

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 3306/MUM/2012
Assessment Year: 2007-08**

The DCIT- 22(2), Tower No. 6, 4 th Floor, Vashi Railway Station Bldg. Complex, Vashi, Navi Mumbai- 400 703.	Vs.	Shri. Baban B. Katwate, T-223,02, Old Barrack, Behind Muncipal Hindi School, Chembur Camp, Mumbai- 400 074. PAN:- AHYPK1263C
(Appellant)		(Respondent)

&

**ITA No 3253 & 3254/MUM/2012
Assessment Year: 2007-08**

Shri. Baban B. Katwate, T-223,02, Old Barrack, Behind Muncipal Hindi School, Chembur Camp, Mumbai- 400 074. PAN:- AHYPK1263C	Vs.	The ACIT, Tower No. 6, 4 th Floor, Vashi Railway Station Bldg. Complex, Vashi, Navi Mumbai- 400 703.
(Appellant)		(Respondent)

Appellant by : Smt. Vinita Menon.
Respondent by : Shri. Ajay L. Thakore, &
Rajeev Mannadiar.

Date of Hearing : 16/06/2016
Date of Pronouncement: 23/09/2016

ORDER

PER RAM LAL NEGI, JM

The assessee and the revenue have filed cross appeals ITA No 3253 & 3306/Mum/2012 respectively against the impugned order passed by the Ld.

CIT(Appeals)- 33 Mumbai, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against assessment order dated 29/12/2009 passed u/s 144 of the Income Tax Act, 1961 (in short 'the Act') and ITA No 3254/Mum/2012 has been filed by the assessee against impugned order passed by the Ld. CIT(A) for the Asst. year 2007-08 whereby the Ld. CIT(A) has confirmed penalty order passed by the AO u/s 271(1(c) of the Act. Since all the three appeals pertain to the same assessee for the same assessment year, the same were heard together at the request of the Ld. Authorised Representative (AR) of the assessee and are being disposed of by this common order for the sake of convenience.

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2. Brief facts of the case are that the assessee filed its return of income for the relevant assessment year declaring the total income of Rs. 16,74,370/-. Since the assessee did not respond to the notices issued u/s 142(1) & 143(2), and also failed to appear and present its case on different dates as mentioned in the assessment order, the A.O proceed to complete the assessment ex-parte u/s 144 of the Act and assessed the total income of the assessee at Rs. 89,07,620/- after making additions under different head. Aggrieved, the assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee partly allowed the appeal of the assessee. The assessee is in appeal before the Tribunal against the impugned order passed by the Ld. CIT(A) raising following effective grounds of appeal:-

“A. On the facts and circumstances of the case the Learned CIT(A) erred in confirming the addition of Advance against orders aggregating to Rs. 13,95,078/-.

B. The Learned CIT(A) failed to appreciate that prior to the date of assessment order, out of Rs. 13,95,078/- advances of Rs. 11,54,304/- was taxed in A.Y. 2008-09, part amount was taxed in the same assessment year for which advance was received, part amount in the earlier assessment year and balance amount in A.Y. 2009-10 and thereby confirming double addition.

C. The Learned CIT(A) erred in giving direction, for taxing the opening advances aggregating to Rs. 5,65,000/- either in earlier years or the subsequent years on the basis of receipt. Without considering the legal position that, direction can be given only for the year of appeal and not for any prior or subsequent years. The direction so given is illegal and without the authority of law and therefore deserves to be deleted.

D. The Learned CIT(A) erred in giving direction, to make addition of Rs. 76,450/- in the name of Shri. Vilas Katwate in earlier years, being opening balance carried forward from the preceding years. Without considering the legal position that, direction can be given only for the year of appeal and not for any prior or subsequent years. The direction so given is illegal and without the authority of law and therefore deserves to be deleted.”

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1. On the other hand the revenue has filed this cross appeal against the impugned order passed by the Ld. CIT(A) on the following effective grounds:-

“1. On the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the disallowance of expenditure amounting to Rs. 54,15,128/- overlooking the fact that this represented 25% of

the expenses claimed by the assessee on account of purchase, salaries, & wages and labour charges and that the claim for such expenses had not been substantiated in terms of section 37(1) of the Income Tax Act, 1961.

2. On the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the disallowance of expenditure amounting to Rs. 54,15,128/-, inspite of the fact that no evidence of any kind had been produced during the assessment proceedings in support of the assessee's claim, though adequate opportunities were given to substantiate the claim for deduction."

2. At the outset the Ld. AR submitted that AO has completed the assessment order without considering the details furnished by the assessee before him. It was further submitted that the during the appellate proceedings, Ld.CIT(A) called for the remand report from the AO and in the said proceedings also the AO did not consider all the details. On the other hand the Ld. Departmental Representative (DR) contended that the assessee was given sufficient opportunity to present his case and the assessment and appellate orders have been passed by the respective authorities after taking in consideration of the submissions of the assessee.

3. We have heard the rival submissions and also perused the material placed on record. In view of the fact that the tax authorities have not considered the documents/materials in entirety, we are of the considered view that all the issues contended by the assessee and the revenue require fresh consideration by the AO. Accordingly, we set aside the impugned order and restore the matter to the file of the AO with the direction to pass the order afresh after hearing the assessee.

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1. The assessee has preferred this appeal against the impugned order passed by the Ld. CIT(A) whereby the Ld. CIT(A) has confirmed the penalty order passed by the AO u/s 271(1)(c) of the Act.
2. Since all the issues have been set aside to AO the penalty order does not survive. However, the AO may initiate penalty proceedings u/s 271(1)(c) of the Act in set aside proceedings.
3. In the result, all the three appeals are treated as allowed.

Order pronounced in the open court on 23rd September, 2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 23/09/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

ITA No. 3306/MUM/2012
&
ITA No. 3253 & 3254/MUM/2012
Assessment Year: 2007-08

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila