

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMIT SHUKLA, JM

आयकर अपील सं./ITA No.4102/Mum/2013

(निर्धारण वर्ष / Assessment Year :2004-2005)

ACIT-11(1), Mumbai-20	Vs.	Mr. Adnan Sami Khan, 1401, Oberai Sky Garden, Lokhandwala Complex, Andheri(W), Mumbai-400053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIPK 9577 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Aarsi Prasad

निर्धारिती की ओर से /Assessee by : Shri Hari S. Raheja

सुनवाई की तारीख / Date of Hearing : **18/02/2016**

घोषणा की तारीख/Date of Pronouncement **07/04/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the revenue against the order of CIT(A), Mumbai, dated 22-3-2013, for the assessment year 2004-05, in the matter of order passed u/s.143(3) r.w.s.147 of the I.T.Act, on the following grounds:-

1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A),Mumbai has erred in deleting the addition of Rs.12,30,851/- made by the AO as Income from House Property considering deemed let out value.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A),Mumbai has erred in accepting that the properties were inhabitable as expenditure has been incurred by the assessee in renovation and repair of the properties, on the basis of submissions made by the assessee during appellate proceedings without giving an opportunity to the Assessing Officer.

3. *The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer be restored.*

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a singer by profession. The addition made by AO was deleted by CIT(A) after having detailed observation at para 3.3 in his appellate order.

3. At the outset, Ld. Counsel for the assessee stated the tax effect in the appeal of the revenue is below Rs.10 lakhs, therefore, the appeal filed by the revenue is not maintainable as per the CBDT Circular No.21/2015, dated 10-12-2015 and liable to be dismissed *in limine*.

4. The Id Departmental Representative agreed to the contention of Id counsel for the assessee.

5. We have considered rival contentions and perused the record. Recently, the CBDT in its Circular No.21/2015 dated 10th December, 2015 have revised the monetary limit to Rs.10 lakhs from Rs.4 lakhs to file the appeal before the Tribunal by the Revenue. On scrutiny of appeal filed by the revenue, we found that the total tax demand is below the prescribed limit of Rs.10 lakhs. The CBDT also clarifies that this instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunal. The Income Tax Act was amended and Section 268A has been introduced on the Statute book with retrospective effect. Section 268A carves out an exception for filing of appeals and References under section 260A of the Act. The legislature has prescribed that the CBDT is empowered to issue circulars and instructions from time to time, with regard to filing of appeals depending on the tax effect involved. The relevant circular issued by CBDT reads as under:

“Reference is invited to Board's instruction No 5/2014 dated 10-07-2014 wherein monetary limits and other conditions for filing departmental appeals (in income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.

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

<i>Sl.No.</i>	<i>Appeals in Income-tax matters</i>	<i>Monetary Limits (in Rs.)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>10,00,000</i>
<i>2.</i>	<i>Before High Court</i>	<i>20,00,000</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>25,00,000</i>

*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.*

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 penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than

one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CIT must be maintained in a systemic manner for easy retrieval.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above 'or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts.

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 12 A 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.

11. This issues under Section 268A (1) of the Income-tax Act 1961.”

6. Considering the above CBDT Circular, we found that this appeal of the revenue is not maintainable as the tax effect in this appeal is below Rs.10 lakhs. Accordingly, we dismiss the appeal of the revenue.

7. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on this 07/04/2016.

Sd/-

Sd/-

(AMIT SHUKLA)

(R.C.SHARMA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 07/04/2016

प्र.कु.मि/pkm, नि.स/ 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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY
ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai