

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

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1636/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer,
Ward 14(3), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Manish Jeevan Bhaliya,
Flat No.504, Radian Paradise,
Wanawari, Kedari Nagar,
Pune-411 040.
PAN : AKKPB9293Q

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 16.03.2020

घोषणा की तारीख / Date of Pronouncement : 16.03.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the
Ld. CIT(Appeals)-3, Pune dated 29.03.2017 for the assessment year 2009-10
as per the grounds of appeal on record.

2. Though the Revenue has raised multiple grounds of appeal, the crux of the grievance of the Revenue is with regard to the bogus purchases conducted by the assessee and that the Ld. CIT(Appeals) has erred in granting relief to the assessee without dealing specifically with the facts of the case and even not calling for any remand report from the Assessing Officer.

3. At the time of hearing, neither the assessee nor his Authorized Representative was present to represent their case on merits. The records were checked and it was found that notice of hearing has been duly issued and served on the assessee. In spite of the facts, the assessee is absent on this date of hearing. Considering the facts and circumstances, we proceed to hear the appeal on merits by recording submissions of the Ld. DR on record.

4. The brief facts of the case are that the assessee is an individual and being a labour contractor, engaged in the business of civil construction. The assessee filed the return of income on 24.03.2010 declaring total income at Rs.5,26,771/-. The case of the assessee was reopened under the provisions of section 147 of the Income Tax Act, 1961 (hereafter referred to as 'the Act') on account of information received from the Sales Tax Department regarding the Hawala Transactions. Notice u/s.148 of the Act was issued on 26.03.2014. Thereafter, several notices were issued u/s.142(1) of the Act from time to time. Last notice u/s.142(1) of the Act was issued on 09.03.2015 to attend on 20.03.2015 along with questionnaire which was sent by the Speed Post and duly served on the assessee. On the given date and time, the assessee neither attended nor filed any written submissions. Since the assessee failed to comply to the notices and furnish the details and information, the assessment u/s. 144 r.w.s.147 of the Act was completed on

26.03.2015 determining total income at Rs.1,98,13,660/- and made additions of Rs.1,89,86,893/- on the basis of the gross profit ratio of 2.72% adopted in the case of the assessee for the previous year.

5. During the First Appellate Proceedings, the Ld. CIT(Appeals) vide Para 7.3.14 of his order, has given relief to the assessee and deleted the entire addition made by the Assessing Officer.

6. At the time of hearing, the Ld. DR brought to our notice that various additional evidences were admitted by the Ld. CIT(Appeals) from the assessee but those additional evidences were not placed before the Assessing Officer for his comments. That further, in these cases of bogus purchases, the facts needs to have a detailed verification and since there was no compliance before the Assessing Officer, the Ld. CIT(Appeals) was not justified in simply admitting various additional evidences and giving relief to the assessee even without calling for any remand report from the concerned Assessing Officer.

7. We have perused the case records and heard the submissions made by the Ld. DR. We have also analyzed the facts and circumstances in this case. This is a case of bogus purchases where assessment has been completed u/s.144 r.w.s.147 of the Act. The Assessing Officer vide Para 8 of his order has applied gross profit @ 2.72% based on the earlier years and made additions accordingly. The facts further clearly demonstrates that in the entire order of the Ld. CIT(Appeals), he has not called for any remand report from the Assessing Officer. The Ld. CIT(Appeals) simply relied on the submissions and evidences furnished before him by the assessee and has given relief even without himself conducting any specific enquiry. This is an

issue of bogus purchases where at the time of reassessment proceedings, the assessee avoided to appear before the Assessing Officer and at the appellate stage, has provided certain additional evidences but they were also not scrutinized on the parameters of genuineness by the concerned Assessing Officer since no remand report was called for from him.

7.1 In our view, justice should not only be done, it should seem to have been done. This way of giving relief to the assessee in a summarized and cryptic order by the Ld. CIT(Appeals) without calling for any remand report is not warranted from a quasi-judicial authority. The parameters of justice demands that there should be check and carves on the practices conducted by the assessee so that the Revenue is not defrauded or denied of the legible taxes which it has to receive from the assessee. Merely admission of additional evidences without giving an opportunity to the Assessing Officer to confront all these evidences, without calling for remand report regarding verification of genuineness of the transactions, the Ld. CIT(Appeals) has not complied with the parameters of law.

7.2 In view of the matter, we set aside the order of the Ld. CIT(Appeals) and remand the matter back to his file and direct him to adjudicate the matter after calling for remand report from the Assessing Officer not only on the entire evidences submitted before him by the assessee but also vis-à-vis verification of facts on the genuineness of transactions which the Assessing Officer should conduct and report back to the Ld. CIT(Appeals). Needless to say, the Ld. CIT(Appeals) shall grant reasonable opportunity of hearing to the assessee.

8. In the result, **appeal of the Revenue is allowed for statistical purposes.**

Order pronounced on 16th day of March, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th March, 2020.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" 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	16.03.2020	Sr.PS/PS
2	Draft placed before author	16.03.2020	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		