

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 No.1157/PUN/2015

निर्धारण वर्ष / Assessment Year : 2008-09

Assistant Commissioner of Income Tax,
Circle – 9, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Maharashtra Erectors Pvt. Ltd.,
S. No. 92, Tathwade,
Pune – 411033

PAN : AABCM1972R

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1181/PUN/2015

निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Maharashtra Erectors Pvt. Ltd.,
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.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 02-08-2018

घोषणा की तारीख / Date of Pronouncement : 30-10-2018

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

This cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 11-05-2015 for the assessment year 2008-09.

2. The brief facts of the case as emanating from records are : The assessee company has a chequered history. The assessee company is a closely held company managed by the family members. The Chairman-cum-Managing Director (CMD) of the company Shri Chandrakant P. Sanghvi and the Director of the company Shri Anil Kumar P. Sanghvi are brothers and are having serious differences in managing the affairs of company. Consequently, the accounts of the assessee company were not finalized and the compliances under provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act") were not made. The assessee is engaged in the business of generation and sale of electricity, hiring of cranes and trailers. No return of income was filed by the assessee company for the impugned assessment year. Notice u/s. 148 of the Act was issued. Despite service of notice u/s. 148 and repeated notices u/s. 142(1), neither return of income nor any Tax Audit Report as mandated u/s. 44AB was filed by the assessee. In response to the statutory notice the authorized representative of the assessee merely furnished tentative Profit and Loss account and Balance Sheet for the period relevant to the assessment years 2008-09 declaring income of Rs.1,72,39,125/-. Shri Anil Sanghvi, Director supported the tentative financial statements. However, Shri Chandrakant Sanghvi, CMD refuted the same. Accusations and

counter accusations were leveled by the two brothers against each other. Since, the limitation period for completing the assessment was nearing and the absence of statutory compliances by the assessee, the Assessing Officer had no other option but to complete the assessment u/s. 144 of the Act. The Assessing Officer completed the assessment by estimating addition of Rs.3,44,78,250/- i.e. three times of the income declared in the tentative financial statements.

Aggrieved by the assessment order dated 31-12-2010 passed u/s. 144 r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the action of Assessing Officer in enhancing the business income. However, with respect to income from house property the Commissioner of Income Tax (Appeals) restricted addition to 15% of the income declared under the said head. Further, the Commissioner of Income Tax (Appeals) enhanced the income by Rs.2,91,79,690/- in respect of Short Term Capital Gain.

Against the findings of Commissioner of Income Tax (Appeals) both, the assessee and the Revenue are in appeal before the Tribunal. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds :

“Ground No: 1

The Id. CIT(A) erred in upholding assessment at 300% of income under the head 'Business Income'. He failed to follow the order passed by him in earlier year enhancing the income by 15% instead of 300% when there is no substantial change of facts of disputes between directors.

Ground No: 2

The Id. CIT(A) erred on facts and law in respect of making further addition of Rs 64,36,734/- to the assessed estimated income of 1,93,10,202/- under the head income from business or profession. In the order, the Ld. CIT(A)

adjudicated that he is not going to interfere with the order of Ld. AO in respect of Income under the head Business Income. He thus erred on increasing the income by 300% instead of computing the income at 300% of tentative statement of total income/returned income.

Ground No: 3

The Ld. CIT(A) erred on facts and in law in holding that provisions of Section 115JB are not applicable. He failed to appreciate that tax under Section 115JB is higher even if tax on enhanced income is considered.

Ground No : 4

The appellant craves leave to add, to alter, omit, amend, delete or substitute all or any of the above grounds at the time of hearing of appeal.”

The Revenue in its appeal has impugned the order of First Appellate

Authority on following grounds :

- “1. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in restricting the amount under the head income from House property to 15% i.e. Rs.16,20,358/- without proper basis and merely on the submission of the assessee during the course of appellate proceedings, without thoroughly examining the facts, records and supporting evidences available with AO and in view of the fact that before the AO each detail was being contested by the rival directors to be incorrect and concocted?*
2. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in admitting the correctness and completeness of various details and evidences which were wither not filed before the AO or contested to be untrue by rival directors in contravention of Rule 46A, even without granting opportunity to the Assessing Officer?*
3. *The appellant craves leave to add, amend or alter any of the above grounds.”*

3. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted that the assessee could not file return of income for the impugned assessment year as both the brothers managing the affairs of the company were having serious disputes and consequently, the affairs of the assessee company were suffering. Even the accounts of the assessee company could not be finalized. Resultantly, the Auditors could not audit

the accounts. The ld. AR submitted that the Commissioner of Income Tax (Appeals) has erred in confirming 300% increase in business income declared by the assessee in the tentative financial results. The ld. AR pointed that in immediately preceding assessment year i.e. assessment year 2007-08 the Assessing Officer had made addition of 300% of the income declared and the Commissioner of Income Tax (Appeals) reduced the same to 15% of the income returned. However, in the present assessment year the Commissioner of Income Tax (Appeals) has not followed his own order in the previous assessment year and has confirmed the findings of Assessing Officer in respect of Business Income. The ld. AR furnished a copy of Tribunal order in appeal by the Revenue in ITA No. 1972/PUN/2013 for assessment year 2007-08, wherein the Tribunal upheld the action of Commissioner of Income Tax (Appeals) in restricting the addition to 15% of the income returned.

4. On the other hand Shri Pankaj Garg representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming the addition of 300% of the income disclosed by the assessee. The ld. DR pointed that the Commissioner of Income Tax (Appeals) in para 15 of the impugned order has specified the reason as to why he is not following his earlier order of restricting the addition to 15%.

4.1 In respect of the appeal filed by the Department the ld. DR submitted that the Commissioner of Income Tax (Appeals) has erred in restricting the addition in respect of income from house property to 15%. The reasoning given by the Commissioner of Income Tax (Appeals) in reducing the income from house property is without any merit.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. In this case we find that neither the return of income nor statutory Tax Audit Report u/s. 44AB of the Act has been filed by the assessee. The assessee has not even bothered to comply with the statutory notices issued by the Assessing Officer. There was absolutely non-cooperation and non-compliance of the provisions by the assessee company. Merely, tentative profit and loss account and Balance sheet for the Financial Year 2007-08 have been filed by the assessee. As per tentative financial statements the total income of the assessee is Rs.1,72,39,125/-. The Assessing Officer estimated the income of the assessee as three times of the total income disclosing in tentative financial statements. In First Appellate proceedings the Commissioner of Income Tax (Appeals) observed that Short Term Capital Gain earned by the assessee has not been brought to tax. Consequently, he issued enhancement notice and made addition of Rs.2,91,79,690/- under the head Short Term Capital Gain. This addition made by the First Appellate Authority has not been disputed by the assessee.

6. The Commissioner of Income Tax (Appeals) confirmed the action of Assessing Officer in making 300% addition qua 'Business Income'. The assessee in appeal has disputed the same in ground Nos. 1 and 2 of the appeal. The ld. AR pointed that in the immediately preceding assessment year the Assessing Officer had made similar addition. However, the Commissioner of Income Tax (Appeals) restricted the same to 15% of the return of income. We find that the Commissioner of Income Tax (Appeals) in the present assessment year has taken a conscious view of confirming the action of Assessing Officer in enhancing the 'Business Income' by

300%. The Commissioner of Income Tax (Appeals) has made a categorical observation in para 15 of the impugned order, that in the immediately preceding assessment year i.e. assessment year 2007-08 books of account were audited and the assessee had filed return of income in response to notice u/s. 148 of the Act. However, in the present assessment year neither the return has been filed nor the books have been audited. The Tribunal in appeal filed by the Revenue in ITA No. 1972/PUN/2013 (supra) has confirmed the findings of Commissioner of Income Tax (Appeals) in restricting the addition to 15% of the income returned. The assessee in the assessment year under appeal has furnished tentative financial statements declaring Business Income of Rs.64,36,734/-. The Revenue has made addition of Rs.1,93,10,202/- on mere estimation. We are in agreement with the view of the Commissioner of Income Tax (Appeals) that the facts of the present case are at variance as no audited accounts have been furnished by the assessee and there is no tax audit report u/s. 44AB of the Act. The income declared by the assessee in tentative financial results does not carry any sanctity, therefore, the ratio applied in A.Y. 2007-08 would not hold in good in A.Y. 2008-09. At the same time we are of considered view that 300% addition made by Revenue authorities is very much on the higher side. Taking into consideration entirety of facts we restrict the addition to 200% of the Business Income declared in the tentative financial statements filed by the assessee. Accordingly, ground Nos. 1 and 2 raised in the appeal by the assessee are partly allowed.

7. In ground No. 3 of the appeal the assessee has assailed that the authorities below have not considered the book profit declared by the assessee under MAT provisions i.e. u/s. 115JB of the Act. Since, we have granted part relief to the assessee in ground Nos. 1 and 2, we deem it

appropriate to remit ground No. 3 to the file of Assessing Officer for recomputing the taxable income after considering the addition confirmed by the Tribunal vis-à-vis the book profits declared by the assessee under the provision of section 115JB of the Act. The ground No. 3 raised in the appeal by the assessee is allowed for statistical purpose.

8. The ground No. 4 of the appeal by the assessee is general in nature, hence, requires no adjudication.

9. In the result, the appeal of assessee is partly allowed.

10. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) in restricting the addition to 15% of the income from house property. The Commissioner of Income Tax (Appeals) in the impugned order has observed that the assessee while computing income under the head Income from house property has claimed statutory deductions only. The ld. DR has not been able to substantiate infirmity in the order of First Appellate Authority. Accordingly, the ground No. 1 raised in the appeal by the Revenue is dismissed being devoid of merit.

11. In ground No. 2 of the appeal, the Revenue has assailed violation of Rule 46A. However, the ld. DR. has failed to point the fresh documents filed by the assessee before the Commissioner of Income Tax (Appeals). The ld. AR has stated at the Bar that the assessee has not filed any additional evidence before the Commissioner of Income Tax (Appeals). A perusal of the impugned order shows that the Commissioner of Income Tax (Appeals) has adjudicated the appeal of assessee without taking cognizance

of any additional evidence. Thus, in view of the above facts the ground No. 2 raised in the appeal by the Revenue is dismissed.

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

13. To sum up, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

Order pronounced on Tuesday, the 30th day of October, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th October, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. The Principal 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