

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

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

आयकर अपील सं./ITA No. 951/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15.

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| Asstt. Commissioner of Income-tax, Circle-1, Kota. | बनाम Vs. | M/s. N.R. Switch N. Radio Service P. Ltd., E-17, RIICO Electronics Complex, I.P.I.A. Kota. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. AABCN 1300 L | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

राजस्व की ओर से/ Revenue by: Shri Ran Singh (Addl. CIT)
निर्धारिती की ओर से/ Assessee by : Shri Sanjeev Mathur (CA)

सुनवाई की तारीख/ Date of Hearing : 10.10.2018.
घोषणा की तारीख/ Date of Pronouncement : 12/10/2018.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the Revenue is directed against the order dated 23rd May, 2018 of Id. CIT (A), Kota for the assessment year 2014-15. The revenue has raised the following grounds :-

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

- (i) On the facts and in the circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs. 7734/- made by the AO u/s 14A r.w.r. 8D.
- (ii) The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.

The issue falls under exception as mentioned in para 10(b) of Board's Circular No. 3/2018 dated 11.07.2018."

2. We have heard the Id. D/R as well as the Id. A/R and carefully perused the impugned order of Id. CIT (A). As apparent from the ground no. 1 of the revenue's appeal that the tax effect in this appeal is not exceeding Rs. 20 lacs and, therefore, the monetary limit provided under CBDT Circular No. 3/2018 dated 11.07.2018 renders the appeal filed by the department not maintainable. The Id. D/R has submitted that the issue of disallowance made by the AO under section 14A read with Rule 8D which was deleted by the Id. CIT (A) without following the Circular No. 5/2014. Hence the case falls in the exception provided in para 10(b) of the Circular. We note that the Id. CIT (A) has deleted the disallowance made by the AO on the ground that the assessee has not earned any exempt income and, therefore, following the various decisions on this issue, no disallowance can be made under section 14A. Thus it is clear that the Id. CIT (A) has not given the finding on the issue by holding that the Circular issued by the CBDT is illegal or ultra virus but the issue has been decided by following the decisions of Hon'ble High Courts. Hence when no issue is involved in this case where the CBDT circular is either held illegal or ultra virus, then the case would not fall in the exception under para 10(b) of the Circular No. 3/2018 as claimed by the revenue. Accordingly when the tax effect in the appeal of the revenue 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 maintainable.

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

Order is pronounced in the open court on 12/10/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 12/10/2018.

Das/

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

1. The Appellant- The ACIT, Circle-1, Kota
2. The Respondent – M/s. N.R. Switch N Radio Service P. Ltd., Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 951/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

