

**आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**'D' BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**AND**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

अपील सं./ITA No.1516/Ahd/2016

अधिवेशन वर्ष/Asstt. Year:2008-2009

D.C.I.T, Circle-1(1)(1), Ahmedabad	Vs.	M/s. AIA Engineering Ltd., 155, GVMM Estate, Odhav Road, Odhav, Ahmedabad-382410.  PAN : AABCA2777J
--	-----	--

(Applicant)	(Responent)
Revenue by :	Shri Santosh Karnani, Sr. D.R
Assessee by :	Shri T.P. Hemani, A.R

सुनवाई का ताराख/Date of Hearing : 20/02/2019

घोषणा का ताराख /Date of Pronouncement: 28/02/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the order of Learned Commissioner of Income Tax(Appeals)-1, Ahmedabad,(in short Ld.CIT(A)) vide appeal no.CIT(A)-1/DCIT, Cir-1(1)(1)/744/2014-15 dated 23/03/2016 arising in the matter of assessment order passed u/s.143(3) r.w.s. 147 of the Income-tax Act 1961, (here-in-after referred to as "the Act") dated 13/03/2015 relevant to Assessment Year 2009-2009.

2. The solitary grievance of Revenue is that Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.33,59,100/- made on account of "Disallowance u/s 40(a)(i) of the Act of Consultancy Fees paid to the non-resident legal firm.

3. 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. In reply to it the Id. DR did not dispute the same and left the issue at the Tribunal with the pray to decided the same by law.

4. We find that the appeal of the Revenue was presented on 08/06/2016. 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 the filing of the appeal to the Tribunal against the order of the Id. CIT(A) where the tax effect by virtue of the relief given by the Id. 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 the 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 the recall of this order. Such an application should be filed within the period prescribed under 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 28/02/2019 at Ahmedabad.**

**-Sd-  
(Ms MADHUMITA ROY)  
JUDICIAL MEMBER**

(True Copy)

Ahmedabad; Dated 28/02/2019

*Manish*

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**आदेश क० प्रतिलिपि अपेक्षित/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. व्रभागीय प्रत्यक्ष, आयकर अपील अाधिकरण / DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपील अाधिकरण, अहमदाबाद / ITAT, Ahmedabad