

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5677/MUM/2013
Assessment Year: 2008-09**

DCIT-10(1), 455, Aayakar
bhavan, 4th floor, M.K.
Marg, Mumbai-400020.

Appellant

M/s Leighton Welspun
Contractors P. Ltd.
302/303, Windsor
Bldg. 3rd fl., CST Road,
Santacruz (E),
Mumbai-400098.
PAN No. AAACL3338D

Respondent

**C.O No. 150/MUM/2016
(ITA No. 5677/MUM/2013)
Assessment Year: 2008-09**

M/s Leighton Welspun
Contractors P. Ltd. (formely
known as Leighton
Welspun Contractor Pvt.
Ltd.) Tower 3, 7th floor,
Equinox Business Park, Off
Bandra Kurla Complex,
L.B.S. Marg, Kurla (W),
Mumbai-400070

PAN No. AAACL3338D

Appellant

Vs. DCIT- Circle 10(1),
455, Aayakar bhavan,
4th floor, M.K. Marg,
Mumbai-400020.

Respondent

Revenue by : Mr. Rajesh Kumar Yadav, DR
Assessee by : Mr. Arijit Chakravarty, AR

Date of Hearing : 17/07/2018
Date of pronouncement : 30/07/2018

ORDER

PER N.K. PRADHAN, AM

ITA No. 5677/MUM/2013
Assessment Year: 2008-09

This is an appeal filed by the revenue. The relevant assessment year is 2008-09. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-21 [in short 'CIT(A)'], Mumbai and arises out of the order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. At the beginning of the hearing, the Ld. counsel of the assessee brought to our notice Circular No. 3/2018 dated 11.07.2018 issued by the Central Board of Direct Taxes (CBDT) and submits that the tax effect is below the monetary limit of Rs.20,00,000/- and hence the appeal filed by the revenue be dismissed as withdrawn.

The Bench asked the Ld. counsel and the Ld. DR to file a copy of calculation sheet indicating tax effect in the instant case. There was no submission by both the sides.

Thus we arrive at the tax effect from the following discussion.

3. The 1st ground raised by the revenue in this appeal is against the order of the Ld. CIT(A) directing the AO to allow depreciation @ 60% on computer accessories mainly UPS and peripherals, printers, Xerox machine, data card etc.

To capture the tax effect, we may turn to the following grounds of appeal filed by the assessee before the Ld. CIT(A) :

1. The AO erred in making addition of depreciation of Rs.17,05,517/- on fixed assets being computer software by reclassifying the same as 'Intangible Assets' eligible for depreciation at the rate of 25% instead of treating the same as 'computers' eligible for depreciation at the rate of 60%.
2. The AO erred in making addition of depreciation of Rs.36,01,355/- on fixed assets being printer, Xerox machiner, UPS, date card, etc. by reclassifying the same as 'Plant & Machinery' eligible for depreciation at the rate of 15% instead of treating the same as 'computers' eligible for depreciation at the rate of 60%.

3.1 The 2nd ground in the appeal filed by the revenue is against the order of the Ld. CIT(A) in deleting the addition of Rs.7,87,550/- representing interest expenditure u/s 14A r.w. Rule 8D.

4. In the above Circular, it has been clarified that 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.

An examination of the order of the Ld. CIT(A) and the grounds of appeal filed by the revenue indicates that the tax effect herein does not exceed the monetary limit of Rs.20,00,000/- fixed for filing appeal before the Tribunal.

At para 13 of the above Circular, it has been clearly mentioned that:

"13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed."

5. Considering the factual scenario narrated at para 3 & 3.1 hereinbefore, the appeal filed by the revenue is dismissed as not pressed.

C.O No. 150/MUM/2016

6. As the appeal filed by the revenue has been dismissed, the cross objection raised by the assessee becomes infructuous.

Order pronounced in the open Court on 30/07/2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/07/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai