

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA Nos.1261/PUN/2017 & 717/PUN/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

The Income Tax Officer,
Ward 12(1), Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Shambhu Properties,
218, Shaniwar Peth,
Pune - 411 030.

..... प्रत्यर्थी /
Respondent

PAN : ABBFS8039F.

Assessee by : Shri Mahesh Panse.

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 27.06.2019	घोषणा की तारीख / Date of Pronouncement: 27.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the Revenue are emanating out of the orders of Commissioner of Income Tax (A) - 5 and 13, Pune dated 09.12.2016 and 20.01.2017 for the assessment years 2013-14 and 2014-15, respectively.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus both the appeals can be

heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts in ITA No.1261/PUN/2017 for A.Y. 2013-14.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a firm engaged in the business of Promoters, Builders and Contractors. Assessee filed its return of income for A.Y. 2013-14 on 20.09.2013 declaring total income of Rs.Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 21.03.2016 and the total income was determined at Rs.88,47,990/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dt.09.12.2016 (in appeal No.PN/CIT(A)5/ITO, Ward-12(1), Pune/132/2016-17) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing the deduction u/s.80IB(10) of the Act, 1961 on pro rata basis in respect of Project Twin Nest.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in allowing the deduction u/s 80IB(10) of the Act to a housing project approved on 27.03.2006 which was still incomplete by 31.03.2011 in violation of Section 80IB(10)(a) Explanation (ii) of the Act which requires the completion certificate to be issue by the local authority for the earlier approved housing project.”

4. Similar grounds have been raised by the Revenue in ITA No.717/PUN/2018 for A.Y. 2014-15.

5. Before us, at the outset, Ld.A.R. submitted that the appeal of the Revenue is not maintainable on account of low tax effect and therefore, the appeal of the Revenue be dismissed. Ld.D.R. did not object to the aforesaid contention made by the Ld.A.R.

6. We have heard the rival submissions and perused the material available on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of Id. CIT(A) in respect of the relief given by him. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 11.07.2018 (Circular No. 3 of 2018), no Department appeals are to be filed against relief given by Id. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.20 lakhs. The Circular further states that the instructions will apply retrospectively to the pending appeals also. In the present case, it is an undisputed fact that on the addition which is in dispute, the tax effect is less than Rs.20 lakhs. In the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect and accordingly dismiss the appeal of Revenue without expressing any opinion on merits of the case. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. **Thus, the grounds of the Revenue are dismissed.**

7. **In the result, the appeal of Revenue in ITA No.1261/PUN/2017 for A.Y. 2013-14 is dismissed.**

8. Now we take up Revenue's in ITA No.717/PUN/2018 for A.Y 2014-15.

8.1. As far as the grounds raised in appeal in ITA No.717/PUN/2018 for A.Y. 2014-15 is concerned, in view of the submission of both the parties that the facts of the case in the year being identical to the facts and issue of the case in ITA No.1261/PUN/2017 for A.Y. 2013-14, we therefore for the reasons stated herein while disposing of the appeal in ITA No.1261/PUN/2017 for A.Y. 2013-14 and for similar reasons hold that the appeal of Revenue to be not maintainable on account of low tax effect and accordingly dismiss the appeal of Revenue. **Thus, the grounds of Revenue are dismissed.**

9. **In the result, the appeal of Revenue in ITA No.717/PUN/ 2018 for A.Y. 2014-15 is dismissed.**

10. **To sum up, both the appeals of Revenue are dismissed.**

Order pronounced on the 27th day of June, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 27th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-5, Pune & CIT(A)-13, Pune.
4. Pr. CIT-4, Pune & Pr.CCIT-Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.