

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.834/PUN/2024

निर्धारण वर्ष / Assessment Year : 2010-11

Dy.CIT, Central Circle-2, Nashik	Vs.	Pawar Patkar Construction Private Limited, Plot No.43/A, Shivneri, Mahatma Nagar Road, Off Trimbak Road, Nashik – 422007, Maharashtra PaN : AAIFP9352Q
Appellant		Respondent

Assessee by : None
Revenue by : Shri Sourabh Nayak
Date of hearing : 23.07.2024
Date of pronouncement : 26.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of the National Faceless Appeal Centre, Delhi dated 23.02.2024 for the assessment year 2010-11.

2. Briefly, the facts of the case are that the respondent-assessee is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of execution of Government Contracts. The Return of Income for the A.Y. 2010-11 was filed on 29.09.2009 declaring total income of Rs.4,44,72,400/-. Subsequently, based on the information received from Maharashtra Sales Tax Department that the assessee made bogus purchases from Varun Enterprises, Raj Traders

and Payal Enterprises aggregating to a sum of Rs.2,65,10,925/- during the previous year relevant to the assessment year under consideration, the Assessing Officer (AO) formed an opinion that income escaped assessment to tax. Accordingly, a notice u/s.148 was issued to the respondent-assessee on 28.11.2013. The respondent-assessee neither complied with the notice u/s.148 nor complied with the notice issued u/s.142(1). During the course of re-assessment proceedings, the AO had issued notices u/s.133(6) to the above suppliers from whom the respondent-assessee was stated to have purchased the goods. The above notices were returned unserved. In response to the show cause notice, the respondent-assessee submitted that the purchases made from the above parties were genuine and made the payments through account payee cheques/RTGS and therefore, the genuineness of the purchases cannot be doubted. On receipt of the explanation, the respondent-assessee was called upon to produce the above parties for verification, however, the respondent-assessee could not produce the parties for verification. On the failure of the respondent-assessee to prove the genuineness of the purchases, the AO treated the entire purchases of Rs.2,65,10,925/- as non-genuine and made addition of the said sum.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide order dated 12.02.2016 directed the AO to adopt 6% to on the alleged hawala purchases, restricting the addition to Rs.15,90,655./-. Thereafter, the Department filed an appeal ITA No.868/PUN/2016 before the Tribunal. The Tribunal vide order dated 09.01.2019 remanded the matter to the file of CIT(A) to dispose of the appeal applying the ration of decision in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT – ITA No.795/PUN/2014, dated 28.04.2017 passed by this Tribunal.

4. The CIT(A)/NFAC vide the impugned order without discussing the full facts of the case restricted the addition to 10% of the alleged bogus purchases by following the decision of the Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd and others Vs. DCIT in ITA No.795/PUN/2014, order dated 28.04.2017.
5. Assailing the impugned order, the Department is in appeal before the Tribunal in the present appeal.
6. The Ld. Departmental Representative submits that the order of CIT(A)/NFAC is very cryptic, without any discussion on the factual aspects of the case and comparable instances. Thus, the impugned order be vacated and be remanded to the file of CIT(A)/NFAC for fresh decision.
7. When the matter was called on, none appeared on behalf of the respondent-assessee despite due service of notice of hearing.
8. We heard the Sr. DR and perused the material on record. We find that this is second round of proceedings before this Tribunal. In the first round of proceedings, the Tribunal in ITA No.868/PUN/2016 order dated 09.01.2019 remanded the matter to the file of CIT(A) for denovo disposal of the appeal by directing the CIT(A) to apply the ratio of decision passed by this Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd and others Vs. DCIT in ITA No.795/PUN/2014, order dated 28.04.2017. However, on mere perusal of the order of CIT(A)/NFAC, we find the order passed by the CIT(A)/NFAC is very cryptic without discussing the ratio of the decision in the case of M/s. Chhabi Electricals Pvt. Ltd and others Vs. DCIT (supra) and simply confirmed the addition @10% of the bogus purchases, without any basis. Thus, the order passed by the CIT(A)/NFAC not only transgresses the directions of the Tribunal but also arbitrary. In the

circumstances, the order of the CIT(A)/NFAC is set-aside and the matter is remanded to the file of NFAC for *denovo* disposal of appeal by following strictly the directions of the Tribunal issued in earlier round of proceedings before this Tribunal.

9. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on this 26th day of July, 2024.

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 26th July, 2024.
Satish

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.