

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "F" New Delhi

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND SHRI SUDHANSHU SRIVASTAVA, ACCOUNTANT MEMBER

ITA No: 638/Del/2014
AY: - 2003-04

ACIT, Central Circle -17, vs. M/s. Weather Bys Construction Pvt. Ltd.
New Delhi. B-10, Shivalik, Malviya Nagar,
New Delhi.
(PAN AAACW5325R)

(Appellant)

(Respondent)

AND
CO No. 316/Del/2015
AY: - 2003-04

M/s. Weather Bys Construction Pvt. Ltd. vs. ACIT, Central Circle-15
(Now known as :Passion Heights Pvt. Ltd.) New Delhi
E-210, Second Floor, Chattarpur Extn.,
Chattarpur, New Delhi.

(Appellant)

(Respondent)

Appellant by : Sh. Atiq Ahmed, Sr. DR
Respondent by : Shri B.K. Dhingra, CA
Date of hearing : 26.11.2015
Date of pronouncement : 27.11.2015

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT

This appeal by the revenue and the cross objection by the assessee arise out the CIT (A) order dated 4.12.2013. The relevant Assessment Year is 2003-04. The grounds of appeal of the revenue are as under:-

1. *"The Commissioner of Income Tax (Appeals) erred in law and on fact of the case in deleting the addition u/s 69C of Rs. 4,48,300/- made by the AO on account of unexplained purchases.*

2. The Commissioner of Income Tax (Appeal) erred in law and on facts of the case in deleting the addition of Rs. 5,58,732/- made by the AO on account of disallowance of expenditure."

2. During the course of hearing, Ld. Counsel for the assessee at the very outset stated that the tax effect in this appeal is less than Rs. 4,00,000/-, therefore, the department ought not to have filed this appeal in view of the circular issued by the CBDT and the provisions contained in section 268A of the Income Tax Act 1961 (hereinafter to be referred as the Act).

3. As per the Ld. Counsel for the assessee, the amount of addition made as per ground No. 1 is Rs. 4,48,300/- and as per ground 2 is Rs. 5,58,732/-. Therefore the total amount contested is Rs. 10,07,032/-. So, the tax effect @ 30% would work out to be Rs. 3,52,461/- and after adding education cess @ 2% and Higher Education Cess @ 1%, the total tax will come to Rs. 3,70,084/- only and hence will be less than Rs. 4 lakhs. He therefore submitted that the department ought not to have filed the appeal and prayed that the instant case may be dismissed.

4. On the other hand, the Id. DR although supported the order of AO, but could not controvert this fact that the tax effect in this appeal is less than Rs. 4,00,000/-.

5. After considering the submissions of both the parties and the material on record, it is noticed that section 268A has been inserted by the Finance Act, 2008 with retrospective effect from 01/04/1999. The relevant provisions contained in section 268A read as under:

"268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it

may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of –

(a) the same assessee for any other assessment year; or

(b) any other assessee for the same or any other assessment year;

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.”

6. It is not in dispute that the Board's instruction or directions issued to the other income-tax authorities are binding on those authorities, therefore, the Department ought not to have filed the appeal in view of the above mentioned section 268A

since the tax effect in the instant case is less than the amount prescribed for not filing the appeal.

7. It is noticed that the CBDT has issued Instruction No. 5/2014 dated 10th July, 2014, by which the CBDT has revised the monetary limit to Rs. 4,00,000/- for filing the appeal before the Tribunal.

8. Keeping in view the CBDT Instruction No. 5 of 2014 dated 10th July, 2014 and also the provisions of section 268A of Income Tax Act, 1961, we are of the view that the Revenue should not have filed the instant appeal before the Tribunal. While taking such a view, we are fortified by the following decisions of the Hon'ble Punjab & Haryana High Court:

- 1. CIT vs. Oscar Laboratories P. Ltd. (2010) 324 ITR 115 (P&H);*
- 2. CIT vs. Abinash Gupta (2010) 327 ITR 619 (P&H);*
- 3. CIT vs. Varindera Construction Co. (2011) 331 ITR 449 (P&H) (FB).*

9. Similarly, the Hon'ble Delhi High Court in the case of CIT vs. Delhi Race Club Ltd. in ITA No. 128/2008, order dated 03.03.2011 by following the earlier order dated 02.08.2010 in ITA No. 179/1991 in the case of CIT Delhi-III vs. M/s P.S. Jain & Co. held that such circular would also be applicable to pending cases.

10. Thus, from the ratio laid down by the Hon'ble Delhi High Court, it is clear that the instructions issued in the circulars by CBDT are applicable for pending cases also. Therefore, by keeping in view the ratio laid down in the aforesaid referred to case, we are of the considered view that Instruction No. 5 of 2014 dated 10th July, 2014 issued by the CBDT are applicable for the pending cases also and in the said

instructions, monetary tax limit for not filing the appeal before the ITAT is Rs. 4,00,000/-.

11. Since the revenue's appeal is dismissed in limine the assessee's cross objection is not taken up for adjudication.

12. In the result appeal of the revenue and cross objection of the assessee are dismissed.

Order pronounced in the Open Court on 27th November, 2015.

sd/-

(SUDHANSHU SRIVASTAVA)
ACCOUNTANT MEMBER

sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated: 27. 11.2015

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Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order
Dy. Registrar

1. No.	Description	Date
1.	Date of dictation by the Author	26.11.2015
2.	Draft placed before the Dictating Member	26.11.2015

3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	
7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	