

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

Before: Shri N.S. Saini, Accountant Member
and Shri Rajpal Yadav, Judicial Member

ITA No. 2600/Ahd/2011
Assessment Year 2005-06

Asstt. Commissioner of Income Tax, Navsari (Appellant)	Vs	Naranlala Pvt. Ltd, Near Railway Station, Navsari-396445, PAN: AAAN7719C (Respondent)
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Revenue by: Shri M. K. Singh, Sr. D.R.
Assessee by: Shri Sunil H. Talati, A.R.

Date of hearing : 08-06-2015
Date of pronouncement : 12-06-2015

आदेश/ORDER

PER : RAJPAL YADAV, JUDICIAL MEMBER:-

The revenue is in appeal before us against the order of Ld. Commissioner of Income Tax(A) dated 27th July, 2011 passed for Assessment Year 2005-06.

2. The solitary substantial grievance of the revenue is that Ld. Commissioner of Income Tax (Appeals) has erred in deleting the addition

of Rs. 7 lacs which was added by the Assessing Officer on account of disallowance of retention money.

3. The brief facts of the case are that assessee has filed its return of income electronically on 24-10-2005 declaring total income of Rs. 41,60,580/-. The case of the assessee was selected for scrutiny assessment and a notice u/s. 143(2) was issued and served upon the assessee. It emerges out that an assessment order was passed u/s. 143(3) on 26-12-2007 wherein income of the assessee was determined at Rs. 51,90,380/-. The dispute travelled up to the Tribunal and the Tribunal has set aside the issues for fresh examination. The Assessing Officer has issued a notice u/s. 143(2) and 142(1). According to the Assessing Officer, assessee has claimed retention money of Rs. 7 lacs which has been excluded from the profits. In his opinion, retention money is a part of the sale and it ought to be recognized as revenue. Accordingly, Id. Assessing Officer has made an addition of Rs. 7 lacs to the income of the assessee. He further disallowed license fee of 45,000/-. In this way, the income of the assessee has been determined at Rs. 49,05,580/-.

4. On appeal, Ld. Commissioner of Income Tax (Appeals) had deleted the addition by observing that same addition was made in the past which has been deleted.

5. Before us, it was contended that issue in dispute is squarely covered by the order of ITAT passed in ITA No. 1744/Ahd/2011 in Assessment Year 2008-09. We find that the Tribunal has set aside the issue to the file of the Assessing Officer for re-adjudication. The finding of the Tribunal in assessee's own case for Assessment Year 2008-09 reads as under:-

“2. The sole ground of appeal raised by the Revenue in this appeal is that the CIT(A) erred in deleting the addition of Rs.99,99,041/- made on account of retention money.

3. The brief facts of the case are that during the assessment proceedings the A.O. observed that the assessee has shown retention money of Rs.99,99,041/- which was excluded from the profit. The A.O. show caused the assessee. The assessee contended that the right to receive the retention money was not accrued to the assessee and hence the same was not shown in its income during the year under consideration. According to the A.O. the assessee was following Mercantile System of accounting and in Mercantile System of accounting the retention money is accrued to the assessee as soon the entries are posted in the books of account. He observed that the assessee itself in the past was showing income on the basis of entire turnover. Similar type of retention money clause was there and that the assessee has changed his method of accounting. He, therefore, brought to tax the retention money of Rs.99,99,041/-.

4. On appeal, the CIT(A) deleted the addition by observing that his predecessor in the case of the assessee itself in the earlier Assessment Years 2002-03, 2005-06 and 2006-07 vide appellate order No.CIT(A)/VLS/95/05-06 dated 14.12.2005 and that he himself in the A.Y. 2007-08 vide appellate order No.CIT(A)/VLS/238/09-10 dated 29.11.2010 has decided the issue in favour of the assessee. He, therefore, following the precedence, deleted the addition of Rs.99,99,041/-.

5. Both the parties before us agreed that the issue is now covered in favour of the assessee by the order of this Bench of the Tribunal in the case of the assessee in the A.Y. 2002-03 in ITA No.1977/Ahd/2011, order dated 27.03.2015 and in the A.Y. 2006-07 in ITA Nos.1831 & 2128/Ahd/2009 vide order dated 17.06.2011 wherein it was held as under:-

“4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Coordinate Bench (ITAT ‘C’ Bench Ahmedabad) in ITA No.1831/Ahd/2009 for AY 2006-07(supra) has given direction to the AO that reads as under:-

“8. On consideration of the facts of the case it is clear that earlier the issue was decided against the assessee by ITAT Ahmedabad Bench in the case of the assessee itself, copies of the same are filed in the paper book. The authorities below have gone by the findings given against the assessee in the earlier years and confirmed the addition on this issue. Therefore, complete facts of the case were not examined and verified including the amount if any incurred by the assessee for business purpose out of the retention amount. However, after passing of the impugned orders, there is a change on the matter in issue and the points have now been decided in favour of the assessee which is also not disputed by the learned DR. However, the authorities below have no

occasion to examine the facts of the case in the light of the above decisions cited by the learned Counsel for the assessee. Both the parties agreed that the matter may be remanded to the file of the AO for reconsideration of the issue in the light of the decision delivered by the Hon'ble Punjab & Haryana High Court and the Hon'ble Supreme Court (supra). We find force in the submissions of both the parties that the matter requires reconsideration in the light of the above decisions. We accordingly, set aside the orders of the authorities below and restore this issue to the file of the AO for reconsideration of the same in the light of the above decisions cited by the learned Counsel for the assessee. The AO shall also verify the details filed by the assessee on this issue and shall pass reasoned order in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee. In the result, these grounds of appeal of the assessee are allowed for statistical purposes."

4.1. Since the facts are identical to the facts of assessee's own case for AY 2006-07 and following the Tribunal order, the issue is restored back to the file of AO to decide the same in the light of the direction given by the Coordinate Bench in ITA No.1831/Ahd/2009 for AY 2006-07(supra)."

6. Respectfully following the above quoted orders of the Tribunal in assessee's own case, we restore the issue back to the file of A.O. with the same directions as given in ITA No.1831/Ahd/2009 for A.Y. 2006-07. Thus, the ground of appeal of the Revenue is allowed for statistical purposes.

7. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Court on Friday, the 10th day of April, 2015 at Ahmedabad."

6. Learned counsel for the assessee at the very outset agreed that this issue be set aside to the file of Assessing Officer for re-adjudicating the same in accordance with the issue taken up in earlier years. On the other hand, Departmental Representative did not raise any objection.

7. Though the tax effect involved in this appeal is below 3 lacs but considering the consistence of the issue involved in number of years, we deem it appropriate to adjudicate it on merit and therefore respectfully following the order of the Co-ordinate Bench, we set aside this issue to the

Assessing Officer with a direction that he shall take up this year also with Assessment Year 2008-09.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12-06-2015

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER
Ahmedabad : Dated 12/06/2015
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Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद