

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA Nos.734 & 735/PUN/2023
(A.Y. 2010-11)

And

C.O.No.24 & 25/PUN/2022
(Arising out of ITA Nos.176 & 177/PUN/2020)

1. Vidya Pradip Zende PAN: AACPZ 8013 E	vs	ACIT, Ahmednagar Circle, Ahmednagar.
2. Varsha Prafulla Zende PAN: AABPZ 2541 C		
Both are residents of 3113, Shrirampur Housing Society, College Road, Opp. Saint Luke Hospital, Gopal Nagar, Ward No.1, Tq-Shrirampur, Ahmednagar.		
Appellants		Respondent

ITA Nos.176 & 177/PUN/2020
(A.Y. 2010-11)

DCIT, Ahmednagar Circle, Ahmednagar.	vs	1. Vidya Pradip Zende PAN: AACPZ 8013 E
		2. Varsha Prafulla Zende PAN: AABPZ 2541 C
		Both are residents of 3113, Shrirampur Housing Society, College Road, Opp. Saint Luke Hospital, Gopal Nagar, Ward No.1, Tq-Shrirampur, Ahmednagar.
Appellant		Respondent

Assessee by	:	Shri Neelesh Khandelwal, CA
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	23/08/2023
Date of pronouncement	:	24/08/2023

O R D E R

Per Bench:

These cross appeals preferred by the Revenue and assessee as well as Cross Objections (CO) by the assessee emanates from the separate orders of Commissioner of Income Tax [Appeals]-2, Pune, both dated 14.11.2019 for A.Y.2010-11 as per the grounds of appeal on record.

2. At the outset, both the parties conceded that the facts and circumstances and the issues involved in all these six appeals are identical and having heard the parties, all these matters are heard together and disposed of vide this consolidated order.

3. Having gone through the grounds of appeal in appeal memo for the cross appeals and the Cos, we find that the parties herein have taken grounds both on merits as well as on legal grounds. Before going into the adjudication part, the Id.AR for the assessee submitted that they are not pressing their cross appeals in ITA No.734 & 735/PUN/23. Having heard his submissions, both these cross appeals of the assessee are dismissed as not pressed.

4. Now, we would adjudicate the Revenue's appeal in ITA

No.176/PUN/2020 taking the same as the lead case for A.Y. 2010-11 and we would address the legal issue raised by the Department first. The Department is aggrieved by the decision of the Id. CIT(A) in allowing the ground of appeal before him in favour of the assessee by holding that reassessment order passed by the AO u/sec. 143(3) r.w.s. 147 of the Act was incorrect and bad in law. The reasons for this decision by the Id. CIT(A) can be verified from the copy of reasons recorded by the AO, wherein the AO states that for invoking the jurisdiction u/sec. 147/148 of the Act, he has reason to believe that income of the assessee has escaped assessment for the present A.Y. 2010-11 because some bogus companies run by one Mr. Anand Sharma and Group has provided bogus commission entries to Prachi Enterprises, in which the proprietor is the assessee i.e. Vidya Pradip Zende during the F.Y. 2009-10 to the tune of Rs. 2,57,479/-. Later on, as evident from the assessment order at para 8.21, the AO writes that the unsecured loans amounting to Rs. 2,50,00,000/- including loan from Chandraghanta Dealers Pvt. Ltd., Maradona Wholesale Pvt. Ltd. and Chinpurni Sales Pvt. Ltd. were not genuine. Further, total income expenses claimed amounting to Rs. 8,65,754/- also includes Rs. 2,57,479/- and this is the same amount which finds place in the reasons recorded by the AO. The Id. CIT(A), thereafter, reversed the order of AO following the decision of the Hon'ble jurisdictional High Court in the case of *Prashant S. Joshi v. ITO* [2010] 189 Taxman 01

(Bom.) wherein it was held that the principle of law is well settled that the question as to whether there was reason to believe, within the meaning of sec.147 that income has escaped assessment, must be determined with reference to the reasons recorded by the AO. Here, in this case, the reasons itself were incorrect by the AO and, therefore, it cannot be said that he had reason to believe within the meaning of sec.147 of the Act that the income of the assessee had escaped assessment. Therefore, at the threshold itself, the AO was battling on wrong premise and accordingly at para 5.1 of the Id. CIT(A)'s order, he holds that the notice issued u/sec. 148 of the Act, which was based on incorrect reasons, was bad in law. Thereafter, the Id.AR demonstrating from the paper book filed assailed that otherwise also, the reassessment order u/sec. 143(3) r.w.s. 147 was bad in law and invalid, since there was no valid sanction taken by the AO from the appropriate authority. Further, though in the reasons recorded by the AO, he alleges that he had received information from ACIT, Kolkata regarding the bogus accommodation entries provided, but in reality, at the time of issuance of notice, actually there were no such information with the AO at all. However, these issues were not dealt with by the Id. CIT(A) and therefore, Id.AR prayed that these matters may be remanded back to the file of the Id.CIT(A) for adjudication as per law after due verification. Ld.DR did not raise any objection, if the matter would be remanded back to the file of the Id. CIT(A). Therefore, in the

given facts and circumstances when the Id.AR has come out with a submission that certain issues were not brought up before the Id.CIT(A) and resultantly were left un-adjudicated, in view thereof, in the interest of justice, even without going into the merits of the case, we set aside the order of the Id. CIT(A) and remand the matter back to his file with a direction to adjudicate the matter within a period of three months from the date of receipt of copy of this order complying with the principles of natural justice in accordance with our observations in the aforesaid paras. The grounds of appeal are allowed for statistical purposes.

5. In the result, appeal of the Revenue in ITA No.176/PUN/2020 is allowed for statistical purposes.

6. At the outset itself, the parties herein have submitted that the facts and circumstances and the issues in all these matters are identical and, therefore, our decision in ITA No.176/PUN/2020 shall apply *mutatis mutandis* to ITA No.177/PUN/2020 also. Therefore, the appeal of the Revenue in ITA No.177/PUN/2020 is also allowed for statistical purposes.

7. That, for the sake of completeness, the COs preferred by the assessee, at this stage, would be appropriate to remand them also back to the file of the Id. CIT(A), so that while adjudicating the

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common issue, there would not be any disturbances caused through partial remanding of the matters. In view thereof, both the COs of the assessee are also remanded back to the file of the Id. CIT(A). We order accordingly. COs of the assessee stands allowed for statistical purposes.

8. In the combined result, the cross appeals of the assessee are dismissed as not pressed. The appeals by the Revenue and the COs by the assessee are allowed for statistical purposes.

Order pronounced in open Court on 24th August, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 25th August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.