

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

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER  
AND  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.963/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2009-10

Sameer Rajendra Shah,  
446, Mangalik, Gulmohar Colony,  
District – Sangli – 416416

PAN : ACGPS2835K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. CIT-1,  
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri Sardar Singh Meena

सुनवाई की तारीख / Date of Hearing : 05-09-2022  
घोषणा की तारीख / Date of Pronouncement : 07-09-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 26-03-2018 passed by the Principal Commissioner of Income Tax-1, Kolhapur ("PCIT") for assessment year 2009-10.

2. The only issue is to be considered is as to whether the PCIT is justified in holding giving effect order dated 09-08-2016 passed by the AO

in pursuance of order dated 29-04-2016 passed by this Tribunal in ITA No. 1061/PN/2013 is erroneous and prejudicial to the interest of revenue.

3. We note that Co-ordinate Bench of this Tribunal in assessee's own case vide order dated 29-04-2016 directed the AO to decide the issue in respect of disallowance of cost of improvement expenditure. The AO reproduced the said direction of this Tribunal in his giving effect order at para 2. On perusal of the giving effect order, we note that the AO allowed the claim of cost of improvement in its entirety. The contention of ld. DR is that the AO did not conduct proper enquiry in terms of directions of Tribunal and the PCIT correctly held the order of AO is erroneous and prejudicial to the interest of revenue by exercising revisionary power u/s. 263 of the Act. The ld. DR placed on record documents four in number. On perusal of the same on 09-08-2016 the AO conducted enquiries in respect of two suppliers by name Shri Sharad Madke, who supplied Murrum and Levelling except Shri Pradeep Dadge. He also examined Shri Sidhu Angadi alias Mali who supplied Murrum and done Levelling. Further, the said order sheet entry reads that the said two persons confirmed their job in the project involving improvement expenditure satisfying the cost of improvement regarding an amount of Rs.66,02,224/- was allowed in favour of the assessee.

4. Further, ld. DR drew our attention to correspondence dated 08-09-2016 wherein the Department of Revenue asked the AO to explain as to what verification has been done in respect of directions of ITAT in its order. We note that during the original assessment proceedings that the assessee was asked to produce contractors/suppliers of Murum by the AO and the

assessee could produce Hanuman Narale and Dilip Kamble before the AO. The AO allowed only 25% of total cost of improvement expenditure and disallowed Rs.70,93,979/- against which an appeal before the CIT(A) was preferred. The assessee filed additional evidence in the form of affidavits of 6 more persons except Shri Anil Madake before the CIT(A). The CIT(A) sought remand report from the AO. In the remand proceedings, the AO examined all the 6 persons who deposed their confirmations in supply of Murum by recording their statement u/s. 131 of the Act. Therefore, it clearly shows the assessee could not submit the affidavit in confirmation from Shri Anil Madake during the course of original assessment proceedings as well as proceedings before the CIT(A) but however in the giving effect proceeding before the AO the assessee produced Shri Anil Madake and Shri Sidhu Mali. The order sheet entry dated 09-08-2016 clearly shows the AO examined both the said persons in the same way conducted in respect of 6 persons who filed affidavits by way of additional evidence in the remand proceedings. Therefore, in our opinion, the AO conducted proceedings in the same way what he conducted in the original assessment proceedings which was completed u/s. 143(3) of the Act and also the remand proceedings from the file of CIT(A).

5. Considering the submissions of assessee, the Co-ordinate Bench of this Tribunal in first round of litigation remanded the issue to the file of AO to taking into consideration confirmations filed by the respective parties filed by way of paper book. Therefore, the AO conducted its proceedings and examined the said two persons by name Shri Anil Madake and Sidhu Angadi alias Mali and given relief to the assessee upon his satisfaction. Therefore, the PCIT is not justified in holding the giving effect order dated

17-09-2016 passed by the AO is erroneous and prejudicial to the interest of revenue. Therefore, the order of PCIT in exercising jurisdiction u/s. 263 of the Act is not maintainable and it is set aside. Thus, the ground raised by the assessee is allowed.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 07<sup>th</sup> September, 2022.

Sd/-  
(G.D. Padmahshali)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> September, 2022.  
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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