

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

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 331 & 332/PUN/2017

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

Janata Grahak Madhyavarti Sahakari
Sangh Maryadit, Grahak Bhavan,
2020, Sadhasiv Peth, Tilak Road,
Pune-411 030.
PAN : AACFJ1835C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-12, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak

Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 02.01.2020

घोषणा की तारीख / Date of Pronouncement : 02.01.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

These two appeals preferred by the common assessee emanates from the order of the Ld. CIT(Appeals), Pune-5, Pune dated 24.10.2016 for the assessment years 2012-13 & 2013-14 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that in both these appeals, the issues are identical. That further, for both the assessment years, the assessee has submitted additional grounds with respect to the issue on "Principles of Mutuality". The Ld. Counsel for the assessee further submitted that for assessment year 2009-10 & 2011-12 in assessee's own case in ITA Nos.1064 & 1065/PUN/2016 dated 29.10.2018, similar additional grounds were raised regarding "Principles of Mutuality" wherein the Tribunal admitted the additional grounds by observing as follows:

"5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals) in confirming the addition of Rs.82,35,000/- in respect of un-utilized rebate being written off and transferred to reserve account. The addition has been made by Revenue under the provisions of section 41(1) of the Act. The assessee before us has raised additional ground of appeal invoking the principles of mutuality. We find that the fresh plea of mutuality raised in additional ground by the assessee emanates from the facts already on record. No fresh evidence is required to be adduced to adjudicate this ground. The additional ground raised would have bearing on the tax liability of the assessee. Therefore, in the light of decision of Hon'ble Supreme Court of India in the case of NTPC Ltd. Vs. Commissioner of Income Tax reported as 229 ITR 383. We are admitting additional ground raised by the assessee."

2.1 That thereafter, the Tribunal observed that before applying principles of mutuality it would be appropriate if the issue is first examined by the authorities below. Therefore, the matter was remitted to the file of Assessing Officer to examine the applicability of principles of mutuality on the addition made. As per Paras 6 & 7 of the said order, the Tribunal has observed as follows:

"6. Both the sides are unanimous in admitting that since the plea of principles of mutuality has been raised for the first time before the Tribunal, it has to be first examined by the authorities below. We are also of considered view that before applying principles of mutuality it would be appropriate if the issue is first examined by authorities below. Thus, the present appeal by the assessee is remitted to the file of Assessing Officer to examine the applicability of principles of mutuality on the addition made."

7. *In the result, the appeal of assessee for assessment year 2009-10 is allowed for statistical purpose.”*

2.2 The Ld. Counsel for the assessee prayed that for both the assessment years i.e. 2012-13 & 2013-14 wherein the same additional ground regarding principles of mutuality has come up before the Tribunal and hence, the matter may be remitted to the file of Assessing Officer for examining the applicability of said principles of mutuality with regard to the addition made.

3. The Ld. DR fairly conceded to the prayer made by the Ld. AR of the assessee.

4. We have perused the case records and heard the rival contentions. We find that even for assessment years 2009-10 & 2011-12 in ITA Nos.1064 & 1065/PUN/2016 (supra.), the Tribunal first has admitted the additional ground with regard to principles of mutuality following the decision of the Hon'ble Supreme Court of India in the case of NTPC Ltd. Vs. Commissioner of Income Tax reported as 229 ITR 383. Thereafter, the Tribunal has remitted the issue back to the file of Assessing Officer for examining the applicability of the principles of mutuality with regard to the addition made.

5. Both the parties agreed that facts and circumstances for these two assessment years 2012-13 and 2013-14 are absolutely similar with regard to assessment years 2009-10 & 2011-12. The principle of consistency has to be maintained. The Ld. DR has no objection with regard to remitting the matter back to the file of Assessing Officer and therefore, in the interest of justice, after hearing both the parties herein for both the assessment years i.e. 2012-13 and 2013-14, we remit the matter back to the file of Assessing Officer in

terms of our findings given in assessee's own cases for assessment year 2009-10 & 2011-12 in ITA Nos.1064 & 1065/PUN/2016 (supra.)

6. In the result, **appeals of the assessee for assessment years 2012-13 & 2013-14 are allowed for statistical purposes.**

Order pronounced on 02nd day of January, 2020.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 02nd January, 2020.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	02.01.2020	Sr.PS/PS
2	Draft placed before author	02.01.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		