

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 518 & 519/PUN/2017

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

The Assistant Commissioner of Income Tax,  
Circle-10, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Bhiva Shankar Rane,  
Gat No.52, Dehu Alandi  
Road, Talawade,  
Pune-412 114  
PAN : AARPR6579A

.....प्रत्यर्थी / Respondent

Revenue by : Shri Pankaj Garg

Assessee by : Shri M.K. Kulkarni

सुनवाई की तारीख / Date of Hearing : 24.01.2019

घोषणा की तारीख / Date of Pronouncement : 25.01.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the Revenue emanates from the separate orders of the Ld. CIT(Appeals)-6, Pune dated 10.11.2016 for the assessment years 2008-09 & 2009-10 as per grounds of appeal on record.

These appeals were heard together and since facts similar, issues common, these appeals are disposed of vide this consolidated order. We would take up the ITA No.518/PUN/2017 as lead case.

2. The brief facts in this case are that the assessee filed return of income on 30.09.2008 disclosing taxable income at Rs.60,54,000/-. The assessment was completed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') determining the total income at Rs.1,20,02,498/-. The assessment order of the Assessing Officer is treated as erroneous and prejudicial to the interest of the Revenue and therefore, order u/s.263 was passed by the Ld. CIT-V directing the Assessing Officer to redo the order. Thereafter, the assessee preferred appeal before the Income Tax Appellate Tribunal against the order passed by the Ld. CIT-V u/s.263 of the Act.

2.1 The Income Tax Appellate Tribunal, Pune in ITA Nos. 813/PN/2014 for the assessment year 2008-09 dated 12.08.2016 has allowed the appeal of the assessee wherein the 263 order passed by the Ld. CIT-V was set aside and quashed. The relevant portion of the Tribunal's order is reproduced below:

*"In the light of aforesaid discussion, we find that the action of the Commissioner is without authority of law and therefore cannot be sustained. In consequence, the order passed u/s.263 for the assessment year 2008-09 dated 28/03/2014 requires to be set aside and quashed.*

*In the result the appeal of the assessee in ITA No.813/PN/2014 relating to A.Y.2008-09 is allowed."*

3. The Ld. AR of the assessee vehemently argued that since the order u/s.263 of the Act based on which the consequential assessment order was passed, was itself quashed, therefore, the consequential assessment order was also liable to be quashed and the additions were deleted as per the order of the Ld. CIT(Appeals).

4. The Ld. DR fairly conceded to these facts.

5. We have perused the case records and analyzed the facts and circumstances in this case. We find that the additions made in the

assessment order was in consequence to the 263 order passed by the Ld. CIT(Appeals)-V, Pune. That on appeal before the Income Tax Appellate Tribunal, Pune, the 263 order of the Ld. CIT-V, Pune was quashed. In such scenario, the consequential assessment order also cannot sustain. Therefore, the Ld. CIT(Appeals) has rightly deleted the additions. We do not find any infirmity in the findings of the Ld. CIT(Appeals) and relief provided to the assessee, is therefore, sustained. Hence, grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue in ITA No.518/PUN/2017 is dismissed.

7. In other appeal in ITA No. 519/PUN/2017 filed by the Revenue, the facts and circumstances of the case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.518/PUN/2017 shall apply. Therefore, for this case also, we do not find any infirmity in the findings of the Ld. CIT(Appeals) and relief provided to the assessee, is therefore, sustained. Hence, grounds raised by the Revenue are dismissed.

8. In combined result, appeals of the Revenue for assessment years 2008-09 & 2009-10 are dismissed.

Order pronounced on 25<sup>th</sup> day of January, 2019.

Sd/-  
**R.S. SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> January, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-6, Pune.
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.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	24.01.2019	Sr.PS/PS
2	Draft placed before author	25.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		