

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2774/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2014-15)

The Deputy Commissioner of Income Tax Anand Circle, 204, 3 rd Floor, S.P. Patel Complex, Near Old C. K. Hall, Mayfair Road, Anand - 388001	बनाम/ Vs.	M/s. Emtici Engineering Limited Anand Sojitra Road, Vallabh Vidyanagar, Anand-388120
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACE4642F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri L. P. Jain, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mehul K. Patel, A.R.

सुनवाई की तारीख / Date of Hearing	25/09/2019
घोषणा की तारीख /Date of Pronouncement	04/10/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Vadodara (CIT(A)' in short), dated 24.08.2017 arising in the assessment order dated 09.12.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. The substantive grounds of appeal raised by the Revenue read as under:-

“1. That in the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the addition towards excessive claim of depreciation.

2.1 That in the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A of the Act merely on the erroneous presumption of overall sufficient interest free funds, without considering that this was only a presumption and the disallowance deserved to be upheld, as in the case of *Avon Cycles Ltd. (2015) 53 taxmann.com 297 (P&H)*, particularly as the assessee had failed to controvert the findings of the Assessing Officer, and failed to demonstrate that investments were actually made out of interest free funds.

2.2 That in the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A of the Act merely on the erroneous presumption of overall sufficient interest free funds, without examining the facts and whether the investments were actually made out of interest free funds.

3.1 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance u/s 40(a)(i) without considering that these payments were taxable in India as fees for technical services in terms of section 9(1)(vii) and were liable for TDS.

3.2 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance u/s 40(a)(i) without considering that the assessee had failed to furnish complete details and demonstrate that this income was not taxable in India under the Income Tax Act and the relevant Double Taxation Avoidance Agreements (DTAAs).”

3. At the time of hearing, it was submitted by the Ld.AR for the assessee that the appeal filed by the Revenue is hit by recently issued CBDT Circular No.17 of 2019 dated 08/08/2019 revising the previous thresholds pertaining to tax effects. It is *inter alia* noticed that the CBDT vide Instruction No. F. No. 279/Misc/M-93/2018-ITJ dt. 20/08/2019 has observed that Circular No.17/2019 dated 08/08/2019 relating to enhancement of monetary limits is also applicable to all pending appeals. As per aforesaid Circular read with instruction, all pending appeals filed by Revenue are liable to be dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.50 Lakhs. In the instant case, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.50 lakhs and therefore appeal of the Revenue is required to be dismissed *in limine*.

4. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 17 of 2019. Accordingly, appeal of the Revenue is dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeal on showing inapplicability of the aforesaid CBDT Circular in any manner.

5. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 04/10/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 04/10/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।