

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 6338/Del/2016
(Assessment Year: 2010-11)**

Income Tax Officer, Ward 2(1), Room No. 375, 3 rd Floor, C.R. Building, New Delhi-110002	Vs	M/s Akshay Commercial Pvt. Ltd., 4356/4C, Ansari Road, Darya Ganj, New Delhi PAN-AAHCA7735N
APPELLANT		RESPONDENT
Appellant by	Shri. Sanjay Kapoor, Sr. DR	
Respondent by	Shri. Ghanshyam Gupta, C.A.	

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by the Revenue against the order dated 4.10.2016 passed by Learned Commissioner of Income Tax(Appeals)-I, New Delhi [in short "Ld.CIT(A)"] pertaining to assessment year 2010-11. In this appeal, the tax effect is less than the monetary limit fixed by the Central Board of Direct Taxes (in short "CBDT") in its Circular No.17/2009 dated 08.08.2019. The Revenue has raised following grounds of appeal:-

- The Ld. CIT(A) erred in deleting the addition of Rs. 95,00,000/- made by the AO u/s 68 of the I.T. Act, 1961 particularly when the assessee has failed to furnish evidence to prove the source of fund the person from whom such huge share capital / premium received.*

1.1. *Ld. CIT(A) has not considered the issue raised by the AO that the investment of huge sum in this company by those with very meager resources is not probable.*

1.2 *Ld. CIT(A) ought to have examined the issue from the point of view of “human probability” as the entry through bank account is not a conclusive proof as observed by Hon’ble Supreme Court in CIT vs. P. Mohanakala (291 ITR 278(SC):- “the transactions though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequences.”*

[B]. At the outset, Learned Authorized Representative of the assessee brought to our notice, at the time of hearing, that tax effect in this appeal is below Rs. 50,00,000./-. Both sides, [Representatives of Revenue and the Assessees] were in agreement, at the time of hearing before us, that the tax effect in this appeal is below Rs. 50,00,000/-. Vide recent CBDT Circular No.17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect of filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified

by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. Having regard to the aforesaid, learned Counsel for the assessee submitted that the appeal was not maintainable. Therefore, in view of the foregoing, this appeal is dismissed being not maintainable, having regard to aforesaid CBDT Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

[C]. Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961 seeking recall of this order and, for restoration of the appeal if it is found that this appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.

[D]. In the result, the appeal by Revenue is dismissed. Our decision was orally pronounced in the Open Court after conclusion of hearing on the date of hearing. Now, this written order is pronounced in Open Court on 19.09.2019

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 19.09.2019
SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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