

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'A1' BENCH, AHMEDABAD**

[Coram: Justice P P Bhatt, President and Pramod Kumar, Vice President]

ITA No.2108/Ahd/2017
Assessment Year: 2014-15

**Dy. Commissioner of Income Tax,
Circle-1(1)(1), Ahmedabad.**

.....**Appellant**

Vs.

AWN Agro Pvt. Ltd.,
Fortune House, NR,
Navrangpura Railway Crossing,
Ahmedabad – 380 009.
[PAN: AAJCA 3256 G]

.....**Respondent**

C.O. No.53/Ahd/2018
(In ITA No.2108/Ahd/2017)
Assessment Year: 2014-15

AWN Agro Pvt. Ltd.,
Fortune House, NR,
Navrangpura Railway Crossing,
Ahmedabad – 380 009.
[PAN: AAJCA 3256 G]

.....**Appellant**

Vs.

**Dy. Commissioner of Income Tax,
Circle-1(1)(1), Ahmedabad.**

.....**Respondent**

Appearances by

Mudit Nagpal *for the Revenue*

Era Kapoor *for the assessee*

Date of concluding the hearing : 29.01.2019

Date of pronouncement : 29.01.2019

O R D E R

Per Bench:

1. By way of this appeal, the appellant Assessing Officer has challenged correctness of the order dated 24.07.2017, passed by the learned CIT(A)-1, Ahmedabad, in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2014-15, on the following grounds :-

“That the Id. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.60,44,418/- made on the ground that market-to-market foreign exchange loss is notional loss and cannot be allowed as per instruction 3 of 2010 of CBDT.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be resorted to the above extent.”

2. At the outset, learned counsel for the assessee submitted that the present appeal of the Revenue need 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 the appeal of the Revenue is not maintainable in view of the 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. Learned Departmental Representative states the liberty may kindly be given to point out, upon necessary further verifications, and to seek recall the dismissal of appeals and restoration of the appeals in the cases (i) in which it can be demonstrated that the appeals are covered by the exceptions (ii) which are inadvertently included in this bunch of appeals, wherein the tax effect, in terms of the CBDT circular (supra), exceeds Rs 20,00,000. None opposes this prayer; we accept the same. We make it clear that the appellants shall be at liberty to point out the cases which are wrongly included in the appeals so summarily dismissed, either owing to wrong computation of tax effect or owing to such cases being covered by the permissible exceptions- or for any other reason, and we will take appropriate remedial steps in this regard.

5. Coming to the Cross Objection filed by the assessee, when this Cross Objection was called out for hearing, learned counsel for the assessee Ms. Era Kapoor submitted that she does not wish to press the Cross Objection due to smallness of the amount involved. She, however, prayed that liberty may be given to take up the issue in subsequent years, if so advised.

6. In view of the above, Cross Objection filed by the assessee is treated as dismissed.

7. In the result, appeal filed by the Revenue and Cross Objection filed by the assessee, both are dismissed. Pronounced in the open Court today on the 29th day of January, 2019.

Sd/-
Justice P P Bhatt
(President)

Sd/-
Pramod Kumar
(Vice President)

Ahmedabad, dated the 29th day of January, 2019

PBN/*

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad