

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

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.1655/PUN/2017**
निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle -3, Pune

.....अपीलार्थी /Appellant

बनाम / V/s.

M/s.M.B.Gharpure Engineers & Contractors(Regd.)
838, Shivajinagar,
Pune – 411 004

PAN : AACFM4994R

.....प्रत्यर्थी /Respondent

आयकर अपील सं. / **CO No.28/PUN/2019**
निर्धारण वर्ष / Assessment Year : 2011-12

M/s.M.B.Gharpure Engineers & Contractors(Regd.)
838, Shivajinagar,
Pune – 411 004

PAN : AACFM4994R

.....प्रत्यर्थी /Cross Objector

बनाम / V/s.

DCIT, Circle -3, Pune

.....प्रत्यर्थी /Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 09.06.2022
घोषणा की तारीख / Date of Pronouncement : 27.07.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. The Revenue's appeal ITA No.1655/PUN/2017 with assessee's Cross Objection C.O. No.28/PUN/2019 for assessment year 2011-12, arise against the CIT(A)- 3 Pune's order, dated 14/03/2017 passed in case Nos. PN/CIT(A)-3/Cir-3,Pn/245/2014-15 involving proceedings u/s. 143(3) of the Income Tax Act, 1961 ; in short "the Act".

Heard both the parties . Case files perused.

2. The Revenue's appeal ITA No.1655/PUN/2017 raises the following substantive grounds.

- "1. On the facts and circumstances of the case, the CIT(A) has erred law as well as the facts in restricting the addition made by Assessing Officer on account of bogus purchases to Rs. 3,41,929/- (12.5% of the hawala purchased) instead of Upholding the entire amount of addition of Rs. 27,35,429/-.*
- 2. On the facts and circumstances of the case, the CIT(A) has erred in law as well as the facts in restricting the addition to 12.5% of the alleged bogus purchases of Rs. 27,35,429/- without considering the fact that the entire cash has been siphoned off by debiting the bogus purchases.*
- 3. On the facts and circumstances of the case, the CIT(A) has erred in law as well as the facts in not considering the fact that goods claimed*

to have been purchased from the Hawala Party, M/s Vandana Metal Syndicate, were not at all received by the assessee nor consumed by it.

4. *On the facts and circumstances of the case, the CIT(A) has erred in law as well as the facts in allowing the appeal without appreciating the fact that the onus to prove the genuineness of the purchases was on the assessee and it failed to prove that the purchases were made from M/s Vandana Metal Syndicate.*
5. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law as well as the facts in allowing the disallowance of Rs. 1,54,73,923/- of 'VAT Refundable' written off by the assessee as irrecoverable from the Sales Tax Department without appreciating the fact that the Sales Tax Department did not refute the assessee's refund claim and the said proceedings are yet to be concluded.*
6. *The appellant prays to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings."*

3. Ms. Deepa Khare raised a preliminary objection at the outset that the correct disallowance amount regarding the latter issue of estimated VAT is Rs. 1,03,80,814/- since the balance figure pertaining to the relevant previous year to the tune of Rs. 50,93,109/- already stood credited/ paid as per the CIT(A)'s discussion in page 24 para 7.5 to this effect. Her case therefore is the total tax effect involved in the instant appeal comes to be less than 50 lakhs as per the CBDT's latest circular No.17/2019 [F No.279/Mise.142/2007-ITJ (Pt)], dated 08.08.2019 read with Circular No.3 of 2018 dated 11.07.2018 revising the upward monetary limits for filing of appeals in Income Tax Cases before Tribunal and other forums.

4. Mr. Walimbe on the other hand has quoted the Assessing Officer's letter dated 01.06.2022 reiterating Revenue's pleadings.

5. We have given our thoughtful consideration to the foregoing rival stands and find no merit in the Revenue's arguments. It emerges from the case records that Assessing Officer had disallowed the latter head VAT refundables amounting to Rs.1,54,73,923/- out of which the assessee; prima facie, appears to have paid Rs. 50,93,109/- (supra). We make it clear that the CIT(A) has held the same to be allowable on actual payment basis u/s.43B of the Act. And the department has not pleaded any ground rebutting the same to this effect. The impugned correct figure therefore comes to Rs.1,03,80,814 only which fails to satisfy the tax effect of Rs.50 lakhs even if added to the first and former issue involving disallowance of bogus purchases Rs.27,35,429/- in entirety. We accordingly dismiss the Revenue's instant appeal ITA no. 1655/PUN/17 as involving lower than the prescribed tax effect as per the CBDT circular applicable on pending cases as well. It is further made clear the Revenue shall be very much at liberty to recall our instant findings as per law subject to the condition that the learned Assessing Officer shall ensure to verify the forgoing VAT payment of Rs. 50,93,109/- as per law. Ordered accordingly.

6. The Assessee's Cross Objection No. 28/PUN/19 also follows the suit since supportive to the CIT(A)'s order under challenge only.

7. This Revenue's appeal ITA no. 1655/PUN/17 as well as assessee's C.O. No. 28/PUN/19 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on this 27th day of July, 2022.

Sd/-

Sd/-

(DR.DIPAK P.RIPOTE)

(S.S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/ **JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 27th July, 2022.
Ashwini

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

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

| S.No. | Details | Date | Initials |
|-------|--|------------|----------|
| 1 | Draft dictated on | 09.06.2022 | |
| 2 | Draft placed before author | 26.07.2022 | |
| 3 | Draft proposed & placed before the Second Member | | |
| 4 | Draft discussed/approved by Second Member | | |
| 5 | Approved Draft comes to the Sr. PS/PS | | |
| 6 | Kept for pronouncement on | | |
| 7 | Date of uploading of Order | | |
| 8 | File sent to Bench Clerk | | |
| 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 | | |