

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

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.550/PUN/2020
निर्धारणवर्ष / Assessment Year : 2011-12

The DCIT, Circle-2, Pune.	Vs	M/s.M.B.Gharpuray Engineers & Contractors, 838, Anohar Residency, BMCC Road, Shivaji Nagar, Pune – 411037. PAN: AACFM 4994 R
Appellant/ Assessee		Respondent /Revenue

Assessee by	Smt. Deepa Khare – AR
Revenue by	Shri Arvind Desai – DR
Date of hearing	23/06/2022
Date of pronouncement	29/07/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the DCIT, Circle-2, Pune is directed against the order of Id.Commissioner of Income Tax(Appeals)-3, Pune dated 28.07.2020 emanating out of the penalty order under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called as 'the Act'). The Revenue has raised the following grounds of appeal:

"1) On the facts and circumstances of the case, the Commissioner of Income tax (Appeals) failed to appreciate that the addition was not made on estimate but on finding that purchases were bogus.

2) On the facts and circumstances of the case, the Commissioner of Income tax (Appeals) failed to appreciate the finding of the Assessing Officer at para 4.6 of the assessment order wherein it is clearly stated that the assessee is regularly inflating

some purchases every year through such bogus purchases.

3) The appellant prays that the order of the learned CIT(Appeals) be held to be bad in law and be quashed and that of the Assessing Officer be restored.

4) The appellant further prays and submits that issue arises out of information received from the external agency, which is covered by exception mentioned in para 10(e) of CBDT letter F No 279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018 wherein it has been mentioned that the adverse judgments should be contested irrespective of tax effect involved in the issue.”

2. The Id.Authorised Representative(ld.AR) of the assessee brought to our notice that the present appeal filed by the Department is emanating out of penalty order passed under section 271(1)(c) of the Act dated 29.03.2019 for the A.Y. 2011-12. The ld.AR explained that quantum of penalty is only Rs.1,05,656/-, therefore, the ld.AR pleaded that as per CBET Circular, the appeal is below the tax limit mentioned in the CBDT Circular and hence not maintainable. He relied on the order of Chandrasekhar A.Joshi in M.A.No.94/PUN/2021 for the A.Y. 2012-13.

3. On the contrary, the ld.DR for the Revenue pleaded that the penalty is with reference to the bogus purchases. The information about the said bogus purchases were received from an independent government agency, therefore, the said appeal is covered by the Exception Clause of CBDT Circular dated 20.08.2018.

4. We have heard both the parties and perused the material available on record. It is a fact that the quantum of penalty is only

Rs.1,05,656/-. It is also a fact that penalty has been levied for the alleged hawala purchases about which information was received from Sales Tax Department. However, it is observed that Id.Co-ordinate Bench, Pune in the case of ACIT vs. Chandrashekhar Ashok Joshi in ITA No.785/PUN/2018 has taken a view that the appeal against these hawala purchases are not covered by Exception Clause of the circular. The relevant part of the Id.Co-ordinate Bench is as under:

“2. We have heard both the sides through virtual court and scanned through the relevant material on record. Having found that the tax effect in the instant appeal referred to by the Revenue is less than the monetary limits of Rs.50.00 lakh, the Tribunal dismissed the appeal of the Revenue by virtue of CBDT Circular No.17/2019 dated 08-08-2019 revising upward the monetary limit to Rs.50.00 lakh for filing of appeals by the Department in Income-tax Cases before various appellate forums.

3. As regards the contention of the ld. DR that the appeal should not have been dismissed because the addition in this case was made on the basis of information from the Sales Tax Department, Maharashtra about the assessee indulging in hawala transactions and hence covered in the exception clause of the Circular as referred to above, we find that such a contention has not been countenanced by the Pune Benches of the Tribunal in several cases including ITO vs. M/s Param Marketing (ITA No.1872/PUN/2019 dt.30-01-2020) and ITO vs. Yusuf Gulmmohammed Patel (ITA No.1852/PUN/2019 dt.30-01-2020). Not only that, even the Miscellaneous application filed u/s 254(2) on this issue has also been dismissed in DCIT vs. M/s Rang Rasayan (M.A.No.60/PUN/2019 dt. 14-01-2020). No contrary view has been brought to our notice on behalf of the Revenue. Respectfully following the above precedent, we are not inclined to accept the Miscellaneous application filed by the Revenue.”

5. Respectfully following the decision of Id.Co-ordinate Bench(supra), the appeal is dismissed as below the monetary limit of Rs.50 lakhs mentioned in the CBDT Circular No.17/2019, accordingly, grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 29th July, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.