

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" 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 Nos. 910 & 911/PUN/2015

निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08

Mr. Parmanand Melumal Jhamtani,  
Prop. M/s. Jhamtani Agencies,  
SR No. 17/2, Opp. Park Street,  
Aundh Kalewadi Road,  
Rahatani, Pune-411 017  
PAN : AAOPJ0821C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-8  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke &  
Shri Rishi Lodha  
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 16.11.2017

घोषणा की तारीख / Date of Pronouncement : 09.02.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

These two appeals by assessee for assessment year 2006-07 and 2007-08 are directed against the orders of Commissioner of Income Tax (Appeal)-2, Nashik for the respective assessment years.

In ITA No.910/PUN/2015, the assessee has assailed the order of Commissioner of Income Tax (Appeal)-2, Nashik dated 13.03.2015 for assessment year 2006-07 and in ITA No.911/PUN/2015, the assessee has assailed the order of Commissioner of Income Tax (Appeal)-2, Nashik of even date for assessment year 2007-08. Since, issues involved in both appeals are arising from same set of facts, the appeals are taken up together for adjudication and are disposed of vide this common order.

2. The brief facts of the case as emanating from records are: The assessee is a proprietor of M/s. Jhamtani Agencies engaged in trading of building material and property. The assessee is also a partner in M/s. Supreme Developers and a director in M/s. Jhamtani Constro Agencies Pvt. Ltd. A survey action u/s.133A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was carried out on 22.01.2009. During the course of survey, it transpired that though the assessee is having turnover of more than Rs. 40,00,000/-, but the assessee has failed to comply with the provision of Section 44AB of the Act in getting its accounts audited. It was further observed that assessee has not filed return of income from assessment year 2006-07 onwards. In survey proceedings certain loose papers/pocket diaries etc. were found and seized by the Department. Notice u/s.148 of the Act were issued to the assessee for assessment years 2006-07 and 2007-08. In response to the said notice, assessee filed his return of income for the assessment year 2006-07 on 12.02.2009 declaring total income of Rs.1,80,79,300/- and for assessment year 2007-08 on 31.03.2009 declaring total income of Rs.7,71,320/-. On the basis of materials/documents found and seized during survey, the Assessing Officer vide assessment order dated 31.12.2009 passed u/s.143(3) r.w.s. 147 of the Act made addition of Rs.44,47,000/- for assessment year 2006-07. Similarly for assessment year 2007-08, on the basis of material/documents seized during survey, the

Assessing Officer made addition of Rs.92,73,094/- vide assessment order dated 31.12.2009.

3. Aggrieved by the assessment orders for the respective assessment years, the assessee filed appeals before Commissioner of Income Tax (Appeal). In appeal for assessment year 2006-07, the First Appellate authority confirmed the addition to the tune of Rs.40,59,000/- and for assessment year 2007-08, the Commissioner of Income Tax (Appeal) confirmed the addition of Rs.86,17,997/-. Against the findings of Commissioner of Income Tax (Appeal) confirming the additions in both the impugned assessment years, now the assessee is in second appeal before the Tribunal.

4. Shri Kishor Phadke appearing on behalf of the assessee submitted that during assessment proceedings the Assessing Officer made additions on the basis of loose papers, small pocket diaries and documents impounded during course of survey operation u/s.133A of the Act. While making additions, the Assessing Officer failed to take into consideration the submissions of assessee that figures mentioned in impounded loose papers, small pocket diaries etc. were merely proposed transactions which never fructified. During proceedings before First Appellate authority, the assessee's vide letter dated 10.10.2011 furnished details and explanations in respect of the recordings made in impounded documents. It was also contended that the Assessing Officer without making proper enquiries from third parties made additions in an arbitrary and unjustified manner. The Commissioner of Income Tax (Appeal) vide order dated 20.10.2011 directed the Assessing Officer to conduct necessary enquiries and furnish report by 29.11.2011. The order of Commissioner of Income Tax (Appeal) seeking report is at page 221 of the paper book. During remand proceedings for assessment year 2006-07 and 2007-08, the assessee furnished

information as sought by Assessing Officer from time to time. The Assessing Officer issued notice to the assessee on 28.02.2014 granting final opportunity to submit parawise explanation along with documentary evidences on or before 06.03.2014. The copy of said notice is at page 234 of the paper book. The Assessing Officer on the same date i.e. 28.02.2014 closed the remand proceedings and furnished remand report in the case of assessee for assessment year 2006-07 and 2007-08 to the Commissioner of Income Tax (Appeal). The copy of remand report is at page 237 to 239 of the paper book. The assessee furnished explanation regarding additions made in assessment orders for assessment years 2006-07 and 2007-08 on 06.03.2014 before the Assessing Officer. The final submissions made by assessee before the Assessing Officer on 06.03.2014 are at page 242 to 245 of the paper book. It was then that the assessee learnt that remand report has already been furnished by the Assessing Officer to the Commissioner of Income Tax (Appeal) on 28.02.2014 itself. The Assessing Officer erred in sending the remand report to the Commissioner of Income Tax (Appeal) on the date of issuing notice to the assessee for 06.03.2014. The Assessing Officer furnished remand report without considering the final submissions of the assessee. This fact was brought to the notice of Commissioner of Income Tax (Appeal) by assessee vide communication dated 12.05.2014. The assessee specifically pointed that the remand proceedings were concluded by the Assessing Officer before the date of final opportunity of hearing granted by the Assessing Officer to the assessee. The Commissioner of Income Tax (Appeal) also failed to call for final report from Assessing Officer or to consider final submission made by Assessee on 06.03.2014. The ld. AR further pointed that the Assessing Officer failed to conduct complete enquiries from third parties as was directed by Commissioner of Income Tax (Appeal).

4.1. The ld. AR further submitted that principles of natural justice have been violated by Authorities below in not considering final submissions of assessee. After having issued notice of hearing for 06.03.2014 to the assessee, the Assessing Officer concluded remand proceedings on 28.02.2014 itself and sent the report to the Commissioner of Income Tax(Appeal), Nashik on the same date, thus depriving the assessee from concluding his submissions.

4.2 The ld. AR submitted that if an opportunity is granted to the assessee, assessee would be able to show that the amount recorded in the loose papers/slips/pocket diaries seized during survey were in respect of proposed transactions which never fructified.

5. On the other hand, Dr. Vivek Aggarwal representing the Department vehemently defended the order of Commissioner of Income Tax (Appeal) in confirming the additions. The ld. DR submitted that sufficient opportunity was granted to the assessee by Assessing Officer during remand proceeding. Notices were sent by the Assessing Officer to third parties on the addresses furnished by assessee. Notices sent by the Assessing Officer were either not served or parties did not appear before the Assessing Officer. Therefore, the plea of assessee that final opportunity of hearing was not granted to the assessee, is without any basis. Loose papers/slip/pocket diaries seized during survey clearly indicate that entries recorded in the documents were in respect of completed transactions and not in respect of proposed transactions or transaction which according to the assessee did not fructify. The ld. DR prayed for confirming the findings of Commissioner of Income Tax (Appeal) in both the impugned assessment years and dismissing the appeals of assessee.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. It is an undisputed fact that during impugned assessment years, the additions have been made on the basis of impounded loose papers/slips/pocket diaries and other documents found and seized during survey operation carried out at the premises of assessee on 22.01.2009. During the course of First Appellate proceedings, Commissioner of Income Tax (Appeal) vide order dated 20.10.2011 called for report from the Assessing Officer in respect of various transactions recorded on loose papers/diaries seized during survey for the assessment years 2006-07 and 2007-08 after necessary enquiries. The ld. AR of the assessee has drawn our attention to the notice dated 28.02.2014 issued by Assessing Officer to the assessee granting final opportunity to submit point wise explanation along with documentary evidences on or before 06.03.2014. The copy of said notice is at page 234 of the paper book. On the same date i.e. 28.02.2014, the Assessing Officer finalized the remand report and furnished to the Commissioner of Income Tax (Appeal) disregarding the fact that he has issued notice to the assessee granting final opportunity to submit documents and explanations on or before 06.03.2014. After having furnished remand report on 28.02.2014, no effort was made by the Assessing Officer to file final/supplementary remand report after receiving final submissions of the assessee on 06.03.2014. The pre-closure of remand proceedings and furnishing of report by the Assessing Officer on 28.02.2014 without considering the final submissions of the assessee is patent violation of principles of natural justice.

7. A perusal of the written submissions made by assessee before Commissioner of Income Tax (Appeal) on 12.05.2014 reveal that assessee had taken a specific objection that the remand report was sent before considering the final submission of assessee which the assessee had filed on 06.03.2014 in

accordance with the notice of the Assessing Officer. The impugned order shows that the Commissioner of Income Tax (Appeal) has neither dealt with the objection raised by assessee nor has considered the submission of assessee dated 06.03.2014 filed before the Assessing Officer during remand proceedings. Thus, in view of the facts of the case and the manner in which the proceedings have been conducted by authorities below, we are of considered view that both the appeals need re-visit to the file of Commissioner of Income Tax (Appeal). The Commissioner of Income Tax (Appeal) shall consider the submission of the assessee dated 06.03.2014 filed before the Assessing Officer during remand proceedings. The Commissioner of Income Tax (Appeal) is at liberty to consider the submissions of assessee and the material placed before him before passing the fresh order or the Commissioner of Income Tax (Appeal) may seek report/comments from the Assessing Officer before passing the order. Needless to say that Commissioner of Income Tax (Appeal) shall follow principles of natural justice before deciding the issues afresh, in accordance with law. Thus, without commenting on the merits of additions in both the appeals, we are restoring the appeals to Commissioner of Income Tax (Appeal). Accordingly, appeals of the assessee are allowed for statistical purposes.

8. In the result, both the appeals of assessee are allowed for statistical purposes.

Order pronounced on Friday, the 09<sup>th</sup> day of February, 2018.

Sd/-  
(**डॉ. करुणाकरा राव**/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(**विकास अवस्थी** /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> February, 2018

SB

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

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

// सत्यापित प्रति // True Copy //

आदेशानुसार / BY ORDER,

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