

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 6690/MUM/2017  
Assessment Year: 2012-2013**

The ITO-4(2)(4), Room No. 647, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	<b>Vs.</b>	M/s M. W. Infra Developers Pvt. Ltd., 99, Niranjana, Opp ROC Office, Marine Lines, Mumbai - 21 PAN: AAEC3701M
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri J. Saravanan (CIT DR)  
Assessee by : Shri Harsh Kaparia (AR)

Date of Hearing: 28/08/2019  
Date of Pronouncement: 28/08/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against the order dated 15.09.2017 passed by the Commissioner of Income Tax (Appeals)-9 (for short 'the CIT(A), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of guarantee commission of Rs. 30,00,000/- without appreciating the fact that the assessee is not engaged in the business of giving guarantee to other companies and*

*the same is not ancillary to the assessee's main business of construction of infrastructure projects and, therefore, income generated through guarantee commission has to be treated as incidental income and taxable under Income from Other Sources u/s 56 of the Income Tax Act.*

- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of interest expenses amounting to Rs. 17,77,050/- without appreciating the fact that the assessee has not proved that the interest bearing funds have been utilized for the project in hand or for earning income.*
- 3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of various expenses amounting to Rs. 1,05,72,661/- without appreciating the fact that since the assessee's project was not yet started, all related expenses has to be capitalized."*

3. At the outset, the Ld. counsel for the respondent/assessee pointed out that the tax effect of the relief granted by the Ld. Commissioner of Income Tax (Appeals) is below Rs. 50 lacs and as per Circular No.17 of 2019 dated 08.08.2019 issued by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, the CBDT has revised the monetary limit for filing appeals before the ITAT from the existing limit of Rs. 20 lacs to Rs. 50 lacs. In the light of the aforesaid facts, the Ld. counsel submitted that this appeal is not maintainable and liable to be dismissed. The Ld. counsel furnished calculation sheet, as per which, the tax effect in this case is Rs. 49,80,220/-.

4. The Ld. Departmental Representative (DR) fairly conceded that this appeal is not maintainable in light of the aforesaid Circular issued by the CBDT, however, submitted that the department may be given liberty to file miscellaneous application in case it is found that the case falls under any of the exceptions provided in the Circular.

5. We have gone through the impugned order passed by the Ld. Commissioner of Income Tax (Appeals) and the grounds of appeals. As pointed out by the Ld. counsel, the tax effect in this appeal is less than Rs. 50 lacs. Accordingly, we dismiss the aforesaid appeal filed by the Revenue as not maintainable/withdrawn. However, in case, it is found that the case falls under any of the exceptions provided in the Circular, then the revenue is at liberty to file miscellaneous application for recalling the order of the Tribunal.

In the result, appeal filed by the revenue for assessment year 2012-2013 is dismissed.

Order pronounced in the open court on 28<sup>th</sup> August, 2019.

*Sd/-*

(M. BALAGANESH)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 28/08/2019

Alindra, PS

*Sd/-*

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai