

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**  
**BEFORE SHRI SANJAY ARORA, AM AND SHRI PAWAN SING, JM**

आयकर अपील सं./I.T.A. No.2265/Mum/2012  
(निर्धारण वर्ष / Assessment Year: 2001-02)

Asst. CIT-7(2), Room No. 624, M. K. Rdl., Mumbai-400 020	<b>बनाम/</b> Vs.	SBM Chemicals & Instruments P. Ltd., 701-D, Poona Chambers, Shivsagar Estate, Worli, Mumbai-18
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCS 4417 M		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Kailash Gaikwad
प्रत्यर्थी की ओर से / Respondent by	:	Ms. Neha Barve
सुनवाई की तारीख / Date of Hearing	:	11.5.2016
घोषणा की तारीख / Date of Pronouncement	:	11.5.2016

**आदेश / ORDER**

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-13, Mumbai ('CIT(A)' for short) dated 20.12.2011, allowed the Assessee's appeal contesting its assessment u/s.143(3) r/w s. 254 of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2001-02 vide order dated 30.10.2009.

2. At the very outset, it was submitted by the Id. Authorized Representative (AR), the assessee's counsel, Ms. Neha Barve, that the tax effect of the Revenue's appeal is below Rs.10 lacs, and which is therefore not maintainable u/s. 268A of the Act in view of the recent Instruction issued by the Board (Instruction No. 21 of 2015 dated

10.12.2015 (F. No. 279/Misc/142/2007-IT(PT)). The Id. Departmental Representative (DR) fairly conceded to the said tax effect of the instant appeal being well below Rs.10 lacs, the claim under dispute - since allowed by the Id. CIT(A), being for Rs. 15.05 lacs. The same accordingly is not maintainable u/s. 268A of the Act, requiring the appellate authorities to have regard to the monetary limit prescribed by the Board, which per its Circular dated 10.12.2015 (supra) is at Rs.10 lacs for the Appellate Tribunal, i.e., for appeals preferred by the Revenue. The same is therefore dismissed as incompetent. We may though clarify that it shall be competent for the Assessing Officer to, while giving appeal effect to this order, or for that matter to that of the first appellate authority, which stands upheld in result, to withdraw the depreciation on the impugned software expenses, since allowed, for the current and subsequent years. We decide accordingly.

3. In the result, the Revenue's appeal is dismissed.

*Order pronounced in the open court on May 11, 2016*

Sd/-  
(Pawan Singh)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 11.05.2016

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**