

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI GEORGE MATHAN, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सा / ITA No.2470/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer,
Ward-5(2), Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Shri Pradeep Laxmanrao Dhumai,
C*303, Akshay Garden Sambaji
Nagar, Dhankawadi,
Pune – 411 043.

..... प्रत्यर्थी /
Respondent

PAN : AARPD7977N.

Assessee by : Shri Pramod Shingte.

Revenue by : Shri S.P. Walimbe.

सुनवाई की तारीख / Date of Hearing : 21.02.2020	घोषणा की तारीख / Date of Pronouncement: 21.02.2020
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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 dated 26.05.2017 for the assessment year 2010-11.

2. The grounds raised by the Revenue reads as under :

“1. On the facts and in circumstances of the case the Ld CIT(A) has erred in restricting the addition made by the Assessing Officer on account of bogus purchases to Rs6,62,408/(i.em12.5% of the Hawala purchases of Rs 52,99,262/-) instead of upholding the entire addition of Rs 52,99,262/- contrary to the decision of Hon'ble High court of Delhi of La Medica (117 Taxman 628), Hon'ble High court of Allahabad in the case of Kaveri Rice Mill (157 Taxman 376) and Hon'ble High court of Rajasthan in the case of Indian Wollen Carpet Factory (125 Taxman 763).

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not considering facts that goods claimed to have been purchased from hawala parties were not at all received by the assessee, not traded by him or consumed by him.

3. On the facts and in the circumstances of the case and in law the Ld CIT (A) has erred in holding that 12.5% of the purchases can be added as income whereas Sales Tax Action found the transaction bogus without actual sale/delivery of goods, on enquiries found sellers non-existent at the given address, assessee failed to file confirmation, failed to produce the suppliers and, letters issued to sellers have come back un-served, which proved that the whole purchases were not genuine.

4 For these and such other grounds as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the Assessing officer be restored”.

3. Before us, at the outset, Ld.A.R. submitted that the appeal of the Revenue is not maintainable on account of low tax effect in view of Circular No.17/2019 dated 08.08.2019 issued by CBDT and therefore, the appeal of the Revenue be dismissed. Ld.D.R. did not object to the aforesaid contention made by the Ld.A.R. but however supported the order of lower authorities.

4. We have heard the rival submissions 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 the relief given by him. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 08.08.2019 (Circular No. 17 of 2019), no Department appeals are to be filed against relief given by ld. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.50 lakhs and it further states that the instructions will apply retrospectively to the pending appeals also. We find that in the present case the tax effect involved is less than Rs.50 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. 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 21st day of February, 2020.

Sd/-

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 21st February, 2020.

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, "बी" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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