

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

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.76/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Sanjay Shantilal Gundecha,
Prop: S.S. Construction,
Manik Nagar, Ahmednagar-414001.

PAN : AANPG5756C

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Ahmednagar Circle,
Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Naresh Kumar
Revenue by : Shri Swapnil Patil

सुनवाई की तारीख / Date of Hearing : 09.09.2019
घोषणा की तारीख / Date of Pronouncement : 12.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-2, Pune dated 16.09.2016 for the Assessment Year 2012-13.

2. The grounds raised by the assessee are as under :-

"(1) On the facts and in the circumstance of the case and in law, the Ld CIT (A) erred in enhancing the income of the appellant to Rs. 95,90,109 as against the income of Rs. 67,41,080 assessed by the Ld AO and Rs.34,05,990 returned by the appellant.

(2) On the facts and circumstances of the case and in law, the Ld CIT (A) erred in issuing enhancement notice u/s 251(2) of the IT Act when the of the case do not justify any such enhancement.

(3) On the facts and circumstances of the case and in law, the Ld CIT (A) in not accepting the returned income of the appellant and in not deleting the various additions made by Ld AO.

(4) On the facts and circumstances of the case and in law, the Ld CIT (A) erred in applying a G.P. of 8% on the total receipts including the sub-contractual receipts of the appellant.

(5) *On the facts and circumstances of the case and in law, the Ld CIT (A) erred in estimating the income of the appellant from "Other Sources" at Rs.7,83,394.*

(6) *The Ld CIT (A) erred on facts and in law in confirming the action of the AO in charging interest u/s 234 B/C.*

The appellant craves leave to add, alter, amend or delete any or all of the above mentioned grounds of appeal."

3. From the above, it is evident that the assessee returned the income of Rs.34,05,990/- in the return of income and the Assessing Officer quantified the assessed income at Rs.67,41,080/-. Against the said assessed income of Rs.67,41,080/-, the CIT(A) enhanced the assessed income of Rs.95,90,109/-. In the scrutiny assessment, the Assessing Officer examined the issue of outstanding liabilities of labour charges and made addition of Rs.33,28,000/-. Otherwise, the 'outstanding labour charges' claimed in the return is Rs.261.52 lakhs. The reasonable claim on this account as per the Assessing Officer is only Rs.228.24 lakhs. The average of 5 years of outstanding labour charges was considered by the Assessing Officer before making the addition of Rs.33,28,000/-. The CIT(A), while enhancing the addition, proceeded to make the addition on different reasoning. Instead of making the addition on account of the said outstanding labour charges, the CIT(A) estimated the profits applying the GP rate @ 8% of the total receipts including the sub-contractual receipts. The income from other sources was also estimated by the CIT(A).

4. Aggrieved, the assessee is in appeal before us with the above extracted grounds.

5. Before us, at the outset, ld. Counsel for the assessee opposed the above manner of making addition on the basis of estimation of current liabilities for

labourers or estimation of GP rate of the assessee on ad-hoc basis, and argued that there is need for fresh assessment on this issue. Deviating from the above grounds, ld. Counsel for the assessee submitted that the assessee is open to the full scale investigation into the said issue of “outstanding liabilities for labour charges”. In this regard, ld. Counsel not only filed various judicial precedents on this issue but also filed the list of labours in respect of which the payments were due to. Further, ld. Counsel submitted that the assessee is already made the payments and discharged the liabilities by this date. Ld. AR submitted that the assessee is ready to evidence the same, if an opportunity is granted before the Assessing Officer by the Tribunal. Making statement at bar, ld. Counsel submitted that, if the Assessing Officer, desires the assessee is ready to parade the labours before the Assessing Officer also in support of the claim of the assessee.

6. On hearing both the sides on this limited issue, we find that the administrative of justice is supreme. Assessee is certain about the genuineness of the claim of outstanding liabilities for labour. We find the assessee has direct evidence to demonstrate the correctness of the claim of the assessee. Considering the said principle, we are of the opinion that the core issue of outstanding liabilities to labour is the basis for all these additions before the Assessing Officer and also before the CIT(A). In our view, this account has to be examined in depth in the light of the additional information and submission made by the ld. AR for the assessee before us. Therefore, the Assessing Officer is directed to examine the veracity of the outstanding liabilities, examine the claim of payments if any made by the assessee to the labour discharging the liabilities etc, and also examine the labours on sample

basis to establish the correctness of the claim. With these directions, the request of the assessee for remanding the issue to the file of Assessing Officer for passing a speaking order is granted. Accordingly, we order. Needless to say, the Assessing Officer shall pass a speaking order after granting a reasonable opportunity of being heard to the assessee in according with set principles of natural justice. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 12th day of September, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th September, 2019
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr.CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.