आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील स० / ITA No.531 & 532/PUN/2019
निर्धारण वर्ष / Assessment Years : 2009-10 & 2011-12

Firoz Ahmed Moh. Motin Choudhary, Star Lubricants, Nr. Parshuram Rolling Mill, Vidya Nagar, Chinchwad, Pune – 411019. PAN : AFTPC7046Q.	.... अपीलार्थी / Appellant

बनाम v/s

The Income Tax Officer, Ward –9(1), Akurdi, Pune.	.... प्रत्यर्थी / Respondent

Assessee by : Shri Dinesh Ramesh Gulabani.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 04.06.2019		घोषणा की तारीख / Date of Pronouncement: 07.06.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the assessee are emanating out of separate orders of Commissioner of Income Tax (Appeals) – 8, Pune dated 04.01.2019 for A.Ys. 2009-10 & 2011-12 respectively.

2. Before me, at the outset, both the parties submitted that though the appeals filed by the assessee are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus both the appeals can be

heard together. In view of the aforesaid submissions of both the parties, I, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts in ITA No.531/PUN/2019 for assessment year 2009-10.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual engaged in the business of trading of Oil under the name and style of 'Star Lubricants". Assessee filed his original return of income for A.Y. 2009-10 on 30.10.2009 declaring total income at Rs.3,00,200/-. The return of income was initially processed u/s 143(1) of the Act. Thereafter, on the basis of the information received from Sales Tax Department, it was found that assessee had indulged into hawala transactions of purchases. AO thereafter issued notice u/s 148 of the Act and it is stated to have been served on the assessee. Consequently, the case was taken for scrutiny and thereafter the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dt.12.03.2015 and the total income was determined at Rs.11,43,960/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.04.01.2019 (in appeal No.PN/CIT(A)-8/ITO-Wd 9(1)/640/2017-18) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

> *"1. The Ld. CIT(A) erred in dismissing the Appeal filed by the Appellant as invalid and non-maintainable being barred by the period of limitation by rejecting appellants affidavit towards condonation of delay for 331 days explaining sufficient cause of delay.*
>
> *2. The Ld. CIT(A) failed to appreciate that in appeal for AY 2010-2011 the delay on same grounds was condoned by the then Ld. CIT(A) & the case of AY 2009-2010 is a covered case wherein ITAT has given decisions for AY 2010-2011 on further appeal.*

> *3. The Ld. AO has wrongly drawn erroneous inference by making total additions of Rs. 8,43,759/- towards bogus purchases from Mihir Marketing & Shifa Enterprises without any investigation & purely on the information of Sales Tax Department which is not justified as per provisions of law."*

4. Similar grounds have been raised in I.T.A. No.532/PUN/2019 for A.Y. 2011-12.

5. On the basis of information received from Sales Tax Department, it was noticed that assessee had made purchases aggregating to Rs.8,43,759/- in A.Y 2009-10 from two parties i.e., Mihir Marketing and Shifa Enterprises. AO was of the view that the purchases made by the assessee from the aforesaid parties were not genuine and the purchases have been made by the assessee to inflate the expenses to reduce the total income of the assessee. Assessee was asked to prove the genuineness of purchases by producing the copies of transportation bills/ lorry receipt, delivery challans, extract of ledger account etc. To prove the genuineness of transactions, assessee furnished copies of purchase bills, ledger extract of the concerned parties in its books of account. Assessee however did not furnish the confirmation of the parties concerned, proof of payment made against alleged purchases of Rs.8,43,759/- etc. AO therefore concluded the purchases to be bogus purchases and added it as unexplained expenditure u/s 69C. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who dismissed the appeal of the assessee.

6. Before me, at the outset, Ld.A.R. submitted that there was a delay of 331 days in filing the appeal before Ld.CIT(A). Assessee filed the affidavit explaining the reasons for delay in filing the appeal and prayed for condonation of delay which was refused by the Ld.CIT(A). He further

submitted that Ld.CIT(A) without deciding on merits, dismissed the appeal of assessee. Before me Ld.A.R. submitted that there was no malafide intention in delayed filing the appeal before Ld.CIT(A) and prayed that in the interest of justice, the delay in filing the appeal before Ld.CIT(A) be directed to be condoned and if given an opportunity, assessee will furnish all the details to prove his case. He therefore prayed that suitable directions may be issued to Ld.CIT(A) to decide the issue on merits. He further gave an undertaking that if given a chance, assessee will appear before lower authorities and furnish all the required details to substantiate his case. He therefore submitted that assessee be granted one more opportunity to plead its case. Ld.D.R. on the other hand supported the order of AO and Ld.CIT(A) and objected to Ld.A.R.'s prayer for 2^{nd} innings.

7. I have heard the rival submissions and perused the material on record. I find that there was delay in filing the appeal before Ld.CIT(A) and the delay was not condoned by Ld.CIT(A) and further Ld.CIT(A) has passed dismissal order by rejecting the affidavit of assessee filed for condonation of the delay without deciding the issue on merits. Before me, Ld.A.R. has explained the reasons for delay in filing the appeal. Considering the submissions of Ld.A.R. and in view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard, I am of the view that the delay in filing the appeal before Ld.CIT(A) needs to be condoned. I accordingly, condone the delay in filing the appeal before Ld.CIT(A). Further, since the Ld.CIT(A) has not decided the appeal on merits, I am of the view that one more opportunity be granted to the

assessee to present his case. I therefore restore the matter back to the file of Ld.CIT(A) to decide the issue on merits afresh in accordance with law. Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish all the details called for by the lower authorities. In view of my decision to restore the issue to Ld.CIT(A), I am not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

8. **In the result, the appeal of assessee in ITA No.531/PUN/2017 for A.Y. 2009-10 is allowed for statistical purposes.**

9. Now I take up assessee's appeal in ITA No.532/PUN/2017 for A.Y 2011-12.

10. As far as the grounds raised in appeal in ITA No.532/PUN/2017 for A.Y. 2011-12 is concerned, in view of the submission of both the parties that the facts of the case in the year being identical to the facts and issue of the case in ITA No.531/PUN/2017 for A.Y. 2009-10, I therefore for the reasons stated herein while disposing of the appeal in ITA No.531/PUN/2017 for A.Y. 2009-10, and for similar reasons restore the issue to the file of Ld.CIT(A) to decide the issue on merits. Thus, the grounds of assessee are allowed for statistical purposes. **Thus, the grounds of the assessee are allowed.**

11. **In the result, the appeal of assessee in ITA No.532/PUN/2017 for A.Y. 2011-12 is allowed for statistical purposes.**

12. **To sum up, both the appeals of assessee are allowed for statistical purposes.**

Order pronounced on 7th day of June, 2019.

Sd/--
(**ANIL CHATURVEDI**)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 7th June, 2019.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-8, Pune.
4. Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.