

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

M.A. No.75/Ahd/2019
(In IT(SS)A No. 426/Ahd/2017)
(Assessment Year : 2012-13)

The JCIT(OSD),
Central Circle – 1,
Baroda.

Vs. Shri Omprakash K Bengani,
A-23/24, Yogeshwar Soceity,
Vibhag – 1, behind JNK
Apartment, High Tension
Road, Subhanpura, Baroda.

[PAN No. AALPB 5860 E]

(Appellant)

..

(Respondent)

Appellant by : Shri Vijay Ranjan & Ira Kapoor, AR's
Respondent by : Shri L. P. Jain, Sr. D.R.

Date of Hearing 05.04.2019

Date of Pronouncement 02.07.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant Miscellaneous Application is directed at the instance of the Revenue seeking restoration of Tribunal's order dated 27.07.2018 in IT(SS)A No.426/Ahd/2017 (Revenue's Appeal) for Assessment Year 2012-13 whereby and whereunder the matter was dismissed due to low tax effect.

2. In the Misc. Application the Revenue has contended that impugned order of the Tribunal is liable to be recalled in view of the fact that the issue involved in the appeal falls within the ambit of exceptions provided in clause 10(a) of the CBDT Circular No.3

of 2018 dated 11.7.2018. The relevant contentions of the Revenue pleaded in the MA reads as under:

“2. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A)-12, Ahmedabad has quashed the assessment order by relying upon the decision of Gujarat HC in Saumya Construction Pvt Ltd 81 taxmann.com 292 and ITAT, Ahmedabad in Vijay Kumar D Agarwal V/s DCIT in IT(SS)A No.153 to 156/Ahd/2012 dated 29.04.2016 on the following grounds:-

(g) As on the date of search, appellant had already filed original returns of income and time limit for issuance of notice u/s 143(2) of the Act had already expired which means that proceedings for these all assessment years were closed and attained finality. While making disallowance u/s 14A of the Act, AO has not referred to any incriminating material found during the course of search which can justify such addition.

(h) The AO has made additions on the basis of return of income already filed prior to the date of search. Additions could be made only on the basis of incriminating material found during search.

3. The decision of the Ld. CIT(A) was not acceptable and hence department filed further appeal before the Hon'ble ITAT vide IT(SS)A No. 426/Ahd/2017 on 06.12.2017 on merits as well as challenging the grounds mentioned in para 2.. Further Vide CBDT's circular dated 11.07.2018, the Hon'ble ITAT dismissed Revenue's appeal involving tax effect of less than Rs. 20 lakhs as withdrawn taking into consideration that the instructions have been made applicable with retrospective effect and are applicable on pending appeals also. The merits of the case as well as the legal issue has not been taken into consideration.. **However, the Hon'ble ITAT has also given liberty that in case on re verification at the end of the A.O., 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 recall of this order..**

4. On verification of the case, it is observed that the Hon'ble ITAT has dismissed the department's appeal taking into consideration only the tax effect, which is below the limit.

Further, it must be mentioned that as per the website of Hon'ble Supreme Court of India, an SLP filed by the Department against the decision of Gujarat High Court in CIT vs. Saumya Construction Pvt. Ltd. has been 'disposed as dismissed' vide order dated J4.04.2018 of Hon'ble Supreme Court of India. In this regard, it is submitted that the SLP has been disposed as 'dismissed' by the Hon'ble Court. However, there is no speaking order as such as to why it has been dismissed. Also, there is no observation of the court with regard to interpretation and scope of section 153A of the Act. Therefore, the legal question regarding interpretation of scope of Section 153A of the Act is still open as the interpretation that additions made without any incriminating material in complete and unabated assessments are not stipulated under the section clearly limits Section 153A of the Act and gives it an interpretation not originally included in the provision when it was inserted."

3. We have heard both the parties on the issue of recall of the impugned order as prayed by the Revenue. We find that the Tribunal has dismissed the appeal of the Revenue on the ground that tax effect in that appeal is below Rs.20 lakhs, and therefore, the same is not admissible in view of the recent CBDT circular No.3 of 2018. It is not disputed by the Revenue that the tax effect involved on the disputed addition is less than Rs.20 lakhs. The case of the Revenue is that its appeal falls within the scope of exceptions provided in clause 10(a) of the above circular, therefore, it has to be decided on merit even though tax effect involved therein is below taxable limit prescribed by the CBDT. We find from the CIT(A)'s order that the CIT(A) has allowed the appeal of the assessee while considering various case laws including the decision in the case of Saumya Construction 387 ITR 529 (Guj). Revenue in MA itself has contended that SLP against decision of Hon'ble Gujarat High Court in the case of Saumya Construction has been dismissed by the Hon'ble Supreme Court vide order dated 24.4.2018. There is nothing before us to show that constitutional validity of the provisions of an Act or Rule is under challenge on the issue, as stipulated in clause 10(a) of the above CBDT Circular. In our view, there is no justification or merit in the plea of the Revenue for recall of the

impugned order of the Tribunal. MA of the Revenue being devoid of any merit, stands rejected.

4. In the result, Misc. Application of the Revenue is dismissed.

This Order pronounced in Open Court on

02/07/2019

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 02/07/2019
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad