

**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:- 5969/Del/2016  
(Assessment Year: 2011-12)**

Income Tax Officer, Ward-30(5), New Delhi	Vs	Sh. Anil Suri, E-17, Kalkaji, New Delhi  PAN-AWSPS9197C
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri. Sanjay Kapoor, Sr. DR	
<b>Respondent by</b>	Shri. Neekanth Khandelwal, Adv	

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

[A]. This appeal has been filed by Revenue against the order dated 30.08.2016 passed by Learned Commissioner of Income Tax(Appeals)-10, New Delhi [in short, "Ld.CIT(A)"] pertaining to assessment year 2011-12. 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:-

*1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs.77,15,236/- to the assessee out of addition of Rs.1,03,35,000/- made u/s 69 A of the IT Act by applying peak credit theory and has allowed Rs.26,19,764/- as income from business activity, which was a maximum amount available on a particular date.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has*

*erred in relying upon the assessment made by the AO in the assessee's own case for A.Y. 2010-11 & 2013-14, wherein while completing the assessment u/s 143(3), AO gave the assessee benefit of peak credit. However, the peak credit as applied by the ld. CIT(A) is not applicable in the instant case as peak credit is necessarily based on the presumption that the assessee is in a continuous process of depositing and withdrawing same money into bank accounts and hence the source of some of the money deposited in the bank can be explained from the withdrawals. In essence, taking the peak credit means giving benefit of cash withdrawals (after removing personal consumption). In the instant case, the assessee had deposited cash in the bank amounting to Rs.1,03,35,000/- and had withdrawn Rs.15,41,950/- only. Therefore, the amount of peak credit worked out by Ld. CIT(A) is erroneous in so far as it gives benefit in excess of the cash withdrawals.*

*3. On the fact and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the fact that the assessee had claimed expenses to the tune of Rs.1,52,763/- out of the gross income of Rs.5,46,704/-, which has also not been considered while arriving at the peak credit. In view of the above, the observation of the Ld. CIT(A) that while passing order u/s 143(3) in assessee's own case for AY 2010-11 & 2012-13, the AO had allowed the benefit of peak credit has got no force and hence not justified. Further, the Apex Court in various decision has held that the principle of Res-judicata is not applicable in tax matters as each assessment year is separate and final only for that year.*

*4. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the facts that the assessee had claimed that the cash credit were cash received against agreement to sell the property, however, the agreement cannot be treated as genuine as the sale agreement is on a plain stamp paper which is not even attested. Further, as per amended section 269SS of the Act, the cash received during negotiations for transfer of immovable property attracts 100% penalty u/s 271D of the Act. Though, this new amendment is not applicable in the relevant year, it conveys the intention of the legislature.”*

[B]. At the outset, it was brought to the notice by learned counsel for the Assessee, at the time of hearing that 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. Therefore, in view of the foregoing, we are of the view that this appeal filed by Revenue is not maintainable. The learned Departmental Representative also did not press the appeal. Accordingly, this appeal is dismissed being not pressed, and also 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 01.10.2019.

*Sd/-*  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**  
Dated: 01.10.2019

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

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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