

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 2067/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

The Asst. Commissioner of Income Tax, Circle-2(3)92), Aayakar Bhavan, Room No. 552, 5 <sup>th</sup> Floor, M.K. Road, Mumbai-400 020	Vs.	Shakun Gases Pvt. Ltd. 2 <sup>nd</sup> Floor, Afzal Mansion Burjorji Bharucha Marg, Fort, Mumbai-400 054
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACCS2608D		

अपीलार्थी की ओर से / **Appellant by** : Shri BS Bist, DR  
प्रत्यर्थी की ओर से / **Respondent by** : None

सुनवाई की तारीख / <b>Date of hearing:</b>	<b>01.11.2018</b>
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>01.11.2018</b>

**आदेश / ORDER**

महावीर सिंह, न्यायिक सदस्य/  
**PER MAHAVIR SINGH, JM:**

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-6, Mumbai [in short CIT(A)], in appeal No. CIT(A)-6/IT-224/7/2016-17 vide dated 03.01.2018. The penalty order under section 221 r.w.s. 140A(3) of the Income Tax Act, 1961 (hereinafter the 'Act') by Asst. Commissioner Income Tax, Circle 2(3)(2) for A.Y. 2013-14 vide dated 15.02.2017.



2. At the outset, it is seen that the relief allowed by CIT(A) on account of penalty will be Rs.17,64,888/-. Hence, net tax effect in this appeal of revenue on the disputed additions made by AO and deleted by CIT (A), is less than Rs. 20 lacs and covered by the CBDT Circular No. 03 of 2018 dated 11.07.2018

3. In view of the above, we are of the view that the Revenue's appeals are fully covered by CBDT circular No. 3 of 2018 and there is no exception brought out by the Revenue that these appeals falls under any of the exception as provided in Para 10 which reads as under: -

*“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

*(a) Where the Constitutional validity of the provisions of an Act or Rule IS under challenge, or*

*(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*

*(c) Where Revenue Audit objection in the case has been accepted by the Department, or*

*(d) Where the addition relates to undisclosed foreign assets/ bank accounts.”*

4. When this was confronted to the learned Sr. Departmental Representative Shri BS Bist, he could not point out that this appeal falls under any of the exception as provided in Circular No. 3 of 2018.



**ITA no.2067/Mum/2018**

Admittedly, the tax effect in this appeal of Revenue is much below the prescribed limit of filing appeal before the Tribunal i.e. ₹ 20 lacs as per CBDT circular No. 3 of 2018. In view of the above, this appeal of Revenue is dismissed as withdrawn in view of Circular No 3 of 2018.

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

Order pronounced in the open court on 01-11-2018.

आदेश की घोषणा खुले मे दिनांक 01-11-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 01-11-2018

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**