

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.2805/PUN/2017
निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Ambarwadikar & Company,
Gut No.103, Beed Bye Pass Road,
Deolai, Aurangabad-431010.

PAN : AAHFA6223A

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle- 3,
Aurangabad.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 17.06.2021
घोषणा की तारीख / Date of Pronouncement : 24.06.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Aurangabad ('CIT(A)' for short) dated 27.10.2017 for the assessment year 2007-08 levying the penalty u/s 271(1)(c) of the Income Tax Act, 1961 ('the Act').

2. Briefly, the facts of the case are as under :-

The appellant is a firm constituted under Partnership Act. It is engaged in the business of acquisition of Government Contract. The return of income for the assessment year 2007-08 was filed on 31.10.2007 declaring total income of Rs.1,06,54,558/-. The said return of income was processed u/s 143(1) of the Act accepting the returned income. Subsequently, on

verification of record, it is found that the appellant firm took loan from Tata Motors Finance Ltd. of Rs.4,95,412/- and paid interest on the same and no tax was deducted thereon. Accordingly, notice u/s 148 of the Act was issued on 27.03.2014 and the assessment was completed by the Assessing Officer vide order dated 30.03.2015 passed u/s 143(3) r.w.s. 147 of the Act after making the following two additions :-

- (i) Addition based on the entries in a diary which are unrecorded in the regular books of account aggregating to Rs.21,07,120/- (20% of Rs.1,05,35,600/-).
- (ii) Addition of Rs.4,95,413/- on account of interest paid to Tata Motors Finance Ltd.

3. Being aggrieved, an appeal was filed before the ld. CIT(A). During the course of proceedings before the ld. CIT(A), he formed the opinion that the amounts mentioned in the diary, the entire sum should be assessed tax instead of 24% of aggregate amounts mentioned. Accordingly, he issued a show-cause notice for the enhancement. In response to the said show-cause notice, it was explained that the entries in the diary does not indicate that it was receipt of incur but it was expenditure. However, rejecting the contention of the explanation of the appellant, the ld. CIT(A) enhanced the addition and issued a show-cause notice for levying of penalty. Accordingly, penalty was levied by ld. CIT(A) vide impugned order dated 27.10.2017 u/s 271(1)(c) of the Act.

4. Being aggrieved, the appellant is before us in the present appeal.

5. The ld. AR submitted that this Tribunal in the quantum appeal of the assessee in ITA No.2070/PUN/2017 order dated 27.05.2021 had set-aside

the issue of addition of enhancement to the file of the Assessing Officer. Accordingly, it is prayed that the order of penalty also be set-aside to the file of the Assessing Officer.

6. On the other hand, ld. Sr. DR has no objection to remand the matter to the file of the Assessing Officer.

7. Having heard the rival submissions and perused the material on record, we are of considered opinion that the matter requires remand to the file of the Assessing Officer since the issue of addition restored to the file of the Assessing Officer in the quantum appeal. We order accordingly.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 24th day of June, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th June, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
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.