

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "E" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL
MEMBER,
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. No. 5265/Mum/2013
(Assessment Year:2005-06)

Income Tax Officer-25(2)(3),
Mumbai - 400 051

Appellant

Vs.

M/s. Swastik Developers
14A, Borivali Shopping Center,
Chandavarkar Lane, Borivali (West),
Mumbai - 400092

Respondent

PAN: AARFS5683A

अपीलार्थी की ओर से /By Appellant : Shri J. Sarvanan, D.R.

प्रत्यर्थी की ओर से/By Respondent : None

सुनवाई की तारीख/Date of Hearing : 30.06.2016

घोषणा की तारीख/Date of
Pronouncement : 30.06.2016

ORDER

PER RAJESH KUMAR, A.M:

This appeal has been filed by Revenue against the order of
Commissioner of Income-Tax (Appeals)-35, Mumbai, dated
03.05.2013 for A.Y. 2005-06 on following ground:

- “i. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing Rs.19,13,587/- on account of “Interest Capitalized in Joint Venture” without considering the fact that the capitalization of interest by the assessee by his own books amounts to claiming interest and by virtue of Chapter IV-D of the I.T. Act, 1961, no expenditure is admissible to any other entity borne by the assessee.”

2. On the date of hearing, none appeared on behalf of assessee but however the ld. D.R. fairly admitted that the tax effect on the impugned additions is less than the limit prescribed by the CBDT Circular of 10.12.2015 bearing No. 21 of 2015.

2.1 We have heard the ld. D.R. and perused the material on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by granting relief to assessee amounting to Rs.19,13,587/- the tax effect of which is below Rs.10 lacs. As per the announcement of Central Board of Direct Taxes (CBDT) dated 10.12.2015 (Circular No. 21 of 2015), no Department appeals are to be filed against relief given by ld. CIT(A) before the Income Tax Tribunal unless the tax effect, excluding interest exceeds Rs. 10 lacs and it further states that the instructions will apply retrospectively to the pending appeals. In the present case, since it is an undisputed fact that on the additions which are in dispute, the tax effect is less than Rs. 10 lacs and in the absence of any material on record by the Revenue to demonstrate that the issue in the present appeal is covered by exemptions specified in clause (8) of the aforesaid CBDT Circular, we are of the view

that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeal of the Department and therefore the present appeal is not maintainable on account of low tax effect. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. In such circumstances, we dismiss the appeal of Revenue without expressing any opinion on merits of the case.

3. In the result, the appeal of Revenue is dismissed.

Pronounced in the open Court on this the 30th day of June, 2016.

Sd/-
(SHAILENDRA KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai: Dated 30/06/2016

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. वेदक / Assessee
3. संबंधित यकर युक्त / Concerned CIT
4. यकर युक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, यकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/देश से,

उप/सहायक पंजीकार,
यकर अपीलीय अधिकरण, मुंबई ।