

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 510/JP/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer, Ward-2(2), Jaipur.	बनाम Vs.	M/s C.M. Goenka Capital Markets Pvt. Ltd., 206, Jaipur Tower, M.I. Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 7518 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

प्रत्याक्षेपण / C.O. No. 17/JP/2018
(Arising out of आयकर अपील सं./ITA No. 510/JP/2018)
निर्धारण वर्ष / Assessment Year 2009-10

M/s C.M. Goenka Capital Markets Pvt. Ltd., 206, Jaipur Tower, M.I. Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward-2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 7518 A		
प्रत्याक्षेपक / Objector		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Raj Mehra (JCIT)
निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar &
Ms. Isha Kanoongo (Adv.)

सुनवाई की तारीख / Date of Hearing : 31/07/2018
उदघोषणा की तारीख / Date of Pronouncement : 31/07/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.:

This is the appeal filed by the Revenue and the cross objection filed
by the assessee against the order of the Id. CIT(A), Kota dated

19/01/2018 pertaining to the A.Y. 2009-10 wherein, the revenue and the assessee have taken following grounds of appeal:

Grounds of revenue's appeal:

On the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in:

1. *Whether on the facts and circumstances of the case, the Id CIT(A) was justified in deleting the addition of Rs. 35,31,603/- made by the A.O. on account of suppression of profit by taking fictitious loss entries through Client Code Modification?*
2. *Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs. 70,632/- made by the A.O. on account of commission payments?*

Grounds of assessee's C.O.:

1. *That under the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the action of the Assessing Officer in passing the order U/s 148 of the Income Tax Act, 1961.*
2. *In the facts and the circumstances of the case and in law, the A.O. erred in issuing notice U/s 148 even though such reopening on the basis of alleged client code modification is struck down by the Bombay High court in the case of Coronation Agro Industries Ltd. (Writ Petition No. 2627 of 2016) and consequently order passed U/s 148/143(3) is ab-initio-void.*
3. *The assessee carves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing."*

2. Firstly, we will take up the cross objection filed by the assessee wherein it has challenged the action of the Assessing Officer in issuing the notice U/s 148 of the Income Tax Act, 1961 (in short the Act).

2.1 At the outset of hearing, the Id AR of the assessee has not pressed the grounds of the C.O., therefore, the same stands dismissed as not pressed.

3. Now we take the revenue's appeal:

At the time of hearing, the Id. AR of the assessee has raised an objection of maintainability of the appeal of the Revenue due to the tax effect not exceeding Rs. 20 lacs as per the CBDT Circle No. 3 of 2018 dated 11th July, 2018. The Id. A/R submitted that in the facts of the present case, tax effect in Revenue's appeal is stated to be Rs. 11,13,091/- on the addition of Rs 54,02,380/- which is below the prescribed limit of Rs 20 lacs.

4. The Id. D/R has fairly submitted that the tax effect involved in the Revenue's appeal is less than 20 lacs which is prescribed threshold limit in terms of the CBDT Circular No. 3/2018 dated 11th July, 2018 issued in supersession of its earlier Circular No. 21 of 2015 dated 10.12.2015.

5. We have heard the rival contentions and perused the materials available on record. It is observed that the demand/ tax effect in the Revenue's appeal in question is below Rs. 20.00 lacs . Under the powers vested by section. 268A(1) of the I T Act, CBDT has recently issued Circular No. 3/2018 dated 11th July, 2018 (F No. 279/Misc. 142/2007-ITJ(Pt) instructing the authorities below that departmental appeal should not be filed before ITAT where the demand/tax effect does not exceed Rs. 20 lacs. The circular is specifically mentioned to be applicable for all pending appeals.

6. Subject to some exceptions, it is further directed by CBDT that all the departmental appeals pending before ITAT where the demand/tax

effect is not exceeding than 20 lacs should be either withdrawn or not pressed by the departmental representatives.

7. The present appeal is not covered by any exceptions mentioned in the said CBDT circular. Since the tax demand in dispute in this departmental appeal is below the limit set out by CBDT for the appeal, the appeal of the assessee is not maintainable in view of CBDT Circular No. 3 of 2018 dated 11.07.2018. Accordingly the appeal of the Department is dismissed as not pressed/withdrawn.

8. In the result, both the appeal of the Revenue and the C.O. of the assessee are dismissed.

Order pronounced in the open Court on 31/07/2018

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31st July, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ITO, Ward-2(2), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s C.M. Goenka Capital Markets Pvt. Ltd., Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 510/JP/2018 & CO 17/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar