

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2283/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2014-15)

<b>Dwarkesh Infrastructure Pvt. Ltd.</b> S-1, Neelkanth Apartments, B/h Vishram Nagar, Memnagar, Ahmedabad - 380052	<b>बनाम/</b> Vs.	<b>DCIT</b> Circle – 1(1)(2), Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCD0020C</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri P. B. Parmar, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	03/02/2020
घोषणा की तारीख /Date of Pronouncement	20/02/2020

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal at the instance of the assessee is directed against the order dated 31.08.2017 passed by the Commissioner of Income Tax (Appeals) – 1, Ahmedabad arising out of the order dated 28.10.2016 passed by the learned DCIT, Circle-1(1)(2), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2014-15.

2. The brief facts leading to the case is that the assessee engaged in the road construction business filed its return of income on 26.11.2014 through electronic media declaring income at ₹98,60,000/-. During the course of assessment proceeding it was found that the assessee has debited an amount of ₹7,00,44,022/- being expenditure towards labour charges. Further verification of the records available before the learned Assessing Officer, it was found that the assessee had incurred expenses on account of labour charges amounting to ₹33,43,053/- and ₹36,82,753/- in respect of one M/s. B A Pavagadhi labour contractors and M/s. Shah labour contractors; respectively. Though clarification was made by the assessee before the learned Assessing Officer, the learned Assessing Officer ultimately finalised the assessment holding the said contractors as dummy, manipulative by the assessee to inflate the expenditure in the form of labour payments. Further that he relied upon the observation made in the order passed by the learned CIT(A) dated 30.08.2016 for assessment year 2013-14 on the dispute relating to the same parties holding the same is bogus and inflated one. Total addition to the tune of ₹70,25,806/- under section 37 of the Act was made which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

3. At the time of hearing of the instant appeal, the learned Advocate appearing for the assessee submitted before us that the very issue was decided by the coordinate bench in assessee's own case in favour of the assessee in respect of the same parties which has been referred by the Assessing Officer in its order dated 28.10.2016. A copy of the same was also handed over to us. He therefore prays for similar relief of deletion of addition made by the authorities below as has been done by the coordinate bench in the identical case before us for assessment year 2013-2014. The learned DR with all his fairness submitted before us that the issue is identical and already been decided by the coordinate bench in assessee's favour. However, he relies upon the orders passed by the authorities below.

4. Heard the parties. We have also perused the relevant materials available on record including the order passed by the coordinate bench in ITA No. 2813/Ahd/2016 for assessment year 2013-2014. While allowing the issue in favour of the assessee by deleting under s.37 of the Act, the coordinate bench has been pleased to observe as follows set out paragraph 6 of page 4 and 5 of the judgment:

*“6. We have duly considered rival submissions and gone through the record carefully. It is pertinent to observe that in order to claim expenditure under section 37(1) of the Act, the assessee is required to fulfill certain conditions viz. (a) there must be an expenditure, (b) such expenditure must not be of nature described in sections 30 to 36, (c) expenditure must not be in the nature of capital expenditure or personal expenditure of the assessee, and (d) expenditure must be laid out or expended wholly and exclusively for the purpose of business or profession. Expression "wholly" employed in section 37 relates to quantification of the expenditure, while expression "exclusively" refers to the motive, objects and purpose of the expenditure. If we make an analysis of the record, then it would reveal that the assessee has demonstrated the incurrence of the above expenditure for the purpose of business. It has submitted contract details from AUDA or AMC how these contracts completed by it with help of labour contractor. It has submitted that labour bills and contract indicating the working assigned by it to different labour contractors. It has submitted bank statement showing payment through banking channel to labour contractors. It has produced income tax return of the contractor showing income of these receipts received from the assessee. It has produced TDS details. It has produced comparative analysis of the GP as well as NP of earlier years vis-à-vis this year. It has also demonstrated how profit will abnormally rise if these disallowances are being included in the income of the assessee. Thus, complete circumstantial evidence produced by the assessee would indicate that it has incurred these expenditure for completing the work. The only circumstances with the AO is that proprietorship concern of the labour contractors were in the names of ladies and actual work were being looked after by their husbands, hence, they are not having knowledge of their business. To our mind these circumstances, ought not to be looked into in isolation for disbelieving the claim of the assessee. Receipts have already suffered tax in the hands of the recipients. Work has been done. There are no doubt with regard to the contracts obtained from AUDA or AMC and completion of work. Thus, actual expenditure must have been incurred on such work. Can the claim of the assessee be belied simply for the reasons that some of the labour contractors were not having complete knowledge of the contract which is being looked after by their husband ? To our mind, the ld.Revenue authorities have failed to appreciate actual circumstances of the dispute. Considering the above details, we allow this ground of appeal and delete the impugned disallowance.”*

5. It appears that the issue already been decided in favour of the assessee where the parties are also identical and therefore respectfully relying upon the order passed

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by the coordinate bench we do not hesitate to delete the addition made under section 37 of the act by the authorities below. Hence assessee's appeal is allowed

6. In the result, assessee's appeal is allowed.

**This Order pronounced in Open Court on**

**20/02/2020**

Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 20/02/2020

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

True Copy

S. K. SINHA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad