

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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.1114/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Dy. Commissioner of Income Tax,  
Circle – 1(1), Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. B.G. Shirke Construction  
Technology Pvt. Ltd.,  
72-76, Industrial Estate,  
Mundhwa, Pune – 411036

PAN : AAACB7293D

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 24-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 27-02-2017 for the assessment year 2013-14.

2. The Revenue has assailed the findings of Commissioner of Income Tax (Appeals) by raising following grounds :

*“1. The order of the Ld. Commissioner of Income-tax (Appeals) is contrary to the law and on facts and in the circumstances of the case.*

*2. The Ld.CIT(A) erred in deciding that retention money has to be taxed in the year of receipt and not on accrual basis even though assessee is following mercantile system and assessee has debited all expenditure related to such contract receipt including retention money.*

*3. The Ld. CIT(A) erred in confirming the view of assessee that retention money has to be excluded in computation of income, although the same has been shown as receipt during the year and credited in profit and loss account.*

*4. The Ld. CIT(A) erred in confirming the view of assessee that retention money has to be excluded in computation of income in view of decision of the Bombay High Court in the case of Associated Cables (P.) Ltd. Vs. Dy.CIT [2006] reported in 286 ITR 596 (Bom.) although the facts of present case is distinguished.*

*5. For these and such other grounds as may be urged at the time of hearing, the order of Ld. Commissioner of Income Tax (Appeals) may be vacated and that of the Assessing Officer be restored.*

*6. The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted at the outset that in the immediately preceding assessment year i.e. assessment year 2012-13 similar addition was made by the Assessing Officer. In first appeal, the Commissioner of Income Tax (Appeals) deleted the addition. The Department carried the issue in appeal before the Tribunal in ITA No. 2771/PUN/2016. The Tribunal vide order dated 07-09-2018 upheld the findings of First Appellate Authority and deleted the addition.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the assessment order. However, the ld. DR fairly admitted that identical issue has been considered by the Tribunal in appeal by the Department in assessment year 2012-13.

5. Both sides heard. Orders of the authorities below perused. The solitary issue raised in appeal by the Department is against deleting the addition of retention money. We find that this issue is recurring in nature.

The Assessing Officer made addition of retention money in assessment years 2003-04, 2006-07, 2007-08, 2008-09, 2011-12 and 2012-13. The Tribunal has been consistently deleted the addition in the hands of assessee. The Commissioner of Income Tax (Appeals) in the impugned order has deleted the addition by following the order of Tribunal in preceding assessment year. The ld. AR has placed before us a copy of the order passed by the Co-ordinate Bench of Tribunal in the appeal filed by the Department in ITA No. 2771/PUN/2016 for assessment year 2012-13 decided on 07-09-2018. We observe that the Revenue in present appeal has raised identical ground as were raised in the immediately preceding assessment year. The Co-ordinate Bench decided the issue in favour of assessee by observing as under :

*“5. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The solitary issue raised in present appeal by the Revenue is against deleting addition of retention money. We find that this issue is recurring since assessment year 2003-04. The Tribunal for the first time in bunch of appeals in assessee’s own case in ITA Nos.727 to 730/PN/2012(supra.) after considering the assessee’s claim, in principle directed for exclusion of retention money subject to verification of quantum. Thereafter, the Tribunal in appeal of the assessee for assessment year 2010-11 (ITA No.1146/PM/2014) & assessment year 2011-12 (ITA No.1330/PUN/2015) has taken a consistent view in deleting the addition subject to verification in similar terms. For the sake of completeness, the relevant extract of the findings of the Tribunal in ITA No.727 to 730/PN/2010(supra) are reproduced herein below:*

*“25. In so far as the merits of the claim is concerned, no doubt in principle the same is covered by the ratio of the judgement of the Hon'ble Bombay High Court in the case of Associated Cables P. Ltd. (supra). The assessee has also furnished the year-wise working of the claim of excluding income on account of retention money for the assessment years in question. Such details are placed in the Paper Book filed before us and it has been asserted that the same was also available on the record of the authorities below. Ostensibly, the Assessing Officer as well the CIT(A) have not examined the merits of the claim because the same was rejected at the threshold itself. At the time of hearing, the appellant has preferred Additional Grounds of Appeal re-quantifying the claim for assessment years 2007-08 and 2008-09 in the event of similar claims not being found exigible for assessment years 2003-04 and 2006-07. In order to enable the Assessing Officer to verify the workings of the claim for assessment years 2007-08 and 2008-09, we restore the matter back to the file of the Assessing Officer. The Assessing Officer shall examine the working of the claim made by the assessee, including the revised workings consequent to non-admission of similar claim for assessment years 2003-04 and 2006-07, and thereafter allow the appropriate claim as per law. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of furnishing appropriate details in support of the claim and only thereafter the Assessing Officer shall adjudicate it as per law and re-compute the total income accordingly for the assessment years 2007-08 and 2008-09.”*

*The issue has been laid to rest by the Tribunal holding exclusion of retention money and the Revenue has not brought on record any contrary decision. Thus, in the light of the orders of Tribunal in assessee's own case for earlier assessment years, we uphold the findings of Commissioner of Income Tax (Appeals) and dismiss the grounds raised by the Revenue."*

6. Since, no new fact has been brought on record by the Department, we find no reason to take a different view. The appeal of Revenue is dismissed for the parity of reasons given by the Co-ordinate Bench while deciding the appeal of Revenue in assessment year 2012-13.

7. In the result, appeal by the Revenue is dismissed.

Order pronounced on Thursday, the 01<sup>st</sup> day of August, 2019.

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

पुणे / Pune; दिनांक / Dated : 01<sup>st</sup> August, 2019.

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)-1, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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