

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE:SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE,JM

ITA No.389/RPR/2014
(Assessment Year :2011-2012)

DCIT-2(1), Raipur(CG)	vs	Unique Structures & Towers Ltd., Plot No.263/311 & 268/306, Urla Industrial Area, Urla, Raipur(C.G.)
PAN No. : AAACU 4655 Q		
(Appellant)	..	Respondent

Revenue by : Mrs. Shabana Parveen, DR
Assessee by : Shri Nikhilesh Begani, AR

Date of Hearing : 17/01/2018
Date of Pronouncement 18/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 31.10.2014 for the assessment year 2011-2012.

2. The Revenue has taken the following grounds of appeal :-

1. *"Whether in law and on facts and circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs. 2,66,671/- made by the AO on accounts of sale promotion expenses which was found not allowable u/s 37(1) of the IT Act, 1961?"*
2. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs.1,35,000/- made by the AO on accounts of sale promotion expenses which was found not allowable u/s 37(1) of the IT Act, 1961?"*
3. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs. 45,000/- made by the AO on accounts of sale promotion expenses which was found not allowable u/s 37(1) of the IT Act, 1961?"*
4. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of Rs. 73,192/- made by the AO on account of sale promotion expenses which was found not allowable u/s 37(1) of the IT Act, 1961?"*
5. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the addition of deemed income u/s 2(24)(x) read with section 36(1)(va) of Rs. 6,31,533/-made by the AO as the employees contribution to EPF & ESIC were not deposited before the due date?"*

6. " Whether in law and on facts & circumstances of the case, the learned CIT (A) has erred in deleting the addition u/s 43B of Rs. 16,21,709/- made by the AO as the service tax remained outstanding?"
7. "The Order of the Ld. CIT(A) is erroneous both in law and on facts?"

3. At the time of hearing the AR of the assessee filed a computation showing that the tax effect in the present appeal filed by the Revenue is below Rs.10 lakhs. The computation is as under :-

CALCULATION OF TAX EFFECT

s. No.	Particulars	Amount (In Rs.)
1	Assessed Total Income	3,29,62,366/-
	Tax on Above	98,88,708/-
	Surcharge@7.50%	7,41,653/-
	Education Cess@ 3%	3,18,911/-
	Total Tax on Assessed Income (A)	1,09,49,272/-
	Additions made on various grounds contested before the Hon'ble ITAT Raipur Bench (Disputed Additions) :	
	a) Disallowance out of Sales Promotion Expenses	2,66,671
	b) Disallowance out of Sales Promotion Expenses	1,35,000
	c) Disallowance out of Sales Promotion Expenses	45,000
	d) Disallowance out of Sales Promotion Expenses	73,192
	e) Addition for delayed deposit of employees contribution to EPF & ESSC	6,31,533
	f) Disallowance u/s.43B on account of Service Tax	16,21,709
		27,73,105/-
2	Assessed Total Income reduced by the amount of Disputed Addition {Rs.3,29,62,366 (-) Rs.27,73,105}	3,01,89,261/-
	Tax on Above	90,56,778/-
	Surcharge@7.50%	6,79,258/-
	Education Cess @ 3%	2,92,081/-
	Tax on Assessed Total Income reduced by the Disputed Addition (B)	1,00,28,117/-
	TAX EFFECT ON ABOVE (A - B)	9,21,155/-

He submitted that in view of the CBDT Circular No.21/2015, dated 10th December, 2015, appeal filed by the Revenue is not maintainable and, hence, liable to be dismissed.

4. On the other hand, Id.DR for the Revenue has not controverted the submissions of Id.AR of the assessee that tax effect in the present appeal of the Revenue was below Rs.10 lakhs.

5. We find that the CBDT in Circular No.21/2015, dated 10th December, 2015, has stated that, as a measure for reducing litigation, it was increasing the monetary limits for filing of appeals by the department before the ITAT and High Courts and SLP before the Supreme Court. The said limit for not filing appeal to the Tribunal was fixed at Rs.10 lakhs. The CBDT has further stated that the said instruction shall apply retrospectively to pending appeals and that all appeals below the specified tax limits should be withdrawn/not pressed. However, appeals before the Supreme Court are to be governed by the limits operative at the time that the appeal was filed. The said Circular of the CBDT is binding on the officers of Income Tax Department. In view of this, we hold that the present appeal of the Revenue before the Tribunal is not maintainable and, hence, we dismiss the same in *limine*.

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Court on Thursday, the 18th Day of January, 2018 at Raipur.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Raipur; दिनांक Dated 18/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur