

आयकर अपीलीय 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.199/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of Income Tax,
Jalna Circle, Jalna

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Meta Rolls & Commodities Pvt. Ltd.,
Gut No. 48, Additional MIDC,
Jalna - 431203

PAN : AADCM3474C

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.212/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of Income Tax,
Jalna Circle, Jalna

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Rajuri Steel Pvt. Ltd.,
E-12, Phase-II, Additional MIDC,
Jalna - 431203

PAN : AABCR5546A

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Rahul Kaul & Anand Partani
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 15-07-2019

घोषणा की तारीख / Date of Pronouncement : 06-08-2019

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

These two appeals by the Revenue are in the case of two different assessee. Since, the issue involved in both the appeals is identical, these appeals are decided vide this common order. For the sake of convenience we will first take up the appeal in ITA No. 212/PUN/2018.

ITA No. 212/PUN/2018

2. The Revenue has assailed the findings of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 06-11-2017 for the assessment year 2011-12. The solitary issue raised in the appeal by the Revenue is against deleting the addition made by Assessing Officer on account of profits from alleged suppressed sale/ clandestine removal of goods.

3. Shri Rahul Kaul and Shri Anand Partani appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing of TMT Bars. The assessment u/s. 143(3) of the Act was made by Assessing Officer vide order dated 18-06-2013. The Assessing Officer inter alia made addition of Rs.19,33,180/- on account of clandestine removal of goods. Thereafter, Pr. Commissioner of Income Tax invoked provisions u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The ld. AR submitted that the assessee had challenged revision order u/s. 263 of the Act before the Tribunal in ITA No. 1026/PUN/2016 for the assessment year 2011-12. The Tribunal vide order dated 20-09-2017 modified the order passed u/s. 263 and restricted the addition to 4% of the alleged suppressed/unaccounted sales. The ld. AR furnished the copy of order of Tribunal in assessee's own case in ITA No. 1026/PUN/2016 (supra).

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the assessment order passed in consequent to order of Pr. Commissioner of Income Tax u/s. 263 of the Act. The ld. DR submitted that the addition may be restricted to the extent upheld by the Tribunal.

5. Both sides heard. Orders of the authorities below perused. We find that the issue raised in appeal by the Revenue has already been adjudicated by the Tribunal in assessee's own case in proceedings u/s. 263 of the Act. The Commissioner of Income Tax (Appeals) following the decision of Tribunal has granted relief to the assessee. For the sake of completeness the relevant extract of the findings of Tribunal on the issue are as under :

"14. However, the direction by the Pr.CIT as given in Para 4 of his order is required to be amended since there is direction existing on the extent of loss of Revenue by virtue of the order of the Tribunal in the earlier assessment years in ITA Nos. 289 to 291/PN/2012 and ITA Nos. 426 to 428/PN/2012 for the Assessment Years 2006-07 to 2008-09 order dated 05-08-2015 r.w. corrigendum order dated 17-02-2016. We proceed to extract the relevant paragraph which reads as under :

"3. On perusal of the record, we find that by an error, the findings of the Tribunal in Para 14 with special reference to from line 5 to 7, needs correction to the extent that the additional income to be added in the hands of the assessee is equivalent to profits on suppressed production @4% or actual GP rate declared by the assessee whichever was higher. In view thereof, we pass this corrigendum order and the Para 14, i.e. from line 45 to 7 would now be substituted by following para :

"14. However, the AO is directed to include additional income in the hands of assessee on account of clandestine removal of goods without payment of excise duty as admitted by assessee before DCGEI, Aurangabad. Accordingly, we direct the Assessing Officer to verify from the records for the respective years and include in the hands of assessee, the additional income @4% or actual G.P. rate declared by the assessee for that year whichever is higher on value of such admitted clandestine removal of material without payment of Excise duty, by the assessee before the Excise authorities. Thus, the assessee is directed to file the requisite details of proceedings

before the Excise authorities, before the Assessing Officer in order to compute the additional income in the hands of assessee in the respective years.”

4. Consequently, the corrigendum is passed in the case of the respective assessee.”

15. However, regarding the direction given in Para 4 of the revision order of the Pr.CIT, we find that the details required by the Pr.CIT are not possible to be filed by the assessee relating to the said goods clandestinely removed in both the cases. On the issue of additional income, we direct the AO to amend his order and quantify the loss of Revenue in connection with the order of the Tribunal in earlier assessment years, if the facts are same.

16. With the said amendment, we are of the opinion that Ground No.8 raised by the assessee is allowed and other grounds stand dismissed. Accordingly, the ground No.8 raised by the assessee is allowed. Rests of the grounds of the assessee are dismissed. Accordingly, the grounds raised by the assessee are partly allowed.

17. In the result, the appeal of the assessee is partly allowed.”

6. Thus, in view of the decision of Co-ordinate Bench in assessee's own case in proceedings u/s. 263 of the Act, we find no reason to interfere with the order of Commissioner of Income Tax (Appeals).

7. In the result, the appeal by the Revenue is dismissed being devoid of any merit.

ITA No. 199/PUN/2018

8. The facts in the present appeal are identical to the one adjudicated by us in ITA No. 212/PUN/2018. The Tribunal in assessee's own case in ITA No. 1027/PUN/2016 for the assessment year 2011-12 vide order dated 20-09-2017 in proceedings u/s. 263 of the Act has restricted the addition @ 4% on clandestine removal of goods. The findings given by us while adjudicating ITA No. 212/PUN/2018 would *mutatis mutandis* apply to the

present appeal, as well. For the reasons given above, the appeal of Revenue is dismissed being devoid of any merit.

9. In the result, both the appeals by the Revenue are dismissed.

Order pronounced on Tuesday, the 06th 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 : 06th 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, Aurangabad
4. The Pr. Commissioner of Income Tax-1, Aurangabad
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