

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

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

ITA No.1351/Ahd/2014
Assessment Year: 2007-08

**Income Tax Officer,
Ward-5(2), Ahmedabad.**

.....**Applicant**

Vs.

PASL Windtech Pvt. Ltd.,
Plot No.37B, Phase-I,
GIDC Estate, Vatva,
Ahmedabad – 382 445.
[PAN: AABCA 3022 G]

.....**Respondent**

Appearances by

S.K. Dev for the applicant

S.N. Soparkar for the respondent

Date of concluding the hearing : 15.01.2019

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 26th February, 2014, passed by the learned CIT(A)-XI, Ahmedabad deleting penalty of Rs.15,92,233/- imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2007-08, on the following grounds:

“The Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs.15,92,233/- under section 271(1)(c) in respect of addition of Rs.48,26,251/- made on account of notional property income.

On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

It is, therefore, prayed that the order of the Ld. CIT(A) may be set-aside and that of the Assessing Officer be restored.”

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 recent 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 Lakhs. 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 Lakhs. 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)

Sd/-
Pramod Kumar
(Vice President)

Ahmedabad, the 29th day of January, 2019

*PBN/**

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad