

आयकर अपीलीय 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. 738/JP/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer, Ward-2(2), Jaipur.	बनाम Vs.	M/s VPS Business Consultancy Pvt. Ltd., B-17A, Jaipur Tower, Opp. All India Radio, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCV9759R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

प्रत्याक्षेपण / C.O. No. 20/JP/2018
(Arising out of आयकर अपील सं./ITA No. 738/JP/2018)
निर्धारण वर्ष / Assessment Year 2009-10

M/s VPS Business Consultancy Pvt. Ltd., B-17A, Jaipur Tower, Opp. All India Radio, Jaipur	बनाम Vs.	Income Tax Officer, Ward-2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCV9759R		
प्रत्याक्षेपक / Objector		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri J. C. Kulhari(JCIT)
निर्धारिती की ओर से / Assessee by : Ms. Isha Kanoongo (Adv.)

सुनवाई की तारीख / Date of Hearing : 06/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 07/08/2018

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)-1, Jaipur dated 23/03/2018 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)-1, Jaipur has erred in:

- 1. 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. 59,40,000/- made by the AO on account unexplained credit of share premium?*
- 2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was not justified in ignoring the fact that the assessee has declared share application money receipt in balance sheet for FY 2008-09 relevant to A.Y 2009-10?*
- 3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was not justified to appreciate the facts that the assessee has credited the share application money during AY 2009-10 (in balance sheet)?*
- 4. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was not justified in ignoring the facts that the assessee has not filed bank statement and confirmations of share application money/share premium received during assessment proceeding?"*

Grounds of assessee's C.O.:

- 1. That under the facts and circumstances of the case the learned CIT(A) has erred confirming the action of the Assessing Officer in passing the order u/s 148/143(3) of the Income Tax, 1961 which is ab-initio void being in violation of the principles of equity and justice.*
- 2. That under the facts and circumstances of the case the learned CIT(A) has erred confirming the action of the Assessing Officer in passing the order u/s 148/143(3) of the Income Tax Act, 1961 is bad in law as the same has been passed without furnishing reasons for issuing notice u/s 148 despite request by the assessee.*

3. *That under the facts and circumstances of the case the learned CIT(A) has erred confirming the action of the Assessing Officer regarding applicability of section 56(1) & 56(2) of the Income Tax Act, 1961 are irrelevant and non-existent. The provisions of section 56 are not applicable to the facts of the case even distantly."*

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 Circular No. 3 of 2018 dated 11th July, 2018.

3.1. The Id. D/R has fairly submitted that the tax effect involved in the Revenue's appeal comes to Rs 18,35,460/- less than Rs 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.

4. 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 IT 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.

5. 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.

6. 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 Revenue is dismissed as not pressed/withdrawn.

7. 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 07/08/2018

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:- 07/08/2018

*Ganesh Kr.

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 VPS Business Consultancy 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. 738/JP/2018 & CO 20/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar