आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2126/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-6, Pune.

.......अपीलार्थी / Appellant

बनाम / V/s.

M/s. Sutham Electric Ltd.
107, Gat No.819/2, Sanaswadi,
Tal. Shirur, Dist. Pune,
Pin-412 207
PAN: AACCS3772Q

......प्रत्यर्थी / Respondent

Revenue by	:	Shri Sudhendu Das
Assessee by	:	None

सुनवाई की तारीख / Date of Hearing	:	04.01.2021
घोषणा की तारीख / Date of Pronouncement	:	04.01.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeals)-4, Pune dated 29.05.2017 for the assessment year 2012-13 as per the following grounds of appeal on record:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.5,27,29,776/- made u/s.43B of the Act by the Assessing Officer despite the same amount shown as unpaid in tax audit report.

2. For these and such other grounds as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.

3. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal during the course of Appellate Proceedings before the Hon'ble Tribunal."

2. At the time of hearing, none appeared on behalf of the assessee. Though the notice was issued, there was no appearance from the side of the assessee. The submission of the Ld. DR is recorded and the case is heard on merits.

3. The crux of the grievance of the Revenue in this appeal is deletion of addition of Rs.5,27,29,776/- made u/s.43B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Assessing Officer despite the same amount shown as unpaid in tax audit report.

4. The brief facts of the case are that the assessee is a private limited company carrying on the business of manufacturing Automotive Switches. The assessee has filed its return of income showing a loss at Rs.6,44,74,396/- on 30.09.2012. The case was selected for scrutiny through CASS. During the course of assessment proceedings, the Assessing Officer found that in the Tax Audit Report [Annexure E of Column 21(B)], the total amount of Rs.5,28,92,513/- was shown as unpaid. However, no such amount was disallowed in the computation of total income. The Assessing Officer, therefore, disallowed the same u/s.43B of the Act and added to the total

income. The Assessing Officer at Para 11 of his order also scanned the copy of relevant portion of the Tax Audit Report of Annexure E and the same is reproduced herein below:

Annexure E

Liability incurred during the previous year

Sr. No.	Nature of liability	Outstanding amount incurred during the previous year	Amount paid/set off before due date of filing of return	Amount remaining unpaid on the due date of filing of return	Whether passed through P & L	Clauses
1.	Sales tax payable	36476784.00	0.00	36476784.00	No	Any sum in the nature of tax, duty, cess or fee under any law
2.	Sales Tax	420474.00	0.00	420474.00	No	Any sum in the nature of tax, duty, cess or fee under any law
3.	Professional Tax payable	3179338.00	0.00	3179338.00	No	Any sum in the nature of tax, duty, cess or fee under any law
4.	Provident Fund payable	11558448.00	0.00	11558448.00	No	Any sum payable by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees
5.	Interest payable	162737.00	0.00	162737.00	No	Any sum payable as interest on any loan or borrowing from any scheduled bank
6.	Bonus payable	1094732.00	0.00	1094732.00	No	Any sum payable to an employee as bonus or commission for services rendered.

In the said chart, it is clearly written that outstanding amount incurred during previous year. Therefore, it is evident that total amount of Rs.5,28,92,513/- was shown as unpaid.

5. The Ld. CIT(Appeals) on the other hand held that these amounts pertain to opening balances. The Ld. CIT(Appeals) further observed that these amounts were considered by the assessee while filing return of income. In the scanned chart of the Tax Audit Report, it is clearly written that the amounts were incurred and remain unpaid as on the last date of previous year. The Ld. CIT(Appeals) having lost sight of this fact, simply accepted the submissions of the assessee that these amounts represent opening balances without verifying in detail this factual aspect. That the Ld. CIT(Appeals) passed the impugned order in gross negligence and superficially. In such scenario, the observation of the Ld. CIT(Appeals) that these amounts were the part of opening balances and were shown in the return of income, is not borne out of record.

Therefore, we are of the considered view, in the interest of justice, the matter should be restored back to the file of Ld. CIT(Appeals) for proper appreciation of facts and law. Accordingly, we set aside the order of the Ld. CIT(Appeals) and restore the matter back his file to re-adjudicate the issue while complying with the principles of natural justice and also for passing a speaking order corroborating with the facts of the case.

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

Order pronounced on 04th day of January, 2021.

Sd/-	Sd/-
INTURI RAMA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 04th January, 2021
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, **"ए"** बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	04.01.2021	Sr.PS/PS
2	Draft placed before author	04.01.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		