

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

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1861/PUN/2018

निर्धारण वर्ष / Assessment year : 2009-10

The Income Tax Officer,
Ward 6(4), Pune.

..... अपीलार्थी /
Appellant.

बनाम v/s

Yusuf Gulammohammed Patel,
Flat No.12, Madani Society,
30, Ghorpade Peth,
Pune - 411 042.

..... प्रत्यर्थी /
Respondent

PAN : ANZPB4042M.

Assessee by : None.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 15.07.2019	घोषणा की तारीख / Date of Pronouncement: 24.07.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) - 4, Pune dt.02.08.2018 for the assessment year 2009-10.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be engaged in the business of M.S. Plate and Profile Cutting. Assessee filed his return of income for A.Y. 2009-10 on 30.09.2009 declaring total income at Rs.4,12,410/-. The return was duly processed u/s 143(1) of the Act. On receipt of information from the Office of Director General (Inv.) Pune regarding Hawala transactions amounting to Rs.27,42,943/- for A.Y. 2009-10 wherein the

assessee was one of the beneficiaries, who availed accommodation entries from Rashmi Enterprises, notice u/s 148 of the Act was issued. Subsequently, notice u/s 142(1) of the Act dt.19.12.2014 along with questionnaire was issued. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.25.03.2015 and the total income was determined at Rs.31,55,353/- inter-alia by making addition of Rs.27,42,943/- being bogus purchases. On such addition of Rs.27,42,943/- AO vide order dt.08.07.2015 passed u/s 271(1)(c) of the Act levied penalty of Rs.9,26,263/-. Aggrieved with the penalty order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.02.08.2018 (in appeal No.PN/CIT(A)-3/Wd 3(1), Pn/261/2015-16) V/ITO Wd.9(3)/138/2013-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the grounds which are argumentative in nature and therefore not reproduced but the only grievance of the Revenue is with respect to the deletion of penalty of Rs.9,26,263/- u/s 271(1)(c) of the Act.

3. The case file reveals that on the date of hearing none appeared but however an adjournment application was filed. Before us, Ld.D.R. fairly admitted that the tax effect involved in the present appeal of Revenue is below the monetary limit prescribed by CBDT Circular dated 11.07.2018. In view of the aforesaid submission of Ld.D.R. and based on the material available on record, we proceed to dispose of the appeal ex-parte qua the assessee.

4. We have heard the Ld. D.R. and perused the material available on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of ld. CIT(A) in respect of deletion of penalty of Rs.9,26,263/-. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 11.07.2018 (Circular No. 3 of 2018),

no Department appeals are to be filed against relief given by Id. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.20 lakhs and it further states that the instructions will apply retrospectively to the pending appeals also. In the present case, it is an undisputed fact that on the addition which is in dispute, the tax effect is less than Rs.20 lakhs. In the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect and accordingly dismiss the appeal of Revenue without expressing any opinion on merits of the case. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. **Thus, the grounds of the Revenue are dismissed.**

5. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 24th day of July, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 24th July, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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