



आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER
AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

Miscellaneous Application No.150/PUN/2023

निर्धारण वर्ष / Assessment Year: 2008-09

Ravi Sellappan, Flat No.6, Building No.44, Hermes Paras Co-op Hsg. Society, Pune - 411006	V s	Deputy Commissioner of Income Tax, Circle-7, Pune.
PAN: AEKPS0589J		
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Rahul Sarada and Sh. Additya Dastane
Revenue by	Shri Rajesh Gawali – Addl.CIT
Date of hearing	12/12/2025
Date of pronouncement	10/02/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is a Miscellaneous Application of the Assessee i.e. Ravi Sellappan having MA No.150/PUN/2023 arising out of ITAT Order dated 05.01.2023 in ITA No.1277/PUN/2017 for A.Y.2008-09.

2. The Revenue had filed ITA No.1277/PUN/2017 for the A.Y.2008-09 in the case of Mr.Ravi Sellappan. The said appeal was



heard on 17.10.2022 by ITAT Pune “A” Bench. The order was pronounced on 05.01.2023 allowing the Revenue’s Appeal.

3. Mr.Ravi Sellappan filed Miscellaneous Application No.150/PUN/2023 under section 254(2) of the Act, against the order in ITA No.1277/PUN/2017. The said Miscellaneous Application was heard on 15.09.2023. ITAT passed order dated 25.10.2023 dismissing assessee’s miscellaneous application in MA No.150/PUN/2023.

4. Assessee filed Writ Petition before the Hon’ble Bombay High Court in WP No.14804 of 2023. Hon’ble Bombay High Court vide order dated 07.05.2024 held as under :

Quote “1. After the petition was heard for some time, the Court felt that Petitioner had a prima-facie case. Hence, without going into the merits, the following order is passed by consent :

a. The impugned order dated 25th October 2023 is hereby quashed and set aside.

b. The matte is remanded to the Tribunal to re-hear Miscellaneous application No.150/Pun/2023.” Unquote.

4.1 As per the directions of the Hon’ble Bombay High Court, registry issued notice refixing the MA No.150/PUN/2023 for



hearing. On 03.10.2025, the Miscellaneous Application No.150/PUN/2023 came up for hearing, during the hearing, ld.AR relied on the letter dated 19.12.2016 claimed to have been filed before ld.CIT(A). Ld.Departmental Representative(ld.DR) for the Revenue requested for time to verify the fact whether letter dated 19.05.2016 was filed before ld.CIT(A) or not! Accordingly, the case was adjourned.

5. On 12.12.2025, the said Miscellaneous Application was heard by this Tribunal.

Submission of ld.AR :

6. Ld.Authroised Representative(ld.AR) for the Assessee filed written submission. Relevant paragraphs of the said written submission are reproduced here as under :

“A. Non-consideration of/ not dealing with the fundamental submission of the Applicant as regards the 'not pressing of the grounds regarding reopening of assessment before the CIT (A)

2 This Hon'ble Tribunal has, in para 4.3 of the said Order, held that the "taxpayer herein had not pressed very grounds raised before the CIT (A) "On the basis that "once he has not pressed the same in lower appellate proceedings", the Applicant was not permitted to raise the same before this Hon'ble Tribunal. This finding and conclusion has been issued as a result of non-consideration of/ not dealing with the



fundamental submission of the Applicant as regards the 'not pressing' of the grounds regarding reopening of assessment before the CIT (A) resulting into errors apparent from the record in the said Order.

3. The fundamental case of the Applicant before this Hon'ble Tribunal was as follows:

a. The concession of 'not pressing the grounds regarding reopening of assessment was made because if the Applicant succeeded on merits then there would not be any tax demand. Under these circumstances, the grounds related to validity of reopening of assessment were conditionally 'not pressed'. The same cannot be construed to mean that the Applicant had agreed to subject himself to the jurisdiction of reassessment proceedings.

b. The letter dated 16th December 2016 filed by the Applicant before the CIT (A) in this regard was relied upon before this Hon'ble Tribunal.

c. This fundamental case was also set out in para 6 of the Written Submissions filed before this Hon'ble Tribunal.

4. The findings of this Hon'ble Tribunal in para 4.3 of the said Order constitutes a mistake apparent from the record on the following grounds which are in the alternative and without prejudice to each other:

a. The Applicant had only 'not pressed' the grounds regarding reopening of assessment. A conditional 'not pressing' of the grounds is, in law and facts, very different from 'withdrawal' of the grounds. The principle that an assessee is precluded from raising certain grounds



could have been applied only if the Applicant had unconditionally withdrawn the grounds or unconditionally 'not pressed' the same.

b. The 'not pressing' was not unconditional. It was conditional upon relief being allowed to the Applicant on the merits of the appeal. The same is clear from the letter dated 16th December 2016 filed by the Applicant before the CIT (A). A copy of the said letter dated 16th December 2016 was annexed at pg. no. 72 of the paperbook before this Hon'ble Tribunal. This Hon'ble Tribunal has overlooked this letter on the basis of which the fundamental case of the Applicant was asserted which is seen from the fact that no reference to this letter was ever made but only the finding of the CIT (A) in its order was noted.

Nisha Synthetics Limited v. CIT [2017] 82 taxmann.com 72 (SC) r/w Nisha Synthetics Limited v. ITAT [2017] 82 taxmann.com 215 (Bom.)

In this case, the Tribunal was directed to rehear the appeal of the assessee on the basis of documents which were already on record before the Tribunal.

Jayant D. Sanghavi v. Income Tax Appellate Tribunal [2017] 88 taxmann.com 554 (Bom.) (Para 2 & 4)

It is a settled position of law that when a Court/ Tribunal is required to examine the correctness of an order in which the appeal filed by a litigant was 'dismissed as withdrawn', the letter addressed by the litigant on the basis of which the appeal was treated as such is of utmost importance to see if the appeal was withdrawn unconditionally or not.



c. *If an assessee does not press certain grounds because the ultimate relief which he was seeking on these grounds is obtained on some other grounds, it is only natural and just that if those other grounds are decided against him, then an opportunity should be given to him to press the first mentioned grounds before the ITAT.*

d. *If miscarriage of justice has taken place on account of the erroneous appreciation of the facts as above which were on record, it is only natural that this Hon'ble Tribunal exercises powers under Section 254(2) of the Act.*

e. *Without prejudice to the above, Rule 27 of the ITAT Rules, 1963 specifically permits an assessee in whose favour the CIT (A) decided the matter to urge even those grounds/ aspects which were unfavourable to the assessee. The reason for the same is obvious viz. if the final outcome of the appeal before the CIT (A) is favourable to the assessee, it would not matter to him how and by what reasoning the decision is arrived at so long as it is not challenged by the Department. But, if it is challenged by the Department, the assessee must be in a position to support the order passed by the CIT (A) on every other ground which was before the CIT (A).*

The Applicant relies on the following judicial precedents in this regard:

a. *Sony Pictures Networks India Pvt. Ltd. v. Income Tax Appellate Tribunal & Ors. [Writ Petition No. 3508 of 2018-Bombay High Court, dated 3rd January 2019] (Para 9)*

Not dealing with the fundamental submission of the assessee is a mistake apparent from the record and the order passed under section



254(1) of the Act must be recalled in exercise of powers under section 254(2) of the Act.

b. Laxmi Electronic Corpn. Ltd. v. CIT [1991] 188 ITR 398 (All.)

In a case where the Tribunal fails or omits to deal with an important contention affecting maintainability/merits of appeal, it must be deemed to be a mistake apparent from record, which empowers Tribunal to reopen appeal and rectify same if it is so satisfied.

17. The observation of this Hon'ble Tribunal in para 7 of the said Order that we can very well direct the Assessing Officer to assess the same in the concerned earlier assessment year" is contrary to the judgement of the Supreme Court in the case of CIT v. Manick Sons [1969] 74 ITR 1(SC) wherein it was held as follows:

"An assessment which has become final may be reopened in appeal by the Appellate Assistant Commissioner or the Tribunal or in revision by the Commissioner, or under an order of rectification of mistake, or pursuant to a notice of reassessment. The Tribunal hearing an appeal may give directions for reopening assessment of the year to which the appeal relates it cannot give any directions to reassess in case of a period not covered by that year reasons already set out the Tribunal had no jurisdiction to proceed to combine the income for the two years 1952-53 and 1953-54 and to divide it for the purpose of assessment between the two years equally. The Tribunal had to assess the income for the year in question." For

18. This observation of this Hon'ble Tribunal which is contrary to the judgement of the Supreme Court has been relied on in arriving at the conclusion that the addition pertains to AY 2008-09. It is now settled



position that the use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact as held by the Supreme Court in the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC).

19. Therefore, the said Order dated 5th January 2023 may be recalled for a fresh hearing on merits of the matter.”

Submission of ld.DR :

7. Ld.Departmental Representative(ld.DR) for the Revenue filed copy of the letter dated 19.12.2016 filed by the Assessee before Commissioner of Income Tax(Appeal)-5, Pune which has got acknowledgment stamp. Ld.DR for the Revenue filed following submission :

“1. Assessment order u/s 147 rws 143(3) of the Income tax Act 1961, passed on 25.02.2016 addition of Rs 6,56,89,219/ assessee had carried out civil contract for M/s Samcon Infrastructure Corporation Pune and not shown the said amount as receivable

2. Assessee being aggrieved by the Assessment Order filed appeal before the CIT(A)-5, Pune Assessee are raised 7 grounds of appeal before CITIA)

3. The Led. CIT(A)-5 Pune passed an order in favour of assessee vide order Appeal No PN/CITIA)/ITO.wd-7/3), Pune/40/2016-17 dated 22/12/2016 allowing the assesses appeal.



4. The revenue filed appeal to ITAT against the CIT(A)s order vide form 36 dated 19/5/2017 Revenue appeal No 1277/PUN/2019.

5. The assessee filed appeal vide ITA No. 180/PUN/2022 as well Cross objection Co No 15/PUN/2017 in revenues appeal No 1277. These were withdrawn by assessee, and Hon'ble ITAT dismissed these appeals as withdrawn vide order dated 14/7/2022

6. The Hon ble ITAT vide order dated 5/1/2023 allowed the revenues appeal.

7. Assessee has filed a Miscellaneous Application No 150/PUN/ 2023 arising out of order dated 5/1/2023.

8. Hearing of MA no 150/PUN/2023 took place on 03/10/2025. In this hearing, the AR of the Appellant has argued that during the appellate proceedings before the Ld CIT(A)-5, Pune the assessee had filed a letter dated 19/12/2016, a copy of the Order sheet noting of the record of CITIA) was procured by filing a RTI Application and same was produced before the Tribunal. The AR argued that he had conditionally withdrawn grounds no 1, 2 and 3 filed before the CITIA) subject to relief being granted on balance grounds of appeal. The order sheet noting dated 19/12/2016 only notes that Shri Aditya Dastane (CA) appeared. Discussed the issues. The AR is not pressing ground no 1, 2, and 3. There is no mention of the conditional withdrawal as claimed by the AR.

9. During the last hearing, the Hon'ble members have asked the department to ascertain if the letter dated 19/12/2016 was filed before the Ld. CIT(A)-5, Pune. In order to verify the same this office has called



for appellate records from the O/o the CIT(A)-5, Pune. On perusal of the records (2 Vols), it is seen that the letter dated 19/12/2016 is on record bearing the stamp and inward no. of CIT(A)-5 Pune (copy of assessee's letter and copy of Order Sheet maintained by the O/o Ld. CIT(A)-5, Pune are enclosed for reference purposes)."

Findings & Analysis :

8. We have heard both the parties and perused the records. In this case, Assessee during the appellate proceedings had challenged proceedings under section 148 of the Act. The ITAT vide order dated 05.01.2023 in ITA No.1277/PUN/2017 has dismissed the Assessee's contention regarding validity of proceedings u/s.148 on the ground that Assessee had *suo-moto* not pressed those grounds before Id.CIT(A). Ld.AR submitted that the withdrawal of legal grounds was conditional. Ld.AR invited our attention to CA-Aditya Dastane's letter dated 19.12.2016 filed before Id.CIT(A) wherein, it is specifically mentioned that "subject to the relief being granted on other grounds". Ld.AR therefore submitted that in these circumstances, Assessee is eligible to raise these grounds before ITAT under Rule 27. We have gone through the letter dated 19.12.2016 and noted that it was a conditional withdrawal. It is also noted that Assessee had filed Cross-Objection No.15/PUN/2017 and Cross Appeal No.180/PUN/2022 against the Id.CIT(A)'s order dated



22.12.2016 for A.Y.2008-09. However, the appeal in Assessee's ITA No.180/PUN/2022 and C.O.No.15/PUN/2017 was heard on 24.06.2022 and order was pronounced on 14.07.2022. The relevant paragraph of said order dated 14.07.2022 are reproduced here as under :

“2. Learned Counsel representing assessee submits at the outset that he neither wishes to press for his cross-objection CO No.15/PUN/2022 (in Revenue's appeal ITA No. 1277/PUN/2017) nor his main cross appeal ITA No.180/PUN/2022 anymore subject to the condition that he is granted liberty to raise all factual as well as legal issues in the departmental appeal hereinabove in light of Peter Vaz Vs. CIT (2021) 436 ITR 616 (BOM). The Revenue is equally fair in not opposing the assessee's forging withdrawal subject to all just exceptions. Faced with this situation, we dismiss the assessee's above Cross Objection CO No 15/PUN/2015(in Revenue appeal ITA No.1277/PUN/2017) as well as his main cross appeal ITA No.180/PUN/2022 in above terms. Ordered accordingly.

3. This appeal ITA No.180/PUN/2022 and C.O.No.15/PUN/2022 [in Revenue's appeal No.1277/PUN/2017] are dismissed as withdrawn in above terms. A copy of this common order be placed in the respective case files.”

8.1 Thus, Assessee was granted liberty to raise all legal and factual grounds in Revenue's Appeal No.1277/PUN/2017. However, while hearing the Revenue's Appeal in Appeal No.1277/PUN/2017, the Assessee's Legal Issues were not heard and were dismissed without



adjudication. Therefore, we agree to the submission of ld.AR for the Assessee.

9. It is also observed that ITAT order in ITA No.1277/PUN/2017 has given certain directions without assessee getting the opportunity of rebutting the facts. It has been submitted by ld.AR that ITAT has not considered Assessee's submission. Apparently seems that ITAT has not considered Assessee's submission.

10. In these facts and circumstances of the case, the ITAT Order in ITA No.1277/PUN/2017 dated 05.01.2023 is recalled for denovo adjudication. Accordingly, grounds of appeal raised in this Miscellaneous Application are allowed.

11. In the result, Miscellaneous Application filed by the Assessee is allowed.

Registry is directed to fix the hearing and inform both the parties. Registry to issue notice to both the parties.

Order pronounced in the open Court on 10 February, 2026.

**Sd/-
ASTHA CHANDRA
JUDICIAL MEMBER**

**Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10 Feb, 2025/ SGR



आदेशकीप्रतिलिपिअग्रेषित / 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. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

सहायक रजिस्ट्रार /Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.