

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 480/PUN/2015

निर्धारण वर्ष / Assessment Year : 2005-06

The Income-tax Officer,
Ward-8(1),
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Mrs. Manisha Chimbalkar,
B-1, Swapna Nagari,
Plot No. 502, Nehru Nagar,
Pimpri, Pune-411 018

PAN :ADBPC8684J

.....प्रत्यर्थी / Respondent

Revenue by : Shri Ajay Modi
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 22.01.2018

घोषणा की तारीख / Date of Pronouncement : 24.01.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 27.01.2015 for the assessment year 2005-06.

2. The brief facts of the case as emanating from records are: A search action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was carried out at the premises of M/s. Fabtech Project & Engineering on 31.01.2012. The assessee is a proprietor of Thermcon Engineers and part of Fabtech Group. Statement of Shri B.A. Rupnar, Chairman of Fabtech Group was recorded u/s.132(4) of the Act on 02.04.2012, wherein he had disclosed additional income of Rs.39 Crores as unaccounted income of the group on account of bogus purchases. In his statement, he declared additional income of Rs.75,35,721/- for assessment year 2005-06 in the hands of assessee. In view of search action, the Assessing Officer re-opened the case of assessee for assessment year 2005-06. In response to notice u/s. 148, the assessee filed return of income on 31.12.2012 declaring total income of Rs.43,17,016/- for assessment year 2005-06. The Assessing Officer held that since the assessee in her original return of income had declared total income Rs.3,03,730/-, on the basis of statement made by Shri B.A. Rupnar, the assessee should have declared her income at Rs.78,39,451/-. However, the assessee declared her income at Rs.43,17,016/- only. Thus, the Assessing Officer made addition of Rs.35,22,435/- in the income declared by assessee and assessed total income of assessee as Rs.78,39,451/-.

3. Aggrieved by the assessment order dated 15.03.2013 passed u/s. 143(3) r.w.s. 148 of the Act, assessee filed appeal before Commissioner of Income Tax (Appeals). In proceedings before Commissioner of Income Tax (Appeals), the assessee explained that while declaring amount of Rs.75,35,721/-, the assessee had included opening balance as on 01.04.2004 and purchases made during the year. In assessment year 2005-06, only bogus purchases debited during the relevant period i.e.

Financial Year 2004-05 could be added. The Commissioner of Income Tax (Appeals) accepted the contentions of assessee and deleted the addition of Rs.35,22,435/- made during assessment proceedings. Against the findings of Commissioner of Income Tax (Appeals), Department is in appeal before the Tribunal.

4. Shri Nikhil Pathak appearing on behalf of assessee submitted at the outset that similar additions were made by the Assessing Officer on the basis of statement made by Shri B.A. Rupnar in the case of Steel Vision India Pvt. Ltd. In First Appellate proceedings, Commissioner of Income Tax (Appeals) deleted the addition. The Department carried the matter in appeal before Tribunal vide ITA No.488/PUN/2015 for assessment year 2005-06. The Tribunal vide order dated 26.05.2017 upheld the findings of Commissioner of Income Tax (Appeals).

4.1 The ld. AR further stated that in the case of Shri Rajabhau Ananda Rupnar similar additions were made by Assessing Officer in assessment year 2005-06. The Commissioner of Income Tax (Appeals) deleted the additions. The Department carried the matter in appeal before Tribunal vide ITA No.654/PUN/2015 and Co-ordinate Bench of Tribunal upheld the findings of Commissioner of Income Tax (Appeals) and dismissed the appeal of Revenue. The ld. A.R. prayed that since the Co-ordinate Bench of Tribunal has confirmed the action of Commissioner of Income Tax (Appeals) in deleting the additions made in similar fashion in the cases of group concerns/members, the addition made by Assessing Officer in the present case may also be deleted.

5. On the other hand, Shri Ajay Modi representing the Department vehemently supported the findings of Assessing Officer and prayed for reversing the findings of Commissioner of Income Tax (Appeals). The ld. DR submitted that it is not emanating from records as to whether the amount offered by Shri B.A. Rupnar is inclusive of opening balance as on 01.04.2004 on account of bogus purchases or it is an afterthought to reduce tax liability. However, the ld. DR fairly admitted that in the cases of group entities, the Co-ordinate Bench of Tribunal confirmed the action of Commissioner of Income Tax (Appeals) in deleting such additions.

6. Both sides heard. Orders of the Authorities below perused. The solitary issue raised by Department in appeal is against the action of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.35,22,435/- i.e. difference between additional income declared in the statement made by Shri B.A. Rupnar and additional income offered in return of income in response to notice u/s. 148 of the Act. We find that in the cases of other group concern/members, similar additions were made by the Assessing Officer. In the First Appellate Proceedings, the Commissioner of Income Tax (Appeals) deleted the additions on the premise that additional income offered on account of bogus purchases includes opening balance as on 01.04.2004. The Tribunal has upheld the findings of Commissioner of Income Tax (Appeals) in the cases of other group concern viz. DCIT Vs. Steel Vision India Pvt. Ltd. (supra) and DCIT Vs. Shri Rajabhau Ananda Rupnar (supra) in deleting the additions. Since the facts in the present case are identical, we find no reason to take a different view. Accordingly, the findings of Commissioner of Income Tax (Appeals) are upheld and the appeal of Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced on Wednesday, the 24th day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)	(विकास अवस्थी /Vikas Awasthy)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th January, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-12, Pune.
4. The CIT (Central) Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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