

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'B' BENCHES:: PUNE

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

ITA No.1315/PUN/2016  
(A.Y. 2008-09)

DCIT, Panvel Circle, Panvel, Dist. Raigad.	vs	M/s. Vintage Enterprises, Shop No.1, Plot No.1, 31 & 32, Patel Paradise, Sector-35E, Owe, Kharghar, Dist. – Raigad.  PAN: AAFFV 5688 J
Appellant		Respondent

ITA No.3469/PUN/2016  
(A.Y. 2008-09)

M/s. Vintage Enterprises, Shop No.1, Plot No.1, 31 & 32, Patel Paradise, Sector-35E, Owe, Kharghar, Dist. – Raigad.  PAN: AAFFV 5688 J	vs	ACIT, Circle, Panvel, Dist. Raigad.
Appellant		Respondent

Assessee by	:	Shri M. Subramanian, Adv.
Revenue by	:	Shri Ajay Kumar Kesari, DR
Date of hearing	:	16/10/2023
Date of pronouncement	:	18/10/2023

ORDER

Per Bench:

These two appeals preferred by the Revenue and the assessee for the same A.Y. 2008-09 emanates from the order of Commissioner of Income Tax [Appeals]-2, Thane (**for short**, 'CIT(A)'), dated 31.03.2016 as per the grounds of appeals on record.

2. At the outset, this Bench observes that there is a glaring defect

much apparent in the documents filed on record. That, specifically it is noticed that in the appeal memo filed by the Department, the assessment order is dated 18/03/2014, and similarly, in the appeal memo of the appeal filed by the assessee, the assessment order is also dated 18/03/2014 and both these assessments were completed u/sec. 143(3) r.w.s. 147 of the Act. The rest of the details as appearing in the cause title of assessment order also matches, meaning thereby, it has to be construed on a reasonable basis that they are the same assessment orders filed in both the respective appeal memos from where the case has originated. Having said that, it is now observed at para 8 of the assessment order filed in the appeal memo by the Department in its appeal which reads as follows: -

*"8. Page No.60 & 66 of Annexure A-1 seized from the residence of Mr. Dilip Dherai on 05/03/2009.*

*8.1 Page No.60 is a cash receipt duly signed by Mr. Mansukh Timbadia for Rs. 20,00,000/-. As per the details submitted by M/s. Krupa Land Pvt. Ltd with the AO during their assessment proceedings, they had bought 16.91 acres of land from Mr. Mansukh Timbadia in Nevali village. This also establishes that receipt of amount in cash by the purchasing parties.*

*8.2 Page No.66 of Annexure A-1 is a cash receipt duly signed by Mansukh Timbadia for receiving amount of Rs. 78,72,500/- wherein it is mentioned "To Mansukh Newali A/c Full & Final." The last six figures of this receipt of full and final payment are exactly matching with the last six figures of Rs. 9,28,72,500/-, which is the amount appearing in last col for 4.425 acres of land on page nos. 190 and 196. This further establishes that receipt of amount in cash by the purchasing parties. Both the above mentioned cash receipts are duly dated and signed by Mansukh Timbadia. On page No.66 which is dated 30/12/2008, there is a clear noting that "To Mansukh Newali A/c Full & Final" which also clearly establish that cash payments have been made for purchase of land in Newali village, which are the part of the balance amount of Rs. 1.39 crore as appearing on Page No.190 (dated 29/11/2008) of Annexure A-5 impounded from the office of Mr. Dilip Dherai at Jai Tower. It is pertinent to mention here that IOM dated 23/08/2008 talks about outstanding payment in 'other mode'*

*8.3 Mr. Dilip Dherai in his statement recorded on 05/03/2009 has admitted that both these pages (Page nos.60 & 66 of Annexure A-1 seized from his residence) are cash payment disbursement entries for land acquisition."*

Now, in assessee's appeal memo the para 8 of the assessment order enclosed therein reads as follows: -

*"8. Plethora of incriminating evidences gathered during the search/survey from various premises of the Jain Corp Group as discussed above clearly establishes that unaccounted cash of Rs. 16,93,90,000/- for sale of land of 6.515 acre vide agreement dated 22/02/2008 was accepted by the assessee while dealing land transactions with the Group as above. This unaccounted cash receipt, which is undisclosed income of the assessee for the year, is not declared by him in his return of income filed nor it was disclosed during the assessment proceedings."*

Both are substantially different in contents. In fact, para 8 of the assessment order filed in the appeal memo by the Department, consist of those clinching facts which ultimately resulted in addition. However, the contents of para 8 of the assessment order filed in the appeal memo of the assessee is altogether different and mismatched. At this juncture, we verified from the case records of the assessee and therein the contents of para 8 in the assessment order matches with para 8 of the assessment order filed by the Department in its appeal memo. Therefore, whether the assessee has filed wrong assessment order is the question and from where it had procured the said order also becomes pertinent to identify whether there is any fraud or malpractice in any manner.

3. Ld.AR submitted that the assessment order which they have filed in their appeal memo is the assessment order which had been sent to

them by the Department and he could not explain why there was mismatch and inconsistency in the contents of para 8 as appearing in the respective assessment orders filed by the parties herein. Ld.AR insisted that copy of the assessment order as filed in appeal memo of the assessee should be construed as the correct assessment order since the Id. CIT(A) had adjudicated, based on the said assessment order.

4. That, the case records provides considerable amount of clarity and validity regarding the facts and circumstances of each case in matters of any ambiguity on enquiry. We have already examined the contents of para 8 as appearing in the assessment order in the case record and it is matching with the contents of para 8 of the assessment order filed by the Revenue in its appeal memo. Therefore, without any doubt the correct assessment order has to be the one as appearing in the case record. Now, neither the Id.AR nor Id.DR could demonstrate through evidence as to which assessment order had been considered for adjudication by the Id. CIT(A). This Bench further observes that this kind of situation, have never been encountered with and it is a very serious matter where the records itself are suffering from ambiguity and uncertainty. We are unable to come to the stage of adjudication because firstly it has to be ascertained whether the Id.CIT(A) in passing the impugned order has placed reliance on the correct assessment order or not. That, suppose if the Id. CIT(A) had adjudicated on the basis of wrong assessment order, then the

impugned order has to be quashed **as being 'non est'** and the correct assessment order has to be restored.

5. Next question is that how a wrong assessment order could have been sent to the assessee by the Department. Considering these circumstances, we set aside the order passed by the Id. CIT(A) and remand the matter back to his file to verify the issues enumerated in **the foregoing paras of this order and adjudicate 'denovo'** complying with the principles of natural justice. We order accordingly for both the matters filed before this Bench. Before parting we state that given the seriousness of the ambiguity and uncertainty in the present circumstances, this Bench also does not rule out the possibility of occurrence of any malpractice or fraud committed through manipulating the contents of the assessment order. In this regard, we also order a thorough enquiry by the Principle Chief Commissioner of Income Tax taking the enquiry to its complete logical end in upholding the principles of fair play, justice and judiciousness. Therefore, both the appeals stands allowed for statistical purposes as per above terms.

6. In the result, the appeals of the Revenue and the assessee are allowed for statistical purposes.

Order pronounced in open Court on 18<sup>th</sup> October, 2023.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 18<sup>th</sup> October, 2023

*ITA Nos.1315 & 3469/PUN/2016*  
*M/s. Vintage Enterprises*

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The **DR, ITAT, "B" Bench Pune.**
5. Guard File.

By Order

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Senior Private Secretary  
ITAT, Pune.