

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

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 399/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of Income Tax,
Circle-1,
Aurangabad.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Rudranee Infrastructure Ltd.
A-9, Industrial Co-op. Society,
MIDC Area, Railway Station,
Aurangabad-431 005

PAN : AADCR4568A

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 06.02.2018

घोषणा की तारीख / Date of Pronouncement : 08.02.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the Revenue is directed against the order of
Commissioner of Income Tax (Appeals)-1, Aurangabad dated 29.12.2015
for the assessment year 2009-10.

2. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) only on the ground that the Department is in process of filing appeal against the order of Tribunal based on which Commissioner of Income Tax (Appeals) has granted relief to the assessee.

3. Shri Rajeev Kumar representing the Department submitted that Commissioner of Income Tax (Appeals) has granted relief to the assessee on the basis of order of Tribunal in assessee's own case in ITA No. 799/PN/2014 for assessment year 2009-10 dated 23.12.2015 wherein the Tribunal has held that invoking of revisional jurisdiction u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of additions/disallowances u/s. 43B and 40(a)(ia) r.w.s.194C are bad in law. The ld. DR submitted that the Assessing Officer in proceedings u/s. 143(3) r.w.s 263 had merely given effect to the order of Commissioner of Income Tax passed u/s. 263 of the Act. The order giving effect to the order u/s. 263 is prior to the order of Tribunal in ITA No. 799/PN/2014(supra).

4. Notice of appeal was sent to the assessee through RPAD. Notice was duly served as is evident from acknowledgement available on file. Despite service of notice, none appeared on behalf of assessee, nor there is any letter seeking adjournment on behalf of assessee. It appears that assessee is not keen to pursue the matter in appeal. Therefore, we are deciding this appeal on the basis of submissions made by the ld. DR and material available on record.

5. The Tribunal in ITA No. 799/PN/2014 for assessment year 2009-10 has held that the additions proposed by Commissioner of Income Tax u/s. 40(a)(ia) and u/s.43B are not sustainable. Once, the revisional jurisdiction u/s. 263 exercised by Commissioner of Income Tax is held to be bad in law, the subsequent proceedings arising therefrom are vitiated. Hence, the proceedings arising from order of Commissioner of Income Tax u/s.263 would be invalid. Accordingly, present appeal filed by the Department is mis-conceived and is dismissed as not maintainable.

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

Order pronounced on Thursday, the 08th day of February, 2018.

Sd/- (अनिल चतुर्वेदी /ANIL CHATURVEDI) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी /Vikas Awasthy) न्यायिक सदस्य/JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 08th February, 2018.

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

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

// सत्यापित प्रति // True Copy //

आदेशानुसार / BY ORDER,

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