

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.1488/Kol/2016
Assessment Year: 2012-13

Income Tax Office, Ward-10(1), P- 7,Chowringhee Square, 3 rd Floor, Kolkata-69	बनाम / V/s.	M/s Aakruti Infrastructure Pvt. Ltd. 25, Canal Street, Kolkata-700 048 [PAN No.AAJCA 5587 A]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sankar Halder, JCIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri . Jhajharia, FCA
सुनवाई की तारीख/Date of Hearing	21-06-2019
घोषणा की तारीख/Date of Pronouncement	13-09-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue’s appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-4, Kolkata’s order dated 17.05.2016 passed in case No.702/CIT(A)-4/Ward-10(1)/14-15 involving proceedings 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. It emerges at the outset that the Revenue has raised sole substantive issue u/s68 of share application / premium of ₹1,03,00,000/- treated as unexplained cash credits u/s 68 of the Act. The tax effect on the disputed addition before us is less than Rs. 50 lacs in cases i.e. less than the prescribed revised threshold limit in

CBDT's latest Circular No17/2019 dated 08.08.2019. It will be pertinent to reproduce the relevant portion of the said Circular as follows:-

"2. As a step toward further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

<i>S.No.</i>	<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (Rs.)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>50,00,000</i>
<i>2.</i>	<i>Before High Court</i>	<i>1,00,00,000</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>2,00,00,000</i>

3.1 We find that intention behind the Circular No17/2019 dated 08.08.2019 needs to be understood in the following perspective:-

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-à-vis where composite order for more than one assessment year is passed, para 5 of the circular is substituted by the following para:

*"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. if, the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in **para 3**. No. appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessments year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately."*

3.2. On perusal of the Circular No. 17/2019 dated 08.08.2019 and the materials available on record, we do not see these case(s) falling under any of the exceptions contemplated in the said circular *per se*. We also find that this circular makes it very clear that the revised monetary limits shall apply retrospectively to pending appeals as well. *Hon'ble apex court in Commissioner of Customs vs Indian Oil Corporation Ltd reported in 267 ITR 272 (SC)* has settled the law that CBDT's circulars are very much

binding on revenue authorities. We thus hold that this Revenue's appeal raising identical sole issue of ₹1,03,00,000/- deserves to be dismissed in terms of low tax effect. We make it clear that it shall very much open for the Revenue to seek necessary rectification in case it is found that any of the appeal involve operations of exception clauses in the tax effect circular as per law.

4. This Revenue's appeal is dismissed for involving lower than the prescribed minimum tax effect.

Order pronounced in open court on 13/09/2019

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 13/09/2019 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-10(1), P-7,Chowringhee Square, 3rd Fl. Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Aakruti Infrastructure Pvt. Ltd., 255, Canal St, Kolkata-48
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।