

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.3127/Ahd/2013
(Assessment Year : 2008-09)

The ITO
Ward-7(1)
Ahmedabad

Vs. Shri Nimeshbhai Bhashkarbhai
Bhatt
33, Rang Upvan Society
Sardar Patel Colony
Naranpura, Ahmedabad

[PAN No.AAWPB 9929 R]

(Appellant)

..

(Respondent)

Appellant by : Shri Shiv Sewak, Sr.DR
Respondent by : Shri M.K. Patel, AR

Date of Hearing : 24/08/2018
Date of Pronouncement: 24/08/2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been filed before us by the Revenue against the order dated 05.10.2013 passed by the Commissioner of Income Tax(Appeals)-XIV, Ahmedabad-[Ld.CIT(A) in short] for Assessment Year (AY) 2008-09.

2. The grounds of appeal raised by the Revenue read as under:-

i) The Ld. CIT(A) has erred in law and on facts in deleting levying on penalty of Rs.17,00,000/- u/s.271D of the I.T.Act imposed by the Joint CIT.

ii) The Ld. CIT(A) has further erred in law and on facts in ignoring the contents of the promissory notes confirming the acceptance of loan in cash and duly signed by the Assessee.

3. At the outset, after going through the grounds of appeal and the impugned orders of the Revenue authorities below, a query was raised by the Bench as to applicability and maintainability of the appeal filed by the Revenue in view of recent CBDT Circular No.3/2018 dated 11.7.2018 restricting the filing of the appeal by the Revenue where the tax effect is below Rs.20 lakhs, the ld.DR did not dispute the same and submitted that the issue is left to the Tribunal to be decided in accordance with law.

4. We find that the appeal of the Revenue is presented on 31.12.2013. On 11.7.2018 the CBDT has issued Instructions bearing No. 3 of 2018 under file No.F.No.279/Misc.142/2007-ITJ(Pt) prohibiting its subordinate authorities from filing of the appeal to the Tribunal against the order of the CIT(A) where the tax effect by virtue of the relief given by the CIT(A) is less than Rs.20 lakhs. The instructions have been made applicable with retrospective effect, meaning thereby, these instructions are applicable on pending appeals also. In the present case, “tax effect” on the total income assessed minus the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is filed, is less than Rs.20 lakhs. Further, the case of the Revenue does not fall within the ambit of exceptions provided in the Circular. Thus, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserves to be dismissed. It is accordingly dismissed.

However, it is observed that in case on re-verification at the end of the AO it comes to the notice that the tax effect is more or Revenue’s case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time

period prescribed in the Act. In view of the above, the appeal of the Revenue is dismissed due to low tax effect.

5. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 24/08/2018

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 24/08/2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XIV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad