

आयकर अपीलिय अधिकरण "A" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.350/PUN/2024
निर्धारण वर्ष / Assessment Year: 2020-21

Kantilal Rupchand Jain, 172 C ward, Bhausingji Road, Kolhapur-416002 PAN NO.ABBPJ2024K	Vs	NFAC, New Delhi
Appellant/Assessee		Respondent/Revenue

ITA 409/PUN/2024
निर्धारण वर्ष / Assessment Year: 2020-21

ITO, Ward – (1), Kolhapur	Vs	Kantilal Rupchand Jain, 172 C ward, Bhausingji Road, Kolhapur-416002 PAN NO.ABBRJ2024K
Appellant/Revenue		Respondent/Assessee

Assessee by	Shri Mahaveer Jain-Advocate - AR
Revenue by	Shri Ramnath P Murkunde,IRS- DR
Date of hearing	07/10/2024
Date of Pronouncement	10/10/2024

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, AM:

These two appeals filed by Assessee and Department are against the same order of Commissioner of Income Tax (appeal) (NFAC) dated 03/01/2024 for AY 2020-2021. Hence both appeals were heard together and disposed by this common order.

2) The Assessee has raised the following grounds of appeal in ITA 350/PUN/2024:

“1. The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 143(3) r.w.s. 144B of the Act which is invalid and bad in law and without following the principles of natural justice.

2. The learned CIT(A) has erred in law and on facts in upholding the disallowance of Rs. 11,30,000/- (being 5% of total purchases amounting to Rs. 2,26,00,000) u/s. 69C of the Act.

3. *The learned CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer of invoking the provisions of S. 115BBE of the Act.*

4. *The learned CIT (A) has erred in law and on facts in sustaining the levy of interest u/s. 234A, 234B and 234C of the Act.*

5. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

3) Revenue in ITA 409/PUN/2024 has raised following grounds :

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of 5% of bogus purchases which works out to Rs. 11,30,000/- as against the addition of Rs. 1,26,00,000/- made on account of bogus purchases from Rishab Trading Company.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing the AO to examine the additional evidence admitted by him as per the provisions u/s 46A(3) of the I.T. Rules , 1962*

3. *The appellant craves leave to add, to amend or alter any ground/grounds which may be necessary.”*

4) Submission of Ld.DR :

Ld. DR submitted that the Assessing officer had provided around 8 opportunities to the assessee to file his submission however, the Assessee failed to file any reply to various notices. However, the Assessee seems to have filed certain documents like details of sales, name and address of persons to whom sales made, Quantity, invoices, etc. before the CIT(A). The Ld.CIT(A) has considered these documents without giving any opportunity to the AO, thus violated Rule 46A.

5) Submission of Ld.AR:

Ld.AR pleaded on merits of the case. Ld.AR filed case law paper book.

6) Findings and Analysis :

We have heard together the appeal in ITA 350/Pune /2024 filed by the assessee and ITA 409/Pune /2024 filed by the Revenue for AY 2020-2021 both emanating from CIT(A)'s order dated 03/01/2024 for AY 2020-2021.

6.1) For the sake of convenience, we discuss the Appeal in ITA 409/Pune /2024 filed by the Revenue here onwards:

We have heard both the parties, perused the records. It is observed from the Assessment Order that the Assessee had not filed any documentary evidence before the Assessing Officer. However, assessee had filed copies of invoices, quantitative details of sales, name of the parties to whom sales was made before the Ld.CIT(A) as seen from the paragraph 7.5 of the Ld.CIT(A)'s order. It is also observed from the CIT(A)'s order that CIT(A) had not called for any Report under Rule 46A of the Income Tax Rules from the Assessing Officer. The CIT(A) has also not recorded any satisfaction for admitting the additional evidence, which is mandatory. We specifically asked the Ld.AR to explain us whether the impugned documents were filed before the AO during the assessment proceedings. Ld.AR could not file any evidence to demonstrate that the impugned documents were filed before the Assessing Officer. In these facts and circumstances of the case, we agree with the Ld.DR that the CIT(A) had violated conditions mentioned in Rule 46A of the Income Tax Rule. It is mandatory for the CIT(A) to record the reasons for admitting the additional evidence and also provide opportunity to the Assessing Officer to rebut the evidence. Therefore, since the CIT(A) had violated the Rule 46A , we set aside the case to the CIT(A) for de-novo adjudication after following the procedure laid down in Rule 46A of the Income Tax Rules. The CIT(A) shall provide opportunity to the Assessee also.

6.2) In the result Ground number 2 of the Revenue is allowed for statistical purpose.

6.3) Ground number 1 of Revenue:

Since we have set aside the case to the CIT(A) , we do not make any observation on the merits of the addition. Accordingly, the ground number 1 is dismissed as unadjudicated.

In the result the Appeal in ITA 409/PUNE/2024 is allowed for statistical purpose.

7) Appeal in ITA 350/PUNE/2024 AY 2020-21

This is the Assessee's appeal. However, since, in ITA 409/Pune /2024 we have set aside the CIT(A)'s order for de-novo adjudication to the CIT(A), the Appeal in ITA 350/PUNE/2024 becomes infructuous.

Accordingly the appeal in ITA 350/Pune /2024 is dismissed unadjudicated .

8) Order pronounced in the open Court on 10th October, 2024

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Sd/-

**(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER**

पुणे/Pune;

/Dated : 10th October, 2024

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

1. अपीलार्थी/The Appellant.
2. प्रत्यर्थी/The Respondent
3. The CIT(A), concerned.
4. The Pr. CIT, concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे/DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फाइल/Guard File.

आदेशानुसार/BY ORDER,

//TRUE COPY//

Senior Private Secretary
आयकर अपीलीय अधिकरण /ITAT, Pune.