

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

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2744/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. M.B. Gharpuray Engineers &  
Contractors.  
838, Anohar Residency, Agarkar Road,  
Shivaji Nagar, Pune-411 016.  
PAN : AACFM4994R

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax-2,  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare

Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 26.02.2019

घोषणा की तारीख / Date of Pronouncement : 28.02.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of Ld. Pr. Commissioner of Income Tax-2, Pune dated 30.03.2017 passed u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

Though the assessee has filed multiple grounds of appeal and revised grounds of appeal, the crux of the grievance of the assessee is with regard to the invoking of jurisdiction u/s. 263 of the Act by the Ld. Pr. Commissioner of Income Tax.

2. At the outset, we notice that the appeal is time-barred by 137 days for which condonation of delay petition along with affidavit has been filed by the assessee. That on perusal of these documents, it is evident that the delay was caused due to the reasons beyond the control of the assessee and more specifically, the assessee acted upon the advice of his consultant and while acting on advice, this present delay has occurred. We have given thoughtful consideration to the condonation of delay petition as well as affidavit and in all judicial fairness, we observe that the grounds for delay are justified and therefore, we condone the delay and proceed to hear the appeal on merit.

3. The facts in this case which has given rise to the order passed u/s.263 of the Act by the Ld. Pr. Commissioner of Income Tax is that the assessment was completed u/s.143(3) of the Act at total income of Rs.1,77,78,593/-. Subsequent to this, upon verification of case records, it was seen that the assessee had written off the sales tax refund of Rs.10.32 lakhs and claimed it as an expense. It was further noticed that the assessee has written off work contract TDS of Rs.10,48,049/- as well and claimed such amount as well as an expense. The Pr. Commissioner of Income Tax observed that prima facie such claims are legal statutory claims and cannot be written off as bad debts, therefore, such claims should have been added back by the Assessing Officer which he has not done while passing assessment order. Therefore, the notice u/s.263 of the Act was issued on 01.03.2017 to revise the above assessment order being erroneous, prejudicial to the interest of the Revenue.

4. That on perusal of the notice issued u/s.263 of the Act which is annexed at page No.1 in the paper book filed before us, in para 3 therein, it is mentioned that :

*“3. On verification of case record it is noticed that :*

*You have made a wrongful claim of Rs.24,58,032/- on account of writing off sales tax refund and WCT TDS refund.”*

5. The Ld. AR of the assessee at the time of hearing invited our attention to page 1 of the second paper book which contains copy of notice issued u/s.142(1) of the Act dated 11.08.2014 wherein certain details were called for from the assessee including copy of return of income along with computation of income, Audited Balance Sheet, Tax Audit report, PAN of all the partners, contact details and 26AS etc. This notice is scanned and annexed as a part of this order as **Annexure -1**.



सत्यमेव जयते

OFFICE OF THE  
DY. COMMISSIONER OF INCOME TAX, CIRCLE-3,  
1<sup>st</sup> Floor, 'A' Wing, PMF Building,  
Shankarshet Road, Swargate, Pune - 411 037.  
Ph. No. 020-24464364

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**NOTICE UNDER SUB-SECTION(1) OF SECTION 142 OF THE INCOME TAX  
ACT,1961**

PAN: AACFM4994R

Date: 11.08.2014

To,  
M B GHARPURAY ENGINEERS AND  
CONTRACTORS  
838, ANOHAR RESIDENCY, AGARKAR ROAD,  
SHIVAJINAGAR, PUNE

Sir/Madam,

In connection with the assessment for the assessment year 2012-13, you are required to:

- (a) Produce or cause to be produced before me at my office at above address on 21/08/2014 at 11.00 A.M the accounts and/or documents specified as under;
- (b) Furnish in writing and verified in the prescribed manner information called for as per the annexure/s and on the points or matter specified therein, before me at my office at above address, on 21/08/2014 at 11.00 A.M

Seal



*Udal Raj Singh*  
(Udal Raj Singh)  
Dy. Commissioner of Income Tax  
Circle-3, Pune

**Annexure**


- i) Copy of Return of income alongwith computation of income.
- ii) Audited Balance Sheet/ Tax Audit Report (if applicable).
- iii) Contact details viz Telephone No./ Cell No./ Fax No./ e-mail address, PAN of all the partners (if you are a firm), of all the directors (if you are a company), of all the key persons (in any other case).
- iv) 26AS and its reconciliation with return of income
- v) Bank statements of all bank accounts (CA/CC/Savings)

5.1 The Ld. AR of the assessee, thereafter, referred to page 2 of the paper book wherein another notice was issued u/s.142(1) dated 29.12.2014 along with details questionnaire by the Assessing Officer. In that questionnaire,

Item No. 6 refers to details of other expenses. This notice along with questionnaire is also made part of this order and annexed herein as

**Annexure-2.**

2



OFFICE OF THE  
DY. COMMISSIONER OF INCOME TAX, CIRCLE-3,  
1<sup>st</sup> Floor, 'A' Wing, PMT Building,  
Shankarshet Road, Swargate, Pune – 411 037.  
Ph. No. 020-24464364

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**NOTICE UNDER SUB-SECTION(1) OF SECTION 142 OF THE INCOME TAX ACT,1961**

PAN: AACFM4994R Date: 29.12.2014


To,  
M/s. M B GHARPURAY ENGINEERS AND CONTRACTORS  
838, ANOHAR RESIDENCY, AGARKAR ROAD,  
SHIVAJINAGAR, PUNE

Sir/Madam,


In connection with the assessment for the assessment year **2012-13**, you are required to:

(a) Produce or cause to be produced before me at my office at above address on **12.01.2015** at **10.35 A.M.** the accounts and/or documents specified as under;

(b) Furnish in writing and verified in the prescribed manner information called for as per the annexure/s and on the points or matter specified therein, before me at my office at above address, on **12.01.2015** at **10.35 A.M.**



Seal



(Uodal Raj Singh)  
Dy. Commissioner of Income Tax  
Circle-3, Pune

**Annexure Enclosed**

4

4. Please reconcile the AIR and CIB data with the return of income and investments made during the year. *not mentioned in 24th*

5. Please reconcile the form 26 AS with the return of income. *Already Submitted*

6. Please give details of other expenses. *None*

7. As regards payment made to sub-contractors, please furnish following information :-

Sr. No	Name and address of the sub-contractor	Nature of sub-contract work assigned	Total value of sub-contract	Sub-contract work completed during the year	Sub-contract bills put up for payment	Sub-contract charges paid during the year	TDS with rate

8. As regards labour charges debited in the P&L A/c, please furnish details with rate and basis. If sub-contract was given, please furnish information in the following format :-

Sr. No.	Name and address of sub-contractors	Nature of labour jobs	Contract amount	Bill put up by sub-contractor	Amount paid to sub-contractor	TDS with rate

9. Give ledger of Gharpuray construction Pvt. Ltd. for AY 2010-11, 2011-12 & 2012-13

10. A copy of return of Gharpuray construction Pvt. Ltd.

5.2 Thereafter, the Ld. AR of the assessee referred to pages 25 and 26 of the paper book which is the reply to the Assessing Officer regarding the 'Bad debts/ Sundry debit balances' wherein the assessee categorically stated that sum of Rs.24.58 Lakhs has been written off by way of bad and irrecoverable debts and sundry debit balances which are as under:

Sales tax refund Bihar	Rs.10,32,097.62
Works contract TDS	Rs.10,40,989.00

In this connection, the assessee has explained each of the heads i.e. Sales Tax Refund, Bihar and Works contract TDS.

5.3 The Ld. AR of the assessee emphasized on the fact that all these enquiries were conducted adequately by the Assessing Officer and assessee has given reply to each of the query as and when Revenue Authorities have

asked for. Therefore, it is not appropriate that Pr. Commissioner of Income Tax assumes revisionary jurisdiction u/s.263 of the Act stating assessment to be erroneous and prejudicial to the interest of the Revenue. Pages 25 and 26 of the paper book are also made part of this order and annexed herein below as **Annexure-3** and **Annexure-4**:

### **ANNEXURE-3**

## **M. B. GHARPURAY ENGINEERS & CONTRACTORS**

(Registered)

838, Shivaji Nagar, Pune - 411 004.

Telephone: +91 20 2565 5483  
Fax : +91 20 2565 4186

e-mail : [mbgeandc@gmail.com](mailto:mbgeandc@gmail.com)

25

.....4.....

There are sub-contractors (other than labour sub-contractors ) who are tendering Construction-related services of an assorted nature. As you know, we are operating in hilly, non-urban and mofussil areas. We have to enlist the services of various other sub-contractors as and when they are needed, and we have to source them locally generally from well-acquainted and reliable people. These parties are local, within Maharashtra, and not from West Bengal, Bihar etc. *Sample Bills are Reattached.*

#### **(7) Hutting**

We are constructing bridges in hilly, jungle and mofussil areas. The contract runs for 3-4 years at a stretch. We have to employ gangs of labour round the clock. They have to be provided temporary residential quarters at the work sites which are called Hutting. Even under the contract with the Government we are required to provide these basic amenities to labourers at work sites and perforce we are required to spend on providing such hutting. The expenditure is wholly and exclusively for business.

#### **(8) Bad debts / Sundry debit balances**

We have written off a sum of Rs. 24.58 lac by way of bad and irrecoverable debts and sundry debit balances. The details are on record. Included in these are the following:-

Sales tax refund Bihar	=	Rs.10,32,097.62
Works contract TDS (Prior to 01-04-2005)	=	Rs.10,40,989.00

In this connection we have to explain as under:-

#### **a) Sales Tax Refund, Bihar :-**

More than 10 to 12 years ago, we had carried out certain bridge construction works in Bihar. There was a refund of Rs.10.32 lac resulting from the Sales tax assessments in relation to the said works in that State. Till today, despite rigorous efforts, representations at various levels, etc., for one reason or another, we have been totally unsuccessful in getting the authorities to issue the refund. For this reason, we had taken a decision during the year under consideration to write off the said amount as bad and irrecoverable.

**ANNEXURE-4****M. B. GHARPURAY ENGINEERS & CONTRACTORS**

(Registered)

838, Shivaji Nagar, Pune - 411 004.

Telephone: +91 20 2565 5483  
Fax : +91 20 2565 4186e-mail : [mbgeandc@gmail.com](mailto:mbgeandc@gmail.com)

26

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**b) Works contract TDS**

This amount represents work contract tax deducted at source out of Running Account bills for various works taken up and completed during accounting years 2000-2001 to 2004-2005. In this connection, it is pertinent to note that even after 7-8 years the assessments were not taken up and generally the experience has been that refunds are not given for one reason or another. Please note that the W.C. assessments for those five years have recently been completed and we have been given a paltry refund of just Rs.70,000/- (as against refund claim of Rs.10.41 lac.) and even this has not been given many months after completion of the Assessments TILL DATE. The amount of Rs.10.41 lac was a book refund. In view of this, total denial of the refund, it was thought fit to write it off. Accordingly, it was so written off during the year under assessment.

**(9) Jai Ambe Steel Company**

From this party, we had purchased steel required in bridge construction. The party had issued regular invoices charging VAT for supply along with delivery challans for the goods (steel) delivered at site from time to time. It appears, delivery challans are retained in site store records at material time. Delivery challan numbers are mentioned on invoices. Steel is a very important commodity and Government also exercises some control over its use and consumption in bridge work. Moreover, we have a practice whereby "Goods Received" stamp under the initials of Store in-charge is put on the invoices. A xerox copy each of the invoices bearing "Goods Received" Stamp are enclosed for ready reference. Further we have paid the bill amounts to the party by Crossed and A/c payee cheques. We trust, in view of this you will appreciate that the transactions are in order.

We trust your goodself will find the above in order so as to complete our assessment for which we thank you.

Yours faithfully,

For M.B.Gharpuray Engineers &amp; Contractors



Partner

Encl: As above.

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5.4 The Ld. AR further pointed out that even for the Revenue Audit Query on the issue, they have notified to the Assessing Officer on the issue which are annexed in pages 17 and 18 of the paper book and are made part of this order as **Annexure-5** and **Annexure-6**:

**ANNEXURE-5****M.B.GHARPURAY ENGINEERS & CONTRACTORS**

Email : mbgeandc.com 838, SHIVAJINAGAR, ANOHAR RESIDENCY, PUNE 411004  
TEL 020 25655483 / FAX 020 25654186

Ref. : ITEC/1647

Date : June 08, 2015 (17)

To  
The Deputy Commissioner of Income-tax,  
Circle - III, PMT Building, Shankarsheth Road,  
Swargate, Pune.

Re: **Our Income-tax Assessment for Asst. Year 2012-13 - Reply to Revenue Audit Query**  
**P. A. No. AACFM4994R.**

Sir,

We learnt from your office today that the Revenue Audit has raised a query regarding the amount of VAT debited in Profit & Loss Account for year ending 31.03.2012. In this connection we wish to clarify as under :

We are liable to pay VAT under MVAT Act 2002 & the amount debited on this account to the Profit & Loss Account is Rs. 44,41,325/- which represents **VAT paid** under the said Act. It appears that the official concerned has an impression that this is an amount that represents some kind of "write off" of refund as was written off during the previous Assessment Year i.e. Asst. Year 2011-12.

In this connection we wish to clarify that what was claimed in Asst. Year 2011-12 was on two counts as under :

- 1] Amount shown in Balance Sheet as refundable on account of VAT in relation to Accounting Years 2006-07 to 2009-10 but written off as unlikely to be received substantially for various reasons.
- 2] Input VAT and VAT TDS, actually paid during Accounting Year 2010-11 and claimed as deduction - **not a WRITE OFF** - as VAT PAID (u/s 43B on payment basis). **It will, therefore, be appreciated that the so-called "Write off" pertains to refundable amounts for prior years and not for Asst. Year 2011-12.**

In these circumstances we hope your goodself will appreciate that the deduction sought for year under assessment i.e. Asst. Year 2012-13 is not a "Write Off" of refund **but it is actually VAT paid** under the MVAT Act in the form of input VAT (on purchases) and VAT TDS (deducted at source), the two being treated as VAT paid under MVAT Act 2002.

We trust that the above explanation will meet with your requirements.

We thank you.

Yours faithfully,  
**For M. B. Gharpuray Engineers & Contractors**

*R M Gharpuray*  
**R M Gharpuray**  
**(Partner)**



*Handwritten notes and signatures in the right margin.*

**ANNEXURE-6**

**M.B.Gharpuray Engineers and Contractors**

18

**Assessment for Asst. year 2012-13**

**Note**

The amount of Rs.10,32,097.62 (written off as bad and irrecoverable) represents sales tax (works contract tax) deducted at source under Bihar Sales tax law during Accounting years 1989-90 to 1992-93 by the authorities of Border Roads Organization (Govt. of India) in respect of our Contract of **Design and Construction of major bridge across river Jamunia (Crossing - II) at Km. 6.57 on road Dumbra-Chandrapura in Project Hirak under Border Roads Organisation.** The work contract tax liability in relation to this work was met by our then sub-contractor (who executed the work). We were hence entitled to refund of the amount of abovementioned TDS of Rs.10,32,097.62 which was determined in the course of our Sales tax Assessment proceedings for accounting years 1989 - 90 to 1992-93. **It will kindly be see that the refund pertains to these four years and thus it is outstanding since 20 years.** We would like to explain here that the refund arose since the subcontractor met the liability out of his pocket and this TDS could not be utilized for meeting such liability on technical grounds and hence the refund due to us!

Since then we have pursued the matter of refund relentlessly with the authorities in Sales tax department at Katras in Bihar. We had met officials up to the level of Finance Ministry also in addition to meeting authorities upto Commissioner in the Sales Tax Dept. But unfortunately all these efforts have proved futile **and till date we have not received even one rupee of the refund.** After that year we did not have any project in Bihar and hence after pursuing the matter of refund at all levels for a number of years, **lately we have given up. It will thus be appreciated that the refund is OVER 20 YEARS OLD and only after being convinced about the futility of pursuing, we have given up and taken a prudent decision to write off the said amount as bad and irrecoverable DURING THE PREVIOUS YEAR ENDING 2011-12 i.e. Asst. year 2012-13.**

*given to maximum  
as directed by Shri V.R. Singh  
in 1985*

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① Sub Contractor was  
MBC Co.

② Actual refund in ) > had  
odd  
Bal. was  
- cash  
Expenses  
for interest  
were left

5.5. The Ld. AR of the assessee further submitted that no action u/s.263 of the Act is warranted since the Assessing Officer completed assessment u/s.143(3) of the Act after calling for voluminous details of various items, duly considering them along with the submissions of the assessee and it is not that entire return income was accepted by the Assessing Officer, Assessing Officer completed assessment after making disallowance of nearly Rs.3.41 Lakhs. Further, details of "Sundry Debit Balances written off" were also called for and submitted and queries raised thereon were also duly answered and then accepted. It is also demonstrated that queries raised by Audit was also explained before the Assessing Officer.

5.6 The Ld. AR further relied on the following decisions:

- i) CIT Vs. Vodafone Essar South Ltd., ITA No.119/2012, 212 TAXMAN 184
- ii) Director of Income Tax Vs. Jyoti Foundation, ITA No.267/2013, 357 ITR 388 (Delhi)

6. Per contra, the Ld. DR has placed reliance on the order passed by the Ld. Pr. Commissioner of Income Tax u/s.263 of the Act.

7. We have perused the case record and heard the rival contentions and have given thoughtful consideration to the judicial pronouncements placed before us. At the time of hearing, the Ld. AR of the assessee demonstrated that vide notice u/s.142(1) of the Act and questionnaire issued, details with regard to writing off Sales Tax refund and Works Contract TDS refund was called for by the Assessing Officer, specifically Item-6 in the questionnaire calling for details of other expenses. Thereafter, the assessee has also filed written reply to these queries and explained in details regarding Sales Tax Refund, Bihar and Works Contract TDS. We also observe even for the Audit

query, the assessee has appraised the matter before the Assessing Officer and again on the same issue the Ld. Pr. Commissioner of Income Tax has invoked revisionary jurisdiction u/s. 263 of the Act. Therefore, as on facts, the issue was adequately enquired upon by the Assessing Officer and similarly, the reply was also furnished by the assessee.

That regarding legal aspects on the matter, we take guidance from the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Vodafone Essar South Ltd. (supra.) where it has been held that the records revealed that the assessee was specifically queried regarding the nature and character of the charges involved. The Hon'ble High Court further held that it is not a case of 'No Enquiry' as specific queries were made by the Assessing Officer and those were duly replied. In such circumstances, Ld. Pr. Commissioner of Income Tax could not have validly exercised revisionary power u/s.263 of the Act and Revenue's appeal was dismissed.

8. That in the present case, the assessee was adequately enquired upon by the Ld. Assessing Officer at the time of assessment itself and replies on the issue was filed by the assessee before the Assessing Officer and also at the time of Audit query. The legal perspective is very clear that once Assessing Officer has done detailed query on the issue and the assessee has given reply regarding the same on the same issue, the Ld. Pr. Commissioner of Income Tax could not invoke jurisdiction u/s. 263 of the Act. It is just a case of plausible opinion but it cannot be said that assessment was erroneous so as to be prejudicial to the interest of the Revenue. Once the Assessing Officer has done necessary enquiry on the matter, the Ld. Pr. Commissioner of Income Tax may be of the view that enquiry should have been conducted in some other manner. It is just a question of another view of the matter but

that does not warrant the Pr. Commissioner of Income Tax should invoke the revisionary jurisdiction u/s.263 of the Act.

9. In view of our aforesaid findings and examination of the issue, we hold that resorting to revisionary jurisdiction by Ld. Pr. Commissioner of Income Tax and consequent order passed u/s.263 of the Act in the case of the assessee is arbitrary, unwarranted and bad in law and accordingly, we direct to quash the order passed u/s.263 of the Act.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 28<sup>th</sup> day of February, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

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

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> February, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. Commissioner of Income tax-2, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	26.02.2019	Sr.PS/PS
2	Draft placed before author	27.02.2019	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		