

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. 1046/JP/2016
निर्धारण वर्ष / Assessment Year : 2013-14

Asstt. Commissioner of Income Tax Circle, Jhunjhunu	बनाम Vs.	M/s Shri Krishana Construction Co., Gayatri Market, Chirawa, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABGFS4261G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

प्रत्याक्षेपण / C.O. No. 04/JP/2017
(Arising out of आयकर अपील सं./ITA No. 1046/JP/2016)
निर्धारण वर्ष / Assessment Year 2013-14

M/s Shri Krishana Construction Co., Gayatri Market, Chirawa, Jhunjhunu	बनाम Vs.	Asstt. Commissioner of Income Tax Circle, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABGFS4261G		
प्रत्याक्षेपक / Objector		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Roshanta Meena (JCIT)
निर्धारिती की ओर से / Assessee by : Shri Manish Dharnidharka (CA)

सुनवाई की तारीख / Date of Hearing : 23/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 23/08/2018

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)-III, Jaipur dated 26/09/2016 pertaining to the A.Y. 2013-14 wherein the Revenue and the assessee have taken following grounds of appeal:-

Grounds of revenue's appeal:

"(i) On the facts and in the circumstances of the case, the Id. CIT(A) has erred in reducing NP rate from 8% to 5.5% ignoring the fact that the assessee did not maintain details of consumption of material of Rs. 11,53,00,002/-.

(ii) On the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the disallowance of Rs. 3,77,996/- u/s 40(a)(ia) because the assessee was liable to deduct tax on payment of interest to non banking financial companies."

Grounds of assessee's C.O.:

1. On the facts & circumstances of the case Id. Lower authorities grossly erred in confirming the rejection of books of account by invoking provision of section 145(3).
2. On the facts & circumstances of the case Id. CIT(A) grossly erred in confirming the addition in the declared income by estimating 5.5% N.P. rate instead of declared N.P. rate of 1.33%.
3. On the facts & circumstances of the case Id. CIT(A) grossly erred in confirming the addition of Rs. 10,020/- on undisclosed receipts of Rs. 1,25,250/-.

2. Firstly, we will take up the cross objection filed by the assessee wherein he has challenged the action of the Assessing Officer in invoking the provisions of section 145(3) and estimating N.P. rate

2.1 At the outset of hearing, the Id AR of the assessee stated that he doesn't wish to press the grounds so taken in the assessee's 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 10,95,167/- 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 23/08/2018

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:- 23/08/2018

*Ganesh Kr.

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

1. अपीलार्थी/The Appellant- ACIT, Jhunjhunu
2. प्रत्यर्थी/The Respondent- Shri Krishana Construction Co., Jhunjhunu
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. 1046/JP/2016 & CO 04/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar