

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1168/Del/2013
Assessment Year : 2007-08

Assistant Commissioner of
Income Tax,
Circle-12(1),
New Delhi.

(Appellant)

Vs. M/s H.B. Estate Developers
Pvt.Ltd.,
H-72, Connaught Circus,
New Delhi – 110 001.
PAN : AAACH3122M.

(Respondent)

Cross Objection No.106/Del/2013
Assessment Year : 2007-08

M/s H.B. Estate Developers
Pvt.Ltd.,
H-72, Connaught Circus,
New Delhi – 110 001.
PAN : AAACH3122M.

(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Circle-12(1),
New Delhi.

(Respondent)

Revenue by : Shri A.K. Saroha, CIT-DR.
Assessee by : Shri Santosh K. Aggarwal, Advocate.

Date of hearing : 19.12.2016
Date of pronouncement : 20.12.2016

ORDER

PER G.D. AGRAWAL, VP :-

The appeal by the Revenue and the cross-objection by the assessee for the assessment year 2007-08 are directed against the order of learned CIT(A)-XXVII, New Delhi dated 2nd November, 2012.

ITA No.1168/D/2013 :-

2. At the time of hearing before us, it is submitted by the learned counsel that the tax effect in this appeal by the Revenue is only

₹3,33,705/-. He pointed out that since in this case the tax was actually levied under the MAT, the disputed addition in the MAT in the Revenue's appeal is only ₹29,74,200/- in respect of which, the tax effect would be only ₹3,33,705/-. He, therefore, submitted that the Revenue's appeal should be dismissed in view of the Circular No.21/2015 dated 10th December, 2015 of the CBDT.

3. Learned DR, on the other hand, submitted that for computing the tax effect, not only the disputed addition under the book profit is to be considered but the disputed addition while computing the normal income should also be considered. He also referred to paragraph 4 of the Circular and stated that as per this paragraph 4, the notional tax on the disputed addition is to be considered. He, therefore, submitted that this appeal should be heard on merits and should not be dismissed on tax effect.

4. We have carefully considered the submissions of both the sides and perused the material placed before us. The grounds raised in this appeal by the Revenue read as under :-

"1. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in directing to assess the lease rental received from unsold house property as "income from business" as against "income from house property" assessed by the A.O.

2. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in holding that the issue of assessability of lease rentals has been decided in favour of the assessee, the ground of appeal relating to disallowance of aggregate expenses of Rs.16,83,663/- becomes infructuous.

3. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in restricting the disallowance of Rs.29,74,200/- made u/s 14A of the Act read with rule 8D to Rs.4,24,789/-.

4. *On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in holding that the amount of disallowance u/s 14A cannot be added to book profit u/s 115JB by ignoring the clear cut provisions of clause (f) below Explanation-1 to section 115JB(2) of the I.T. Act."*

5. Ground Nos.1, 2 & 3 are relating to determination of income under the normal provisions and ground No.4 is for the determination of income under Section 115JB. So far as normal provision is concerned, the total disputed addition is ₹16,83,663/- + ₹25,49,411/- (₹29,74,200 - ₹4,24,789) i.e. ₹42,33,074/-. Admittedly, the tax has been levied on the MAT income because the total income under the normal provision after the additions made by the Assessing Officer is ₹1,43,02,850/- while the income determined by the Assessing Officer under MAT provision is ₹12,36,50,765/-. Accordingly, the tax has been levied on the basis of MAT income. It is also not in dispute that even after the relief by the CIT(A), the tax would be charged on MAT income because the MAT income is much more than income under the normal provisions of IT Act. Therefore, the question remains whether the relief allowed by the CIT(A) under the normal provisions of the IT Act is liable to be considered for determining the tax effect. Learned DR in this regard has relied upon paragraph No.4 of the Circular, which reads as under :-

"4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of

appeal deleted or reduced in the order to be appealed against.”

6. From the above, it is evident that tax effect is to be worked out by determining :-

- (i) tax chargeable on the total income, and
- (ii) tax which is chargeable after the disputed addition is reduced from the total income.

Difference of above would be tax effect.

7. Admittedly, in both the circumstances, in the present case, tax is chargeable on the MAT income. As per above paragraph No.4, notional tax effect is to be determined in the case of assessed loss because the variation in the assessed loss has a consequence in the subsequent year in the form of carry forward and set off. However, in the year under consideration, the income declared in the normal provision was positive income and the income determined by the Assessing Officer is also positive income and income worked out after the order of the CIT(A) is also positive income. Therefore, any variation in the income under the normal provision under the Income-tax Act does not have any consequence in the subsequent year because there is no question of any carry forward or set off of loss. In this year, tax is levied by the Assessing Officer under MAT and after the order of CIT(A) also, tax would be charged under MAT. Therefore, in our opinion, no notional tax effect is to be worked out on the disputed addition under the normal provisions of the IT Act.

8. Undisputedly, the disputed addition under the MAT provision is only of ₹29,74,200/- on which tax effect is admittedly below ₹10 lakhs. In view of the above, in our opinion, the above Circular of the CBDT is

squarely applicable. Respectfully following the same, we dismiss the Revenue's appeal.

Cross Objection No.106/Del/2013 :-

9. The learned counsel for the assessee has fairly admitted that if the Revenue's appeal is not admitted, then the assessee's cross-objection may be treated as infructuous.

10. As we have dismissed the Revenue's appeal, the cross-objection of the assessee is treated as infructuous and is dismissed.

11. In the result, the appeal of the Revenue as well as the cross-objection of the assessee is dismissed.

Decision pronounced in the open Court on 20.12.2016.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Revenue : Assistant Commissioner of Income Tax,
Circle-12(1), New Delhi.
2. Assessee : M/s H.B. Estate Developers Pvt.Ltd.,
H-72, Connaught Circus, New Delhi – 110 001.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar