



आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./I.T.A. No.4097/Mum/2016
(निर्धारणवर्ष / Assessment Year:2010-11)

Assistant Commissioner of Income Tax-25(2) Room No.508, C-10, 5 th Floor Prataykshkar Bhawan Bandra Kurla Complex Bandra (E), Mumbai-400 051	बनाम/ Vs.	Damyanti Ashwin Patel 5, Divya Darshan N.S.Road No.5 JVPD Scheme Vile Parel (W) Mumbai-400 056
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABPP-2154-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपीलसं./I.T.A. No.4092 /Mum/2016
(निर्धारणवर्ष / Assessment Year:2010-11)

Assistant Commissioner of Income Tax-25(3) C-10, 6 th Floor Prataykshkar Bhawan Bandra Kurla Complex Bandra (E), Mumbai-400 051	बनाम/ Vs.	Purvi Pankaj Patel 5, Divya Darshan N.S.Road No.5 JVPD Scheme Vile Parel (W) Mumbai-400 056
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABPP-7140-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Devdatta Mainkar
Revenue by	:	Pooja Swaroop, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	10/08/2018
घोषणा की तारीख / Date of Pronouncement	:	05/09/2018



आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Year [AY] 2010-11 contests separate orders of Ld. first appellate authority *qua* certain relief provided to the two different assessees. We dispose-off the same by way of this common order for the sake of convenience & brevity since both are covered by *low tax effect* circular recently issued by *CBDT*.

ITA No. 4097/Mum/2016, Damyanti Ashwin Patel

2. At the outset, Ld. Sr. DR, *Ms. Pooja Swaroop*, placed on record letter dated 30/07/2018 issued by *Assistant Commissioner of Income Tax-25(2)*, certifying that the tax effect of the quantum addition as contested by the revenue is less than threshold limit of Rs.20 Lacs and the same is covered by recently issued *low tax effect* Circular No.03/2018 dated 11/07/2018 issued by *Central Board of Direct Taxes [CBDT]*.

3. We have gone through the circular and find that the tax effect of quantum in dispute is below prescribed limit of Rs.20 Lacs and the assessee stood benefitted by the above circular issued by *CBDT* wherein the minimum monetary limit for filing the appeals before various appellate authorities have been fixed as under:-

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (Rs.)
1	<i>Before Appellate Tribunal</i>	<i>20.00,000</i>
2	<i>Before High Court</i>	<i>50.00,000</i>
3	<i>Before Supreme Court</i>	<i>1,00.00,000</i>



The aforesaid limits, as per *para 13* of the circular applies to pending appeals also. In view of the admitted position, we dismiss the revenue's appeal.

ITA No. 4092/Mum/2016, Damyanti Ashwin Patel

4. The captioned assessee has been assessed u/s 143(3) on 28/03/2013 wherein the *income from Shares* as offered by the assessee under the head *Capital Gains* has been assessed as *Business Income*. The Ld.CIT(A), reversing the stand of Ld. AO, has allowed the claim of the assessee, against which the revenue is in further appeal before us. At the same time, Ld. CIT(A) noted that the correct figures of *Long Term Capital Gains* was Rs.35.94 Lacs instead of Rs.49.91 Lacs as wrongly picked by Ld. AO. The difference of the two represented exempt *dividend income & interest on PPF* aggregating to Rs.13.96 Lacs and the Ld. AO was directed to exclude the exempt amounts after due verification while determining the correct income of the assessee. The revenue, in grounds of appeal, has contested the stand of Ld. CIT(A) in directing the AO to assess *income from shares* under the head *Capital Gains* as against assessed by Ld. AO as *Business Income*.

5. The Ld. Authorized Representative for Assessee [AR], *Shri Devdatta Mainkar*, by way of workings, submitted that the tax effect of the quantum addition under dispute was less than threshold limit of Rs.20 Lacs and therefore, the appeal was not maintainable. The same has been controverted by Ld. Sr. DR, *Ms. Pooja Swaroop*, who submitted that the tax effect as per system computation was more than Rs.20 Lacs.



6. We have carefully heard the submissions and perused relevant material on record. We find that root of difference lies in the fact that Ld. AO picked up wrong figures of *Long Term Capital Gains [LTCG]* as Rs.49.91 Lacs as against correct figures of Rs.35.94 Lacs and the differential amount i.e. Rs.13.96 Lacs arose to the assessee from *dividend income and interest on PPF* which was exempt as per the statutory provisions. The Ld. CIT(A) provide two relief to the assessee i.e. the *income from shares* was to be assessed as *Capital Gains* and secondly, the Ld. AO was directed to pick up correct figures of *LTCG* after excluding the stated exempt income of Rs.13.96 Lacs *there-from* after due verification. The revenue, in grounds of appeal, has agitated the first relief provided to the assessee. This being the case, the tax effect of the quantum additions as agitated by the revenue falls below threshold limit of Rs.20 Lacs and the same is squarely covered by the recently issued *low tax effect* Circular No.03/2018 dated 11/07/2018 issued by *Central Board of Direct Taxes [CBDT]*. In such a situation, the appeal of the revenue, in our opinion, is not maintainable in terms of the aforesaid circular. Therefore, the same stand dismissed.

Conclusion

7. Both the appeals stand dismissed.

Order pronounced in the open court on 05th September, 2018.

Sd/-

(Saktijit Dey)

न्यायिकसदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखासदस्य / **Accountant Member**



आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**