arrived at for the assessment year 1997-98. The assessing officer observed in the assessment order that the labour charges paid by the assessee for getting the rough diamonds cut and polished were not proved. As far as the assessee is concerned, the assessee has proved the payment of the labour charges and the parties to whom payments were made have been identified. They are all assessed to income-tax and assessment particulars were furnished before the assessing authority. The assessing authority in turn made enquiries with those parties to whom the assessee stated that labour charges were made, Those parties also confirmed before the assessing that they had received labour charges from the assessee. But the assessing officer went further. He enquired as to whether those parties in fact had the infrastructure so as to undertake the work entrusted by the assessee and whether in fact they had undertaken any such work for and on behalf of the assessee so that the payment of labour charges was justified. The assessing officer after coming to a conclusion that those parties had no infrastructure to take up such work from the assessee, disallowed the payments in the hands of the assessee company.

5. As rightly pointed out by the CIT(A) the assessee had filed the following particulars before the assessing authority:

*Name and address of the job contractor
GIR/Permanent Account Numbers
Gross job work income for the concerned assessment year
Job work charges received from the assessee
Job work charges paid to karigars Income returned
Date of filing of the return of income
Percentage of job work for the assessed company
Whether tax audit report obtained and filed*

6. In addition to the above particulars, the job contractors have confirmed before the assessing officer that they had in fact received such labour charges from the assessee. In these circumstances, we find that there is no force in the argument of the assessing officer that the incidence of labour charges were not proved

7 TAT, Mumbai Bench "B" in the case of Sevantilal Bros Exports Put Lid fn ITA No.5471, 6472 & 6474/Bom/1989 through their order dated 06 December, 1994 has held that in the case of a diamond exporter is not always possible to prove the identity of the ultimate job workers. who had undertaken the cutting and polishing work of diamonds. The Tribunal has held that the assessee does not engage such job workers directly but such works are given through job contractors, who in turn entrust the work to different workers coming from different parts of the country and that too the workers are changed from year to year and in such circumstances

it was not possible for an assessee to keep chase of the details of such ultimate workers. The Tribunal has held that in such circumstances where the quantitative particulars furnished by the assessee are proper and acceptable and necessity of job work, cannot be ruled out and the payment was proved, there is no justification in making such disallowance. This was again the finding of HAT. Mumbai Bench "D" in the case of M/s Samir Diamonds in A No. 5105/Bom/1985 It is to be seen that the assessing officer has turn proves the case of the assessee that the assessee had processed accepted the entire turnover of the assessee as export turnover, which in the diamonds necessarily engaged. In that way there is no quantitative disparity also. Therefore, the order of the CIT(A) is confirmed."

8. In the instant case also, we have seen that the assessee has carried out the cutting and polishing works through labour contractors, who in turn, have engaged the workers for carrying out the work. As observed by the co-ordinate bench in the above said cases, it may not be the look out of the assessee to ascertain as to how and through whok the labour contractors have carried out the work of cutting and polishing of rough diamonds. From the point of view on the sesace, we notice that the assessee has furnished all the relevant details and the AO has not found any fault thereon. The labour contractors have confirmed the receipt of labour charges both before the AO as well as the ADITI The assessing officer has accepted the sales and export of polished diamonds There should not be any dispute that the assessee could not have converted rough diamonds into Cut and polished diamonds without incurring labour charges. As rightly pointed out by Ld A.R, the assessee cannot be penalised for the failure of the labour contractors to maintain proper records The decisions rendered by the co-ordinate benches in the above cited cases also support the case of the assessee.

9. In view of the foregoing discussions, we are of the view that there is no justification in disallowing labour charges claimed by the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned disallowance of labour charges.

10. In the result, the appeal filed by the assessee is allowed."

5. Considering the consistent decision of co-ordinate bench on similar set of fact and respectfully following the same, I direct the assessing officer to delete the entire addition. In the result, grounds of appeal of assessee are allowed.
6. In the result, the appeal of assessee is allowed.

Order was pronounced in the open Court on 09/09/2025.

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated:09/09/2025
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai