

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
'B' BENCH MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM**

**&**

**SHRI AMARJIT SINGH, JM**

**ITA No.4309/Mum/2017  
(Assessment Year :2009-10)**

Income Tax Officer Ward 1(3), Kalyan 1 <sup>st</sup> Floor, Mohan Plaza Wayale Nagar, Khadak Pada Kalyan (W) – 421 301	Vs.	Shri Narendrakumar Goyal Prop. M/s. Neeraj Trading Company, Gala No.2, B Building, Rajlaxmi Commercial Complex Kalher, Bhiwandi – 421 302
<b>PAN/GIR No. AAOPG1214A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Rajendra Joshi
Assessee by	Ms. Neha Paranjpe
<b>Date of Hearing</b>	<b>02/12/2020</b>
<b>Date of Pronouncement</b>	<b>04/12/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.4309/Mum/2017 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Aurangabad in appeal No.THN/CIT(A)-2/511/2015-16 dated 27/03/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 by the Id. Income Tax Officer, Ward 1(3), Kalyan (hereinafter referred to as Id. AO).

2. The revenue has raised the following grounds:-

*1. On the facts and circumstances of the case the CIT (A) erred in not giving any opportunity by calling remand report from the assessing officer on the additional evidence submitted by the assessee at appeal stage, as required u/r 46A of Income Tax Rules, neither he called for the case records to verify the facts.*

*2. On the facts and circumstances of the case CIT(A) has erred in deleting the addition without subjecting the set off issue to any cross verification even though the amount was so huge.*

*3. On the facts and circumstances of the case the order of the CIT(A) required to be vacated and that of the Assessing Officer may be restored.*

*4. The appellant craves leave to add, amend, alter or delete any ground of appeal.*

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2008-09 on 30/09/2009 declaring total income of Rs.8,04,871/-. The assessment was originally completed u/s.143(3) of the Act on 28/10/2011 determining total income at Rs.16,19,870/- and subsequently, the Id. CIT sought to pass an order u/s.263 of the Act on 23/04/2014 wherein he treated the order passed by the Id. AO as erroneous and prejudicial to the interest of the revenue. Consequent to the same, the Id. AO passed an order u/s.143(3) r.w.s. 263 of the Act on 30/03/2015 determining total income of the assessee at Rs.4,42,22,100/- after making addition of Rs.4,26,02,221/- on account of difference in turnover. We find that assessee is engaged in the business of trading in paper and paper products. The Id. AO observed that assessee has reported turnover in his profit and loss account to the tune of Rs.106.61 Crores as against the reportable turnover in the opinion of

the Id. AO at Rs.110.87 Crores. The assessee explained before the Id. AO that he followed exclusive method of accounting wherein VAT amounts are excluded from total sales while reporting in profit and loss account. The assessee was asked to submit the proof of payment of VAT to the tune of Rs.4,26,02,221/-, which the assessee failed to do. Accordingly, the Id. AO treated the difference in turnover in the sum of Rs.4,26,02,221/- as unaccounted sales while completing the assessment.

3.1. Before the Id. CIT(A), the assessee submitted that he had paid Rs.4,25,91,104/- as VAT for purchase of goods and Rs.12,732/- was paid by challan to the Government Treasury which had been shown under the head "duties and taxes". The assessee also submitted the VAT audit report before the Id. CIT(A). We find that the Id. CIT(A) had observed that assessee had shown in VAT audit report, turnover of Rs.110,87,66,039/- on which tax of Rs.4,25,92,593/- was payable. The Id. CIT(A) also observed that assessee has made total purchases of Rs.106,47,77,586/- on which an amount of Rs.4,25,91,104/- was paid as VAT and included in the purchase bills itself, which amount was available for set off to the assessee. After claiming the set off, only an amount of Rs.12,732/- including the amount of interest on delayed payment of Rs.1,175/- remain to be payable by assessee. The Id. CIT(A) observed that as against this, the sum of Rs.11,557/- was paid by the assessee on 01/04/2008 and balance of Rs.1175/- was paid on 22/06/2009. With these details which were filed by the assessee only before the Id. CIT(A) for the first time, the Id. CIT(A) concluded that there was no suppression of turnover and granted relief to the assessee. We find that the aforesaid factual details containing input VAT available for set off with output VAT were admittedly not filed before the Id. AO and were filed before the Id. CIT(A) for the first time and the Id. CIT(A) had not sought any remand

report from the Id. AO in this regard. Hence, we find that the only grievance of the revenue before us seems to be violation of Rule 46A of the IT rules committed by the Id. CIT(A). When this was put to both the parties before us, both the parties agreed for set aside of the matter to the file of the Id. AO for denovo adjudication. Accordingly, in the interest of justice and fair play, we deem it fit and appropriate to remand this issue to the file of the Id. AO for denovo adjudication and decide the matter in accordance with law. Accordingly, the grounds raised by the revenue are allowed for statistical purposes.

**4. In the result, appeal of the revenue is allowed for statistical purposes.**

Order pronounced on 04/12/2020 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 04/ 12/2020  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**