

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. N. K. Saini, AM And Sh. Kuldip Singh, JM**

**ITA No. 4617/Del/2009 : Asstt. Year : 2002-03**

ITO Ward 2(2), Room No. 389A, C.R. Bldg, I.P. Estate, New Delhi.	Vs	Austin Brenner Remedies (P) Ltd. 126-A, Pkt. 6, DDA MIG Kondli, Phase-II, Delhi. AADCA4654L
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**&**

**CO No. 34/Del/2010 : Asstt. Year : 2002-03**

Austin Brenner Remedies (P) Ltd. 126-A, Pkt. 6, DDA MIG Kondli, Phase-II, Delhi. AADCA4654L	Vs	ITO Ward 2(2), Room No. 389A, C.R. Bldg, I.P. Estate, New Delhi.
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Assessee by : Sh. Ved Jain, Adv. & Sh. Ashish Chadha, CA  
Revenue by : Sh. K.K. Jaiswal, DR**

<b>Date of Hearing : 19.04.2016</b>	<b>Date of Pronouncement : 21.04.2016</b>
-------------------------------------	---

**ORDER**

**Per N. K. Saini, AM:**

This appeal by the Department and the cross objection by the assessee are directed against the order dated 17/09/2009 of the CIT(A)-V, New Delhi.

2. In the Departmental appeal following grounds have been raised:

1. *“On the facts and circumstances of the case, the ld. CIT(A) has erred in law and on facts in directing to delete protective addition of Rs. 78,35,000/-, substantive addition of Rs. 78,350/- ignoring that:*

*a) The assessee company is found to be an entry operative without any existence of business.*

*b) The assessee company does not have any godown, office, shop, factory or any other infrastructure required for active running for business.*

*c) The assessee has no actual income as such creditworthiness for advancing of Rs. 78,35,000/- was not proved.*

*d) The facts of the present case are different and cases relied upon by the ld. CIT(A) are not of those entry operators.*

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”*

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the assessment framed was protective and no tax was involved. Therefore, the Department ought not to have filed this appeal in view of the latest Circular No.21 dated 10.12.2015 issued by the CBDT, vide which it has revised the monetary limit to Rs.10,00,000/- for not filing the appeal before the Tribunal. The relevant portion of the said circular reads as under:

*“.....*

.....

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No	Appeals in Income-tax matter	Monetary Limit (in Rs)
1	Before Appellate Tribunal	10,00,000/-
2	Before High Court	20,00,000/-
3	Before Supreme Court	25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

.....

.....

9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

*10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”*

4. From Clause 10 of the above said circular it is clear that these instructions are applicable to the pending appeals also and as per clause 3, there is clear cut instruction to the department to withdraw or not to press the appeals filed before the ITAT wherein tax effect is less than Rs.10,00,000/-. These instructions are operative retrospectively to the pending appeals.

5. Keeping in view the CBDT Circular No.21 of 2015 dated 10.12.2015 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.

6. In view of the above, without going into merits of the case, we dismiss the appeal filed by the department.

7. In the present case, the Id. CIT(A) has allowed the relief to the assessee on its appeal and Departmental appeal against the order of the CIT(A) has been dismissed. Therefore, the cross objection arising out of the said Departmental appeal becomes infructuous and is dismissed.

8. In the result, appeal of the department and the cross objection by the assessee are dismissed.

Order Pronounced in the Court on 21.04.2016

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

**Dated: 21.04.2016**  
\*Kavita Arora

Sd/-  
**(N. K. SAINI)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**

Draft dictated on	21.04.2016
Draft placed before author	21.04.2016
Draft proposed & placed before the second member	21.04.2016
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	25.04.2016
Kept for pronouncement on	
File sent to the Bench Clerk	21.04.2016
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	