

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SURAT" BENCH, SURAT
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

अपील सं./ITA No.1175/Ahd/2016
निर्धारण वर्ष/Asstt. Year:2010-2011

D.C.I.T, Circle-2(1)(2), Room No.223, Aayakar Bhawan, Majuragate, Surat.	Vs.	M/s. Shiva Industrial Securities Agency Gujarat Pvt. Ltd. R.S. No.71, Sameer Complex, Navsarjan Society, Pandesara, Surat PAN: AAFCS3845P
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(Applicant)	(Responent)
Revenue by :	Smt. Smitha V. Nair, Sr. DR
Assessee by :	Shri Nirmal Somani, C.A

सुनवाई की तारीख/Date of Hearing : 12/11/2018
घोषणा की तारीख /Date of Pronouncement: 13/11/2018

आदेश/O R D E R

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This revenue's appeal for A.Y. 2010-11, arises from order of the Id.CIT(A)-II, Surat, dated 22/02/2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The grievance of the Revenue is that the Id. CIT(A) has erred in deleting the additions of Rs.13,00,000/- on account of unexplained cash credit u/s.68 of the Act on unsecured loan and Rs.24,00,000/- on account of unexplained cash credit u/s.68 of the IT on share capital/premium.

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 Id. 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 05/05/2016. On 11/07/2018 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.

Order pronounced in the Court on 13/11/2018 at Surat.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

True Copy

Surat; Dated 13/11/2018

Manish

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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत / ITAT, Surat