

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. 1956 & 1957/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Dy. Commissioner of Income Tax,
Panvel Circle, New Panvel

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Dhondiram Narayan Limbhore,
Prop. M/s. Trimurti Contractors,
Trimutri Complex, Dhatav,
Taluka Uran, Dist. Raigad – 402 116
PAN : AAFPL0276L

.....प्रत्यर्थी / Respondent

C.O. Nos. 43 & 44/PUN/2018
(Arising out of ITA Nos. 1956 & 1957/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Shri Dhondiram Narayan Limbhore,
Prop. M/s. Trimurti Contractors,
Trimutri Complex, Dhatav,
Taluka Uran, Dist. Raigad – 402 116
PAN : AAFPL0276L

.....Cross Objector

बनाम / V/s.

Dy. Commissioner of Income Tax,
Panvel Circle, New Panvel

.....Appellant in the appeal

Appellant by : Mrs. Shweta Mishra
Respondent by : Shri Subodh Ratnaparkhi

सुनवाई की तारीख / Date of Hearing : 30.07.2018	घोषणा की तारीख / Date of Pronouncement : 03.08.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM

There are total four appeals under consideration filed by the Assessee and the Revenue involving A.Yrs. 2010-10 and 2011-12. ITA Nos. 1956 & 1957/PUN/2016 are filed by the Revenue and CO Nos. 43 & 44/PUN/2018 are filed by the Assessee. They are filed against the consolidated order of CIT(A)-2, Thane. Therefore, these appeals/cross objections are clubbed together and being adjudicated in this composite order.

2. We shall first take up the appeals of the Revenue. Revenue raised similar grounds in both the assessment years and therefore, the grounds of appeal in **ITA No.1956/PUN/2016 for A.Y. 2010-11** are extracted here as under :

“1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in relying on the decision of Supreme Court in the case of Kanchwala Gems Vs. JCIT 288 ITR 10 (SC) and Hon’ble High Court’s decision in the case of Vijay Protein, Sanjay Oil Cake Industries, etc.

2. On the facts and in the circumstances of the case, and in law, the Hon’ble CIT(A) erred in not following the order of ITAT, Pune in ITA No.1411-1415 dated 20-02-2015 in the case of M/s. Kolte Patil Developers Ltd., wherein 100% addition of bogus purchases were confirmed.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in giving relief to the assessee to the extent of suppressed G.P. out of total bogus purchases even though –

- (i) The assessee could not produce primary evidences like Octrol Receipts, Delivery Challan etc. evidence to prove the genuineness of the purchases before the AO and before CIT(A).*
- (ii) The affidavits filed by the entry providers before Sales Tax Authorities cannot be ignored having evidentiary value.*

4. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

5. The appellant craves leave to add, amend, alter or delete any ground of appeal.”

3. Briefly stated relevant facts of the case include that the assessee is an individual and is engaged in the business of Engineering and Labour Contractor. Assessee filed the return of income on 07-10-2010 declaring total income of Rs.47,72,670/- This is a case where assessee made certain purchases and the suppliers from whom the purchases are made are in the suspected list of the Sales Tax Department of Maharashtra Govt. AO alleged that the purchases made from 4 suppliers (Para No.4.3 of the assessment order) amounting to Rs.38,36,129/- are bogus ones. Eventually, the AO disallowed the said sum of Rs.38,36,129/-. Similarly, the AO made addition of Rs.48,91,615/- for the A.Y. 2011-12. CIT(A) restricted the disallowance to Rs.9,59,032/- and Rs.12,22,905/- for the A.Yrs. 2010-11 and 2011-12 respectively.

4. Before us, at the outset, Ld. AR for the assessee brought our attention to the computation sheet prepared by him showing that the tax effect in both the appeals filed by the Revenue is below Rs.20 lakhs. The said chart is reproduced here below :

<i>Particulars</i>	<i>A.Y. 2010-11</i>	<i>2011-12</i>
<i>Total disputed purchases</i>	<i>Rs.38,36,129/-</i>	<i>Rs.48,91,615/-</i>
<i>Addition confirmed by Hon.CIT(A)</i>	<i>Rs.9,59,032/-</i>	<i>Rs.12,22,905/-</i>
<i>Relief granted by Hon.CIT(A)</i>	<i>Rs.28,77,097/-</i>	<i>Rs.36,68,710/-</i>
<i>% of disputed purchases confirmed by Hon.CIT(A)</i>	<i>25%</i>	<i>25%</i>

He submitted that the appeals filed by the Department are liable to be dismissed on account of low tax effect. The Ld. AR pointed that as per CBDT Circular No.3/2018 dated 11th July, 2018, the monetary limit for filing of

appeal by the Department before the Tribunal is Rs.20 Lakhs, therefore, the appeals filed by the Department are not maintainable.

5. On the other hand, the Ld. DR for the Revenue defended the assessment orders and prayed for reversing the findings of the CIT(A) in the appeals. However, the Ld. DR fairly admitted that the tax effect in the present appeals filed by the Department is less than Rs.20 Lakhs.

6. Both sides heard. On perusal of the facts in both the appeals filed by the Department and the chart (supra) depicting the tax effect, we find undisputedly the total tax effect involved in the present appeals is below Rs.20 lakhs. The CBDT circular No.3/2018 dated 11th July, 2018 raised the monetary limit of tax effect for filing of appeal by the Department before the Tribunal to Rs.20 Lakhs. The circular applies to the pending appeals of the Department before the Tribunal too. Thus, in view of the CBDT circular, we are of the opinion that the present appeals of the Revenue are liable to be dismissed on account of low tax effect without going into the merits of the case.

7. In the result, both the appeals of the Revenue are dismissed.

We shall now take up the cross objections filed by the assessee.

CO Nos. 43 and 44/PUN/2018
A.Yrs. 2010-11 and 2011-12

8. Since both the appeals of the Revenue are dismissed as not-maintainable on account of low tax effect, the cross objections filed by the assessee becomes infructuous. As such, the cross objections of the

assessee for both the assessment years are dismissed as academic or infructuous.

9. In the result, both the cross objections of the assessee are dismissed.

10. To sum up, the appeals of the Revenue and cross objections of the assessee for both the assessment years are dismissed.

Order pronounced on 03rd day of August, 2018.

Sd/-

Sd/-

(विकास अवस्थी / VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2018.
Satish

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

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

आदष्टानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ ITAT, Pune.