

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

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

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2381/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

ACIT Cricle-2(1)(1), Ahmedabad Room No. 103, First Floor, Navjeevan Trust Building, Ahmedabad- 380014	बनाम/ Vs.	M/s. Infinium Motors Pvt. Ltd. 909, 9 th Floor, Shtitiratna Panchwati, C.G. Road, Ahmedabad- 380006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA CI4 684 B		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Mudit Nagpal, Sr. DR
प्रत्यर्थीकीओरसे / Respondent by:	None

सुनवाईकीतारीख/Date of Hearing	23/09/2019
घोषणाकीतारीख /Date of Pronouncement	15/10/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the Revenue for A.Y. 2013-14, arise from order of the CIT(A)-2, Ahmedabad dated 09.08.2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The ground of appeal raised by the Revenue reads as under:-

"1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance u/s. 36(1)(iii) of the IT Act.

1.1 The Ld. CIT(A) has failed to appreciate that in the case of S A Builders the Apex Court had decided the matter in the favour of the assessee owing to commercial expediency whereas in the instant case, such element is non-existent.

1.2 *The onus lies on the assessee to demonstrate that it had interest free funds available with it for making such advances and not the other way around.*

1.3 *The Ld. CIT(A) has failed to appreciate that as per Section 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.*

2. *The appellant craves to leave to amend or alter any ground or add a new ground, which may be necessary."*

3. At the time of hearing, it was submitted by the Ld.AR for the assessee that 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. As per aforesaid Circular, 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

15/10/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad: Dated 15/10/2019

TANMAY, SR. PS

TRUE COPY

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 ।