

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 2299/Ahd/2016
Assessment Year: 2012-13

Asst. Commissioner of Income-tax**Appellant**
Circle-7(2), Ahmedabad

Vs.

Shah Industries**Respondent**
*C-1/270, GIDC Estate,
Naroda, Ahmedabad -382330
[PAN : AAFFS 9157 H]*

Appearances by:

SK Dev, for the Appellant
Tushar P. Hemani, for the Respondent

Date of concluding the hearing : 17.01.2019
Date of pronouncing the order : 29.01.2019

O R D E R

Per Pramod Kumar, Vice President :

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 1st June 2016, passed by the learned CIT(A)-7, Ahmedabad for the assessment year 2012-13, on the following grounds:

- “1. That the Ld.CIT(A) has erred in law and on facts in deleting the addition Rs.7,32,896/- made by the AO u/s. 28(iib) of the I.T. Act.
2. That the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 19,26,348/- made by the AO u/s.145A of the I.T. Act.
3. That the Ld.CIT(A) has erred in law and on facts in allowing the disallowance of Rs.9,74,550/- made u/s.43 (5) of the I.T. Act.
4. That the Ld.CIT(A) has erred in law and on facts in allowing the disallowance of Rs.5,87,417/- on account of depreciation, interest and insurance on assets.
5. That the Ld.CIT(A) has erred in law and on facts in allowing the disallowance of Rs.35,807/- made on account of vehicle repairs expenses.
6. That the Ld.CIT(A) has erred in law and on facts in allowing the disallowance of Rs.84,234/- made by the AO out of entertainment expenses.

7. *That the department craves leave to add or alter any further grounds of appeal before or during the course of hearing."*

2. At the outset, learned counsel for the assessee submitted that the present appeal of the Revenue needs to be dismissed on account of low tax effect in view of the CBDT Circular No.3 of 2018 dated 11.07.2018. The learned Departmental Representative fairly admitted that the tax effect involved in this appeal is less than the limit prescribed by the aforesaid CBDT Circular.

3. We have heard the rival submissions and perused the material available on record. We find that prima-facie this appeal of the Revenue is not maintainable in view of the recent CBDT Circular No. 3/2018 in F.No.279/Misc. 142/2007-ITJ (Pt) dated 11th July, 2018, vide which it has been decided by the Board that no departmental appeals should be filed before the Tribunal if the tax effect by virtue of the Commissioner of Income-tax (Appeals)'s order is below Rs. 20 lacs. The Board has provided exemptions at clause (10) of the Instructions wherein it has been provided that these instructions will not be applicable, where the Constitutional validity of the provisions of an Act/Rule is under challenge or where Board's order, notification, instruction or circular has been held to be illegal or where Revenue Audit objection in the case has been accepted by the Department or where the addition relates to undisclosed foreign assets/bank accounts etc. We find that the present case does not fall within the exemption clause and the tax effect is less than Rs.20 lacs. Therefore, the present appeal is not maintainable and hence dismissed.

4. In the result, the appeal of the Revenue is dismissed. Pronounced in the open court today on the 29th January, 2019.

Sd/-

Ms. Madhumita Roy
(Judicial Member)

Ahmedabad, the 29th day of January, 2019

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

Pramod Kumar
(Vice President)

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad