

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 Nos. 1278 to 1280/PUN/2016

निर्धारण वर्ष / Assessment Years: 2002-03 to 2004-05

The Assistant Commissioner of Income Tax,
(Central) Circle, Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Ghatge Patil Industries Limited,
At Post :-Uchgaon, Tal : Karveer,
Dist- Kolhapur,
Pin-416 005,
PAN : AAACG6595R

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1069/PUN/2016

निर्धारण वर्ष / Assessment Year : 2004-05

M/s. Ghatge Patil Industries Limited,
At Post :-Uchgaon, Tal : Karveer,
Dist- Kolhapur,
Pin-416 005,
PAN : AAACG6595R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle, Kolhapur.

.....प्रत्यर्थी / Respondent

Revenue by : Shri Sanjeev Ghei
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 20.08.2018

घोषणा की तारीख / Date of Pronouncement : 31.08.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

ITA No.1278/PUN/2016 by the Department is directed against the order of Commissioner of Income Tax (Appeals), Pune-11 dated 11.03.2016 for the assessment year 2002-03. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on two grounds i.e.

i) Quashing of re-assessment proceedings; and

ii) Deleting the addition of Rs.29,18,469/- made by the Assessing Officer on account of suppression of sale of scrap.

2. Shri Nikhil Pathak appearing on behalf of the assessee submitted at the outset that the appeal of the Revenue is liable to be dismissed on account of low tax effect.

3. Shri Sanjeev Ghei representing the Department fairly admitted that in the appeal by the Department for assessment year 2002-03 tax effect is less than Rs.20 Lakhs.

4. Both sides heard. The Revenue is in appeal against the order of Commissioner of Income Tax(Appeal) in deleting the addition of Rs.29,18,469/- made by the Assessing Officer on account of sale of scrap. Undisputedly, the tax effect involved in appeal is less than the monetary limit prescribed by the recent CBDT Circular for filing of appeals before the Tribunal by the Department. The CBDT vide Circular No.3/2018, dated 11.07.2018 has raised

the monetary limit of tax effect for filing of appeals by the Department before the Tribunal to Rs.20 lakhs. The Circular applies to the appeals to be filed by the Department in future as well as the appeals pending before the Tribunal. Without going into merits of the issues raised in the appeal, in view of the CBDT Circular the present appeal of the Revenue is dismissed on account of low tax effect.

5. Before parting, we clarify here that the Revenue shall be at liberty to approach the Tribunal for restoration of appeal, with the requisite material to show that the appeal is protected by the exceptions prescribed in Para 10 of the Circular (supra.)

6. In the result, **appeal of the Revenue in ITA No.1278/PUN/2016 for assessment year 2002-03 is dismissed.**

ITA No.1279/PUN/2016 (By Revenue)

ITA No.1280/PUN/2016 (By Revenue)

(A.Ys. 2003-04 & 2004-05)

7. ITA No. 1279/PUN/2016 & ITA No.1280/PUN/2016 by Revenue are directed against the order of Commissioner of Income Tax (Appeals), Pune-11 dated 30.03.2016 common for the assessment years 2003-04 & 2004-05.

The assessee has filed cross appeal in ITA No.1069/PUN/2016 for the assessment year 2004-05 against the same order of Commissioner of Income Tax (Appeals).

8. Since the issues involved in all the three appeals are arising from same set of facts, these appeals are taken up together for adjudication vide this common order.

9. The Revenue in its appeal for assessment year 2003-04 has raised following grounds:

“1) On the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made on sale of scrap made by the AO amounting to Rs.7,02,58,930/- for the years 2003-04 to 2009-10 treating the statement of MD of the assessee company as unreliable in the absence of any evidence supporting/confirming the modus operandi for sale of scrap.

2) On the facts and the circumstances of the case, the Ld. CIT(A) has erred in ignoring the ratio decided in the judgment of the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs. UOI(1986).

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

4) The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal.”

Identical grounds of appeal have been raised by the Revenue for assessment year 2004-05.

10. Shri Sanjeev Ghei representing the Department submitted that the assessee is engaged in manufacturing of grey iron castings, gate valves, mechanical industrial clutches etc. A search action u/s.132(4) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) was carried in the case of assessee on 11.09.2008. The notice u/s.153A of the Act was issued to the assessee on 21.08.2009. In response to the said notice, the assessee filed return of income on 12.10.2009 declaring loss of Rs.5,10,06,327/-. The return filed by the assessee was on the similar lines as was filed under the provision of section 139(1) of the Act. During search, it was found that the assessee has indulged in suppression of sale of scrap. The Managing Director of the

Company, Shri Kiran Patil in his statement recorded u/s.132(4) of the Act made disclosure of additional income of Rs.8 Crore divided equally in four assessment years i.e. assessment years 2006-07 to 2009-10. However, the Managing Director subsequently retracted from his statement. The Assessing Officer completed assessment making addition on the basis of statement recorded u/s.132(4) of the Act made by the Managing Director of the Company. The ld. DR submitted that in assessment year 2003-04, the Assessing Officer made addition of Rs.1,26,255/- in respect of unaccounted sale of scrap. For the similar reasons, Assessing Officer made addition of Rs.39,95,909/- in assessment year 2004-05 on account of suppression of scrap sale. The Commissioner of Income Tax(Appeals) deleted the addition in both the impugned assessment years as the addition made by the Assessing Officer on account of suppression of sale of scrap was less than 1% of the total turnover. The ld. DR prayed for setting aside the impugned order and restoring the findings of Assessing Officer.

11. On the other hand, Shri Nikhil Pathak appearing on behalf of assessee vehemently defended the order of Commissioner of Income Tax (Appeals) in deleting the addition. The ld. AR submitted that during search operation no incriminating evidence whatsoever was found by the Department indicating suppression of sale of scrap. No declaration was made by the Managing Director of the assessee company for the assessment years 2003-04 and 2004-05. The Assessing Officer made addition merely on the basis of estimation. The ld. AR referring to the assessment order submitted that the Assessing Officer made addition of the difference between the value of sale of scrap @1% of the total turnover and actual scrap sale recorded in the books. The ld. AR pointing to the table in Para 5 of the assessment order dated 30.12.2010 passed

u/s.143(3) r.w.s 153A of the Act for assessment year 2003-04 submitted that the addition has been made merely on estimation.

11.1 The ld. AR further pointed that the Managing Director of the Company in his statement recorded u/s.132(4) of the Act had not admitted any undisclosed income for the assessment year 2003-04 and 2004-05. The Revenue in the grounds of appeal has not questioned the findings of Commissioner of Income Tax (Appeals) on non seizure of any material indicating unaccounted income in the assessment year 2003-04 and 2004-05. The ld. AR vehemently supported the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeals of the Revenue.

12. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The solitary issue raised by the Revenue in appeal is against deleting addition of Rs.1,26,255/- on account of suppression of sale of scrap in assessment year 2003-04 and Rs.39,95,909/- in assessment year 2004-05. The ld. AR has asserted that during search operation, no incriminating material was found for making such addition. Even in the statement recorded u/s.132(4) of the Act by the Managing Director of the Company which was subsequently retracted. There is no declaration of undisclosed income for the assessment year 2003-04 and 2004-05. These facts have not been disputed by the Revenue. We observe that the Commissioner of Income Tax(Appeals) in Para 4.1 of the impugned order has categorically recorded these facts and the same have not been challenged by the Department in the appeal. The addition has been made by the Assessing Officer merely on the basis of estimation of undisclosed sale of scrap. The Assessing Officer has estimated 1% of total turnover as the value of scrap generated. The shortfall of

scrap i.e. less than 1% has been added by the Assessing Officer. The addition made by the Assessing Officer in the impugned assessment years is as under:

<i>A.Y.</i>	<i>Turnover</i>	<i>Scrap sale @1%</i>	<i>Scrap sale shown in the book</i>	<i>Difference</i>
<i>2003-04</i>	<i>69,30,16,443</i>	<i>69,30,164</i>	<i>68,03,909</i>	<i>1,26,255</i>
<i>2004-05</i>	<i>1,10,20,02,935</i>	<i>1,10,20,029</i>	<i>70,24,120</i>	<i>39,95,909</i>

13. It would be relevant to mention here that regular assessments for assessment years 2003-04 and 2004-05 were completed u/s.143(3) of the Act. Thus, assessment years under appeal are non- abated assessments. In the absence of any incriminating material no addition could have been made by the Assessing Officer in the impugned assessment years. So far as the statement of Managing Director is concerned, we observe that the Managing Director of the assessee-company had not made any declaration of additional income for assessment years 2003-04 & 2004-05. Thus, the statement by Managing Director whether retracted or not would have no bearing in the assessment years under appeal. It is a well settled law that in the case of completed assessments, additions in assessment proceedings under section 153A can be made only on the basis of any incriminating material found and seized during search operation. Any addition made on estimation or surmises would not sustain.

14. Thus, in view of the facts of the case and well settled law, we do not find any infirmity in the findings of the Commissioner of Income Tax (Appeals) in deleting the addition. Accordingly, we uphold the same and dismiss the appeals filed by the Revenue for both the assessment years 2003-04 & 2004-05.

15. In the result, appeals of the Revenue in **ITA No.1279/PUN/2016 & ITA No.1280/PUN/2016 for the assessment years 2003-04 and 2004-05 are dismissed.**

ITA No.1069/PUN/2016 (By Assessee)
A.Y. 2004-05

16. The assessee in its appeal has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds:

“1. The order of the learned CIT(Appeals) is bad in law and opposed to the facts.

2. The learned CIT(Appeals) has erred in upholding addition of Rs.28,621/-made by the DCIT as difference between cost of construction as per books and value as per the valuation report of DVO. He erred in simply following the order of CIT(A) Kolhapur for A.Y. 2005-06 and confirmed the addition. He failed to appreciate that entire cost of construction has been recorded in the books of account of the appellant from year to year, ignoring the extract of ledger of audited accounts placed on the records which contained complete narration for each entry date wise, and failed to appreciate that the report of DVO was a personal judgment devoid of any evidence. The addition of Rs.28,621 may kindly be deleted.

3. The appellant craves leave to add to amend or alter any or all the grounds of appeal either before or at the time of hearing.”

17. The ld. AR submitted that the assessee in its cross appeal for assessment year 2004-05 has assailed the findings of Commissioner of Income Tax (Appeals) in confirming the addition of Rs.28,621/- on account of difference between cost of construction of bungalow as per DVO's report. The ld. AR submitted that the Assessing Officer while making addition has applied CPWD rates without considering the fact that the assessee had constructed house in Kolhapur. The Assessing Officer should have adopted State PWD rates. The ld. AR further pointed that during search no incriminating material was found indicating unaccounted investment in the construction of bungalow. The ld. AR pointed that difference between cost of construction of bungalow as declared by

the assessee (Rs.83 Lakhs) and the cost of construction determined by the Assessing Officer on the basis of DVO report (Rs.94 Lakhs) is about 13%. The Tribunal in assessee's own case for assessment year 2005-06 in ITA No.1332/PUN/2014 decided on 27.09.2017 has deleted the addition on account of marginal difference in the valuation.

18. The ld. DR on the other hand, supported the findings of Commissioner of Income Tax (Appeals) in confirming the addition in respect of unaccounted investment in bungalow.

19. Both sides heard. The solitary issue raised by the assessee in appeal is against confirming addition of Rs.28,621/- on account of difference between cost of construction of bungalow as declared by assessee and value as determined by the DVO. We find that identical issue was raised by the assessee in ITA No.1332/PUN/2014 for assessment year 2005-06 before the Tribunal. The Tribunal deleted the addition by observing as under:

“10. The first issue which arises in the present appeal is jurisdictional issue that in the case of search proceedings where no incriminating documents were found, can the addition be made in respect of assessment proceedings, which had not abated. The second issue which is arising is that where the difference in the valuation is about approximately of Rs.11 lakhs which works out to 13.43% and where the DVO has failed to give the benefit of deduction under self supervision and had also applied CPWD rates as against the prescribed rates of PWD rates, can any addition be made in the hands of assessee. We find merit in the plea of assessee in this regard. The total addition made in the instant assessment year was only Rs.85,988/- and difference shall stand reduced in case the rates of PWD for construction are applied as against the DVO applying the rates of CPWD and further, the assessee is entitled to the deduction in value on account of self supervision. In the totality of the above said facts and circumstances and in view of the difference being about 13.43%, we find no merit in the orders of authorities below in upholding the above addition made in the hands of assessee. Accordingly, we delete the addition of Rs.85,988/-. In view of our deciding the issue on merits, we are not going into the jurisdictional aspect of the issue raised by the learned Authorized Representative for the assessee, which becomes academic in nature. Accordingly, we hold so.”

The property in question in the assessment year under appeal is the same which was subject matter of valuation in the assessment year 2005-06. No material has been placed before us by the Revenue controverting the findings of the Co-ordinate Bench. Following the decision of Tribunal in assessee's own case in the immediately succeeding assessment year, we delete the addition for similar reasons. Accordingly, appeal of the assessee for the assessment year 2004-05 is allowed.

20. To sum up, all the three appeals of the Revenue i.e. for assessment years 2002-03 to 2004-05 are dismissed and cross appeal of the assessee for assessment year 2004-05 is allowed.

Order pronounced on Friday, the 31st day of August, 2018.

Sd/-	Sd/-
(डॉ. करुणाकरा राव/D. KARUNAKARA RAO)	(विकास अवस्थी /VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER
पुणे / Pune; दिनांक / Dated : 31 st August, 2018	
SB	

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-11.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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