

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री रमित कोचर लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM

आयकर अपील सं./ ITA No. 7599/Mum/2016

(निर्धारण वर्ष / Assessment Year 2008-09)

Tata Marcopolo Motors Ltd. 1 st Floor, Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400 001	Vs.	Dy. Commissioner of Income Tax, 1(3), Aayakar Bhawan, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACCT5547J		

आयकर अपील सं./ ITA No. 326/Mum/2017

(निर्धारण वर्ष / Assessment Year 2008-09)

Dy. Commissioner of Income Tax, 1(3), Aayakar Bhawan, Mumbai-400 020	Vs.	Tata Marcopolo Motors Ltd. 1 st Floor, Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400 001
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Nikhil Tiwari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri D.G. Pansari, DR

सुनवाई की तारीख / Date of hearing:	28-01-2019
घोषणा की तारीख / Date of pronouncement :	28-01-2019



आदेश / ORDER

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

These Cross appeals are arising out of the orders of Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-3/IT-133/2012-13 vide order dated 19.10.2016. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-1(3), Mumbai (in short 'DCIT'/'ITO'/ AO') for the A.Y. 2008-09 vide order dated 10.12.2010 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. This appeal contains the quantum addition i.e. deleting the disallowance by admitting the additional evidence in violation of Rule 46A(3) of the Income Tax Rules, 1963 (hereinafter the 'Rules), wherein the disallowance was at ₹ 52,26,750/- & allow the expenses of ₹ 4,38,867/- on account of employee's contribution towards PF & ESIC. The tax effect in this appeal is amounting to ₹ 17,58,532/-. When this was confronted to the learned Sr. Departmental Representative he admitted that the tax effect in this appeal is less than ₹ 20 lacs and covered by the CBDT Circular No. 03 of 2018 dated 11.07.2018

3. We have gone through the circular and noticed that this circular will apply to pending appeals also & we are referring to Para 13 of the circular for this proposition, which reads as under: -

"13. This Circular will apply to SLPs/appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply



*retrospectively to pending SLPs/ appeals/cross objections/ references. **Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.***

4. In view of the above, we are of the view that the Revenue's appeal is fully covered by CBDT circular No. 3 of 2018 and there is no exception brought out by the Revenue that this appeal 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."

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

6. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the stamp duty expenses. For this assessee has raised the following grounds: -

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of the AO in disallowing the stamp duty expenses of ₹ 5,99,9,500/- paid on issue of share certificate treating the same as capital in nature.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) ought to have appreciated that the stamp duty expense are merely documentation charges for issue of share certificates and hence are allowable as deduction under section 37(1) of the Act.”

7. At the outset, the learned counsel for the assessee stated that she has instructions from the assessee not to press this issue. The reasons given by assessee in its letter as under: -

“the only ground on which the appeal is filed by the appellant relates to disallowance of stamp duty expenses of ₹ 5,99,950/- paid on the issue of share certificates. The appellant had incurred the said expenditure for issue of share



certificate and not for issue of share capital. However, the AO and CIT(A) disallowed the same as capital in nature and added back to the income of the appellant.

In view of the above, considering the smallness of the tax effect involved in the impugned disputed issue appellant humbly requests your Honours to kindly permit to withdraw the captioned appeal and oblige.”

8. As per above indicated reasons, the assessee is not interested in prosecuting the issue and the same is dismissed as withdrawn.

9. **In the result, both, the appeals of Revenue as well as assessee are dismissed as indicated above.**

Order pronounced in the open court on 28-01-2019.

Sd/-

(रमित कोचर / RAMIT KOCHAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-01-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai