

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

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 98/PUN/2018
निर्धारण वर्ष / Assessment Year : 2006-07

The Income Tax Officer,
Ward-6(3), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Chhaganlal Shamlal Kirad
468, Nana Peth,
Pune-411 002
PAN : ABUPK7868B

.....प्रत्यर्थी / Respondent

Revenue by : Shri Piyush Kumar Singh Yadav
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 11.11.2021
घोषणा की तारीख / Date of Pronouncement : 12.11.2021

आदेश / ORDER

PER CHANDRA MOHAN GARG JM:

This appeal filed by the Revenue is directed against the order of the Ld. CIT(Appeals)-4, Pune dated 29.09.2017 for the assessment year 2006-07 as per the following grounds of appeal on record:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to the assessee on the premise that the provisions of section 40(a)(ia) of the IT Act, 1961 is applicable only in respect of amounts which are payable when in fact the Apex Court in Palam Gas Service Vs. CIT (247 Taxman 379-SC) has clearly held that the provisions of section 40(a)(ia) is applicable both to payable and paid amount.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to the assessee even when the quantum addition has been confirmed by the his predecessor on similar facts.

3. 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.

4. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."

2. The Ld. CIT-DR supporting the penalty order submitted that the Assessing Officer was right in imposing penalty by observing that additions were made on account of disallowance of expenses u/s.40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') for non-deduction of TDS u/s.194C of the Act. He further submitted that if the case of the assessee would have not been selected for scrutiny, the issue of non-deduction of TDS u/s.194C of the Act which the assessee was liable to deduct would have been gone unnoticed and assessee would have succeeded in non-payment of correct taxes. Therefore, the Assessing Officer was right in opinion that the assessee had concealed his taxable income to the tune of impugned amount and thus, it is a fit case for levy of penalty u/s.271(1)(c) of the Act. The Ld. CIT-DR further vehemently pointed out that the Ld. CIT(Appeals) granted part relief to the assessee without any reasonable basis and justified reasoning and therefore, impugned first appellate order may be set aside by restoring the order of the Assessing Officer.

3. Replying to the above, the Ld. AR for the assessee submitted that since quantum appeal as well as cross penalty appeal filed by the assessee have been restored to the file of the Assessing Officer by the Pune Bench of the Tribunal for the assessment year 2006-07, therefore, this appeal may also kindly be restored to the file of the Assessing Officer.

4. On careful consideration of the submissions above, we find from the copy of the order placed at page 11 to 15 of the paper book, Pune Bench of the Tribunal in ITA No.1003/PUN/2016 for the assessment year 2006-07 dated 20.03.2019, has restored the issue to the file of the Assessing Officer by observing as follows:

“6. In the case of Commissioner of Income Tax Vs. Ansal Land Mark Township (P) Ltd. (supra) the Hon'ble Delhi High Court has held that insertion of proviso by the Finance Act, 2012 is declaratory and curative and applies retrospectively with effect from 1st April, 2005. Thus, we do not find any impediment in applying second proviso to section 40(a)(ia) in the case of present assessee. The Co-ordinate Bench of Tribunal in the case of Yamazaki Mazak India Pvt. Ltd. Vs. Pr. Commissioner of Income Tax ITA No. 1003/PUN/2016, A.Y. 2006-07 Tax (supra) has taken a similar view qua retrospective applicability of second proviso to section 40(a)(ia) of the Act. Thus, in the light of second provision to section 40(a)(ia) of the Act, we deem it appropriate to restore the issue of disallowance u/s. 40(a)(ia) back to the file of Assessing Officer for necessary verifications.”

5. Even in the penalty appeal filed by the assessee, the Pune Bench of the Tribunal in ITA No.3079/PUN/2017 for the assessment year 2006-07 dated 10.08.2020 has restored the issue back to the file of the Assessing Officer by observing as follows:

“4. We have heard rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s.271(1)(c) on the addition of Rs.1,53,83,426/- u/s.40(a)(ia) of the Act. We find that the Co-ordinate Bench of the Tribunal in ITA No.1003/PUN/2016 dt. 20.03.2019 has set aside the quantum additional to the file of the AO to decide the issue afresh of disallowance u/s.40(a)(ia) of the Act in view of the Hon'ble Delhi High Court's decision rendered in the case of CIT Vs. Ansal Landmark Township (P). Ltd. reported in 377 ITR 635. The impugned penalty u/s.271(1)(c) of the Act has been levied on the aforesaid disallowance u/s.40(a)(ia). We are therefore of the view that since the quantum addition itself has been set aside, the question of levy of penalty on account of concealment of income of such addition also be set aside. Accordingly, we set aside the order of penalty order to the file of AO to decide in line with the issue of quantum addition. Thus, the appeal of the assessee is allowed for statistical purposes”

6. Both the parties here agreed that when in the quantum appeal, the issue has been restored by the Pune Bench of the Tribunal to the file of the

Assessing Officer by order dated 20.03.2019 (supra.) and consequently, the penalty appeal filed by the assessee against partly confirmation of penalty u/s.271(1)(c) of the Act on the income of Rs.10,21,101/- @ 100% of tax sought to be evaded by the Assessing Officer, has also been restored to the file of the Assessing Officer to decide as per outcome of quantum order, by order dated 10.08.2020 (supra.). Thus, it is amply clear that the Pune Bench of the Tribunal has restored quantum appeal as well as penalty appeal of the assessee to the file of the Assessing Officer for re-adjudication as per directions noted hereinabove, then obviously this appeal filed by the Revenue against the first appellate order wherein the Ld. CIT(Appeals) has granted partial relief to the assessee deleting part penalty as directed to the Assessing Officer to levy penalty at the rate of 100% of concealment of income Rs.10,21,101/- deleting the remaining amount of penalty levied by the Assessing Officer. In such situation, when quantum appeal as well as cross penalty appeal filed by the assessee have been restored to the file of the Assessing Officer, we find it fit, proper and necessary to restore this cross appeal of Revenue to the file of the Assessing Officer with similar directions as mentioned herein above. Accordingly, we set aside the orders of the Assessing Officer as well as the Ld. CIT(Appeals) and restore the matter to the file of the Assessing Officer for re-adjudication as per law keeping in view out of the quantum appeal re-adjudication.

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

Order pronounced on 12th day of November, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
CHANDRA MOHAN GARG
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th November, 2021.

SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	11.11.2021	Sr.PS/PS
2	Draft placed before author	12.11.2021	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		