

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. 1338 & 1483/PUN/2016

निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13

The Deputy Commissioner of Income Tax,  
Central Circle-1, Aurangabad.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Sai Enterprises,  
Plot No. E-10,  
MIDC Area,  
Aurangabad-431 136  
PAN : AAWFS8713L

.....प्रत्यर्थी / Respondent

Revenue by : Shri Sanjeev Ghei  
Assessee by : None

सुनवाई की तारीख / Date of Hearing : 05.06.2018

घोषणा की तारीख / Date of Pronouncement : 20.06.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

These two appeals by the Department are directed against the order of  
Commissioner of Income Tax (Appeals)-1, Aurangabad.

In ITA No.1338/PUN/2016, the Revenue has assailed the order of  
Commissioner of Income Tax (Appeals)-1 dated 11.03.2016 for the  
assessment year 2011-12.

ITA No.1483/PUN/2016, by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 12.04.2016 for the assessment year 2012-13.

Since, the issues involved in both these appeals are similar and are arising from same set of facts, these appeals are taken up together for adjudication and are disposed of vide this common order.

2. The notice of appeal ITA No.1338/PUN/2016 for assessment year 2011-12 was first sent to the assessee through RPAD on 05.03.2018 for 05.04.2018 on the address mentioned in Form-36. On 05.04.2018, none appeared on behalf of the assessee; therefore, fresh notice was issued for 05.06.2018. The second notice was sent to the assessee through RPAD on 11.04.2018 for 05.06.2018. The notice of appeal ITA No.1483/PUN/2016 for assessment year 2012-13 was sent on 22.03.2018 through RPAD for 09.05.2018. Despite service of notice, none appeared on behalf of the assessee on 09.05.2018. The hearing of appeal was adjourned to 05.06.2018. Again on 05.06.2018, none appeared to represent the assessee to defend the above mentioned appeals. It appears that the assessee is not keen to pursue the appeals. Therefore, we are proceeding to decide these appeals with the assistance of ld. DR and material available on record.

**ITA No. 1338/PUN/2016**  
**A.Y. 2011-12**

3. The Revenue in ITA No.1338/PUN/2016 has raised following grounds:

*“1. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.52,91,248/- out of addition of Rs.78,82,954/- made by the Assessing Officer, on account of difference in the account of sundry creditor and assessee's books of account. The Ld.CIT(A) erred in admitting additional evidence u/r. 46A of the IT.*

*Rules, without calling for remand report from the Assessing Officer and by accepting the explanation of the assessee.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs.23,895/-to Rs.2,867/- made by the Assessing Officer on account of advance given for non business purpose.*

*3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs.6,63,250/-to Rs.3,50,000/-, made by the Assessing Officer on account of disallowance of 15% of specified expenses.*

*4. The appellant craves to leave to add, alter modify, delete and amend any of the above grounds as per the circumstances of the case.”*

4. Shri Sanjeev Ghei representing the Department submitted that Commissioner of Income Tax (Appeals) in First Appellate proceedings has granted relief to the assessee by admitting additional evidence. The Commissioner of Income Tax (Appeals) did not call for remand report from Assessing Officer before granting relief to the assessee on the basis of additional evidence. The ld. DR prayed for reversing the findings of Commissioner of Income Tax (Appeals) and restoring the addition made by the Assessing Officer.

5. We have heard the submissions made by the ld. DR and have perused the orders of Authorities below. The assessee is engaged in the business of trading in scrap and manufacturing of plastic granules. In ground No.1 of appeal, the Revenue has assailed the order of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.52,91,248/- out of Rs.78,82,954/- made by the Assessing Officer on account of difference in sundry creditors. A perusal of the impugned order shows that the Commissioner of Income Tax(Appeals) has granted part relief to the assessee on the basis of confirmations received from Skoda Auto India Pvt. Ltd. and M/s.Unitech Industry. Examination of assessment order (para-5) shows that confirmations from sundry creditors were already on record during

assessment proceedings. The Assessing Officer had issued notice u/s.133(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to sundry creditors and had received copies of ledger accounts of assessee in their books of account. The assessee had also filed reconciliation statement before Assessing Officer in respect of both sundry creditors. Apart from above documents, no fresh material was available before the Commissioner of Income Tax (Appeals). The ld. DR has failed to point out the alleged additional evidence filed by assessee before First Appellate Authority. Since, the Revenue has failed to show any document that has been accepted by the Commissioner of Income Tax (Appeals) as additional evidence, there is no question of seeking remand report from the Assessing Officer on the document which were already on record and have been examined by the Assessing Officer during assessment proceedings. Accordingly, ground No. 1 raised in appeal by Revenue is against the facts and lacks merit. **Thus, the ground No. 1 is dismissed.**

6. In ground No. 2 of appeal, the Revenue has assailed action of Commissioner of Income Tax(Appeals) in restricting disallowance/addition of Rs.23,895/- to Rs.2,867/-. During assessment proceedings, the Assessing Officer made addition to Rs.23,895/- on account of diversion of funds to ITC Limited for non business purpose. It is an undisputed fact that assessee has failed to give any plausible explanation for advancing Rs.23,895/- to ITC Limited. The Assessing Officer made addition of the entire amount. In First Appellate proceedings, the Commissioner of Income Tax (Appeals) restricted the addition to Rs.2,867/- i.e. proportionate interest @12% and disallowed the amount u/s. 36(1)(iii) of the Act. We do not find any infirmity in the order of Commissioner of Income Tax(Appeals) in

restricting the addition on the basis of proportionate disallowance of interest. Thus, **ground No. 2 raised in appeal by Revenue is dismissed.**

7. In ground No. 3 of appeal, the Revenue has assailed restricting of ad-hoc disallowance to Rs.3,50,000/- in respect of various expenditure viz. Freight & Transport, Scrap yard expenses, vehicle running expenses etc. The Assessing Officer made addition of Rs.6,63,250/- on the ground that some of the vouchers were not available, some vouchers did not have proper narration, some vouchers did not contain complete addresses of the recipients and the payments were mostly made in cash. The Commissioner of Income Tax(Appeals) restricted ad-hoc disallowance to Rs.3,50,000/- on the ground that Assessing Officer after identifying such vouchers, should have made specific disallowance in respect of incomplete and missing vouchers rather than resorting to ad-hoc disallowance of 15% i.e. Rs.6,63,250/-. Taking into consideration entire circumstances, the Commissioner of Income Tax(Appeals) restricted the addition to Rs.3,50,000/-. The order of Commissioner of Income Tax(Appeals) is quite reasonable and justified. Accordingly, we are of considered view, the impugned order does not call for any interference and hence, the same is upheld. Thus, **ground No. 3 raised in appeal by Revenue is dismissed.**

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

**ITA No. 1483/PUN/2016**  
**A.Y. 2012-13**

9. The Revenue in ITA No.1483/PUN/2016 has raised following grounds:

*“1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.75,29,990/- out*

*of addition of Rs.84,69,564/- made by the Assessing Officer, on account of difference in the account of lender M/s Unitech Inc. And assessee's books of account. The Ld. CIT(A) erred in admitting additional evidence u/r. 46A of the IT. Rules, without calling for remand report from the Assessing Officer and by accepting the explanation of the assessee.*

*2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in not discussing the difference of the amounts reflected in the account of the assessee and that of M/s.Unitech Inc., Mumbai, whereby the amount of Rs.17,00,426/- (Rs.26,40,000/- less Rs.9,39,574) has escaped assessment.*

*3. The appellant craves to add, alter, modify, delete and amend any of the grounds as per the circumstances of the case.”*

10. The Revenue has assailed the order of Commissioner of Income Tax (Appeals) primarily on the ground that the Commissioner of Income Tax (Appeals) admitted additional evidence in violation of Rule 46A of the Income Tax Rules.

11. On perusal of impugned order, we find Commissioner of Income Tax (Appeals) granted relief to the assessee on the basis of documents already available on record and there is no mention of additional evidence being filed by assessee during First Appellate proceedings. The ld. DR has also failed to point out the alleged additional evidence, filed during First Appellate proceedings by the assessee. Accordingly, we find no merit in the **ground No. 1 raised in appeal by the Revenue and accordingly, the same is dismissed.**

12. In ground No. 2 of appeal, the Revenue has assailed the order of Commissioner of Income Tax (Appeals) on the ground that Rs.17,00,426/- has escaped assessment, as Commissioner of Income Tax (Appeals) has not made any discussion of this amount in the impugned order. The ld. DR has failed to point out as to how the order of Commissioner of Income Tax

(Appeals) is erroneous and the amount as stated above has escaped assessment. We are of opinion that the order of Commissioner of Income Tax (Appeals) is well reasoned and justified. We find no reason to interfere with the same. Accordingly, ground No. 2 raised in appeal by Revenue is dismissed.

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

14. To sum up, appeals of the Revenue for Assessment Years 2011-12 and 2012-13 are dismissed.

Order pronounced on Wednesday, the 20<sup>th</sup> day of June, 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 : 20<sup>th</sup> June, 2018

SB

**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, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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