

IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH, NAGPUR  
BEFORE SHRI PARTH SARATHI CHAUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Through Virtual Hearing from Pune)

आयकर अपील सं. / ITA No. 193/NAG/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Asstt. Commissioner of Income Tax,  
Circle, Chandrapur

.....अपीलार्थी / Appellant

बनाम / V/s

Averel Gangadhar Shetty  
C/o. UTCL, Awarpur Cement Works,  
Tah. Korpana, Chandrapur – 442917.  
PAN: AHFPS7393L

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Abhay Agrawal ['Ld. AR']

Revenue by : Mr Kailash Kanojiya ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 20/11/2023

घोषणा की तारीख / Date of Pronouncement : 30/11/2023

आदेश / ORDER

**PER G. D. PADMAHSHALI, AM;**

This appeal is directed against order of Commissioner of Income Tax (Appeals)-4, Nagpur ['CIT(A)' in short] dt. 22/03/2017 passed u/s 250 of the Income-tax Act, 1961 ['the Act' in short] which in turn ascended out of order of assessment passed u/s 143(3) of the Act by Asstt. Commissioner of Income Tax Officer, Chandrapur Circle, Chandrapur ['AO' in short].

2. Brief facts of the case are that;

2.1 The assessee is a contractor maintaining regular books of account of his business which was subjected to audit u/s 44AB of the Act. For the assessment year under consideration the assessee filed his return of income declaring total income of ₹47,42,027/-. The case of the assessee was subjected to scrutiny wherein verification of return and Form 26AS revealed under reporting of contractual receipt/revenue. Recording such observation, the Ld. AO called upon the assessee to explain the correctness of ₹11,49,90,817/- contractual receipt reported in the return of income as against the contractual receipt of ₹16,38,83,921/- accrued to him and as reported by payee namely Ultratech Cement Limited ['UTCL' hereinafter]. Upon assessee's effective failure to substantiate the forgoing difference of ₹4,45,75,433/- with cogent evidence claiming the difference arisen on account of 'reimbursement of expenditure' the Ld. AO brought the entire difference to tax as the income of the assessee and framed the assessment accordingly u/s 143(3) of the Act.

2.2 Aggrieved assessee filed an appeal before first appellate authority, wherein the Ld. CIT(A) vide para 9 has confirmed addition to the extent of ₹20,65,367/- and directed to delete the balance addition on the basis of appellant's submission coupled with his predecessor's adjudication in assessee's own case for assessment years viz; 2005-06 & 2007-08, as under;

*"9. I have considered the reconciliation statement submitted by the appellant in totality on each ground and I find substantial force in the submissions made by the appellant. The expenditure on which TDS has been claimed pertain to reimbursement of expenses undertaken by the appellant on behalf of the*

*contractor and by no stretch of imagination the same can be treated as income of the appellant.*

*Further, these expenses have not been claimed by the appellant in the profit and loss account. The A.O. has not disputed appellants submission made during the course of assessment proceedings. **I also find that the issue of reconciliation had cropped up in earlier assessment years also where the matter was decided in appellant favour by CIT(A).** Therefore, considering the facts in totality the appellant deserved relief on this ground. However, I find that with respect to TDS wrongly made twice amounting to Rs.20,65,367/-, the appellant has not been able to satisfactorily file reconciliation statement and explain the nature of transaction.*

*Therefore, addition amounting to Rs.20,65,367/- out of total addition of Rs.4,45,75,433/- is confirmed. AO is directed to delete the remaining addition.*

*Ground of appeal is Partly Allowed.*

*(Emphasis supplied)*

3. Without touching merits of the case, in support of solitary ground of appeal the Ld. DR assailed that, the assessee's grounds came to be allowed merely on the basis of reconciliation statement, submission and previous year's adjudication, which were neither supported by cogent evidences nor were confronted to the Ld. AO for verification. The Ld. DR further assailed that, insofar as the AY 2005-06 & 2007-08 are concerned, the respective first appellate authority did not allow the appeal of the assessee but remanded the matter back to the file of Ld. AO for verification of claim of from the books of accounts. The Ld. CIT(A) however while dealing with the present case was carried away by the submission of the appellant and erred in directing the Ld. AO to delete the addition without any cogent evidence (if any) and without first verifying correctness *vis-à-vis* authenticity of reconciliation statement. Thus, the impugned order suffered from provisions of rule 46A of IT-Rules, 1962 and section 250(6) of the Act.

4. *Per contra*, the Ld. AR adverting to para 5.1 & 5.1 of the impugned order reiterated that the books of accounts of the appellant are subjected to tax audit u/s 44AB of the Act and based thereupon the claim of the assessee were allowed in the preceding assessment years. Following consistency, the Ld. CIT(A) rightly allowed the appeal of the assessee of the year under consideration, which cannot be faulted with. For the reason, the present appeal of the Revenue stands meritless.

5. We have heard the rival contentions of the parties; and subject to provisions of rule 18 of 'ITAT Rules, 1963', perused the material placed on record.

6. In the present case, we observed that, the respondent neither during the course of original assessment nor in first appellate proceedings had adduced any evidence in support of its claim to prove that the excess/difference of contract receipts reported in Form 26AS by the payee UTCL were indeed arisen to him on account of reimbursement of expenditure. *Per contra* without first recording the satisfaction in terms of rule 46(2) (supra), the Ld. CIT(A) accepted the claim of the respondent merely on the basis of submission which were un-supported by cogent & compelling evidence. A careful reading of para 5.1 & 5.2 of the impugned order reveals that in preceding assessment years viz; 2005-06 & 2007-08 the subject matter was remanded to Ld. AO for fresh verification of appellant's claim from the accounts and give the relief accordingly. Whereas in the present case, the Ld. CIT(A) without first stating point of determination, his decision thereon and clear reasons therefore has jumped to conclusion and directed the Ld. AO to delete the addition by overlooking into earlier assessment year's appellate adjudications.



7. Without going into the merits of the case, we note that, while exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. CIT(A) was required to *state point of determination, his decision thereon and clear reasons therefore* in terms of section 250(6) of the Act. *Per contra* in the instant case, we find that the Ld. CIT(A) directed for deletion of addition violating the provisions of rule 46A (supra) and further without adjudicating the matter in terms of sub-section (6) of section 250 of the Act, which in our considered view suffered from former compliance. Therefore, this adjudication by the first appellate authority without touching the merits of the case, in our considered view is not in consonance with the provision of sub-section (6) of section 250 of the Act. For the reasons, without commenting on merits of the case, we set-aside the impugned order and remit the matter back to the file of Ld. CIT(A) with a direction to deal therewith in accordance with law *de-nova* after according not more than three opportunities and pass a speaking order in terms of section 250(6) of the Act.

**8. In result, the appeal is ALLOWED FOR STATISTICAL PURPOSES.**

U/r 34 of ITAT Rules, order pronounced in open court on this Thursday, 30<sup>th</sup> November, 2023.

-S/d-

**PARTH SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे/ PUNE ; दिनांक / Dated : 30<sup>th</sup> day of November, 2023.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT, Concerned.

4. The CIT-Concerned (MH-India)

5. DR, ITAT, Nagpur Bench

6. गार्डफ़ाइल / Guard File.

Ashwini

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.

-S/d-

**G. D. PADMAHALI**  
**ACCOUNTANT MEMBER**