

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA Nos.765 & 768/PUN/2017

निर्धारण वर्ष / Assessment years : 2006-07 & 2011-12.

Gulab Maharu Badgujar (HUF),
204, Pashupatinath, C-02, B-Wing,
Mahadev, Nashik Sankalp Complex,
Gandhar Village Near Khadalpade Chowk,
Kalyan (W), Thane – 421 301.

..... अपीलार्थी /
Appellant

PAN : AAEHG6745C.

बनाम v/s

The Asst. Commissioner of Income-Tax,
Central Circle – 2, Nashik.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 17.06.2019	घोषणा की तारीख / Date of Pronouncement: 27.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the assessee are emanating out of the consolidated order of Commissioner of Income Tax (Appeal) – 12, Pune dated 11.01.2017 for A.Ys. 2006-07 and 2008-09 to 2011-12.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the assessee are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of

convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts in ITA No.765/PUN/2017 for assessment year 2006-07.

3. The sole ground raised by the assessee in A.Y. 765/PUN/2017 for A.Y. 2006-07 reads as under :

“On the facts and in the circumstances of the case and in Lower Authorities have erred in making an addition of Rs.19,00,000/- by rejecting appellant’s contention and also by rejecting the documentary evidences on record, the addition being arbitrary and based on surmises and guesswork, same is bad in law and entire addition needs to be deleted.”

4. Similar ground has been raised by the assessee in ITA No.768/PUN/2017 for A.Y. 2011-12.

5. First we shall take up appeal in ITA No.765/PUN/2017 for A.Y. 2006-07.

6. Before us, Ld.A.R. submitted that initially order u/s 143(3) r.w.s. 147 of the Act was passed by AO on 14.02.2014. Thereafter Ld.CIT called for the assessment records and after examination of assessment records, he came to the conclusion that the assessment order passed by AO was erroneous and prejudicial to the interest of Revenue. He accordingly vide order dated 19.03.2015 passed u/s 263 of the Act, set aside the order of AO and directed him to reframe the assessment as per the directions contained therein. Against the order passed by Ld.CIT u/s 263 of the Act wherein he had set aside the order of AO, assessee had carried the matter before the Tribunal. He submitted that the Co-ordinate Bench of the Tribunal vide order dated 03.05.2019 in ITA No.798 & 799/PUN/2015 held that revisionary proceedings exercised by Ld.CIT to be not correct and accordingly set aside the order of Ld.CIT. He placed on record the copy of

the aforesaid order of the Tribunal and pointed to the relevant findings of the Tribunal. In such a situation, he submitted that the consequential order passed by the AO does not survive. He therefore submitted that impugned consequential order be set aside as it does not survive. Ld. D.R. on the other hand did not controvert the submissions made by Ld.A.R. but however supported the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. It is an undisputed fact that in the present case Ld.CIT vide order dt.19.03.2015 passed u/s 263 of the Act had set aside the order passed by AO u/s 143(3) r.w.s. 147 of the Act. Against the order passed by Ld.CIT passed u/s 263 of the Act for A.Ys 2006-07 and 2011-12, assessee had carried the matter before the Tribunal. The Tribunal vide order dt.03.05.2019 had held the revisionary proceedings exercised by Ld.CIT to be not correct and therefore had set aside the order passed by CIT u/s 263 of the Act for both the years. In such a situation, when the original order of Ld.CIT passed u/s 263 of the Act has been set aside, the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the Act does not survive. Thus, the ground of the assessee in ITA No.765/PUN/2017 for A.Y. 2006-07 is allowed.

8. In the result, the appeal of assessee in ITA No.765/PUN/2017 for A.Y. 2006-07 is allowed.

9. Now, we take up assessee's appeal in ITA No.768/PUN/2017 for A.Y. 2011-12.

9.1. As far as the ground raised in appeal in ITA No.768/PUN/2017 for A.Y. 2011-12 is concerned, in view of the submission of both the parties

that the facts of the case in the year being identical to the facts and issue of the case in ITA No.765/PUN/2017 for A.Y. 2006-07, we therefore for the reasons stated herein while disposing of the appeal in ITA No.765/PUN/2017 for A.Y. 2006-07 and for similar reasons hold that the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the Act does not survive. **Thus, the ground of assessee is in ITA No.768/PUN/2017 for A.Y. 2011-12 is allowed.**

10. **To sum up, both the appeals of assessee are allowed.**

Order pronounced on 27th day of June, 2019.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 27th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1 – Kolhapur.
4. Pr. CIT – Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” / DR, ITAT, “A” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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