

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JM AND SRI B. R. BASKARAN, AM

ITA No.7283/Mum/2014

(A. Y:2009-10)

The Dy. Commissioner of Income Tax - 14(3) (2), 453, Aayakar Bhavan, 4 th floor, M. K. Marg, Mumbai 400 020	Vs.	M/s. Symantec Software Solutions Pvt. Ltd., Unit No.430, C Wing, 4 th floor, Fortune 2000, Bandra Kurla Complex, Mumbai -51. PAN: AABCV 2624 B
Appellant	..	Respondent

Appellant by	..	Smt. Beena Santosh, DR
Respondent by	..	Shri Nikhil Tiwari, AR

Date of hearing	..	01-09-2016
Date of pronouncement	..	01 -09- 2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal of the Revenue is arising out of the order of the CIT (Appeals)-21, Mumbai in appeal No.CIT (A) 21/IT/101/2013-14 dated 10-09-2014. Assessment was framed by the Additional CIT-10 (1), Mumbai for assessment year 2009-10 u/s 143 (3) of the Income Tax Act, 1961 (hereinafter “the Act”) vide his order dated 01-03-2013.

2. At the outset, the learned Counsel for the assessee pointed out that the tax effect in this appeal is below Rs.10.00 lacs. He has also pointed out to the summary of total tax effect as submitted by the assessee in this case which reads as under:-

Particulars	Reference	Amount (Rs.)
Total expenses paid/payable to MIEL E- Security Private Limited on Manpower support services (invoice-wise details submitted with A O vide submission dated 14 February 2013)	A	75,03,147
Out of the above expenses, total expenses considered as capital in nature by the learned AO in the Assessment Order dated 01 March 2013	B (please refer Note 1)	45,15,027
Depreciation under section 32 of the Act on the capital Expenditure above allowed by the learned A O in the Assessment order	C (please refer Note 1)	24,59,576
Net disallowance after allowing depreciation	D = B – C (please refer Note 1)	20,55,450
Addition to the total income of the Assessee considered by learned A O on account of above disallowance	E	22,55,450

(Please refer para 10 of the Assessment Order) – Incremental disallowance of 2 lakhs was a mistake on The part of the learned A O		
Applicable rate of tax for A Y 2009-10 (including Surcharge of 10% and education cess of 3%)	F	33.99%
Total tax impact of addition made by the learned A O Which has been contested by department in ITAT appeal	$G = E * F$	7,66,627

The learned Counsel for the assessee further submitted that in view of the CBDT Circular No.21/2015, dated 10.12.2015 brought out by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, the appeal was not maintainable and be dismissed. The learned Sr. DR also agreed to the facts stated by the learned Counsel for the assessee but could not point out whether this case falls under any of the exception provided in the Circular.

3. We have heard the rival submissions and perused the material on record. We find from the records before us that the tax involved in the disputed issue is below Rs.10 lacs and therefore, in view of the circular No. 21/2015 dated 10th December, 2015 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 10.00 lacs or less and this circular is also applicable retrospectively to all pending appeals. The relevant extract the said CBDT Circular (Supra) is as under:-

“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. Considering the above, the appeal filed by the Revenue, is therefore, dismissed.

5. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 01-09-2016.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 01-09-2016
LakshmiKanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

Sr.No.	Particulars	Date	Initials	Member Concerned
1	Dictation given on	06/09/16	LK Deka	JM
2	Draft placed before author	07/09/16 08/09/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			