

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

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

**ITA No. 4202/MUM/2018
Assessment Year: 2013-2014**

The ITO-21(2)(3), Room No. 105, 1 st Floor, Piramal Chambers, Parel, Mumbai - 400012	Vs.	Shri Mohamed Anwar M Shethwala, 75-77E Shirin Mansion Compound, L J Marg, Near Paradise Cinema, Mahim, Mumbai - 16 PAN: AAGPS3262A
(Appellant)		(Respondent)

Revenue by : Shri J. Saravanan (CIT DR)
Assessee by : Shri Bhupendra Shah (AR)

Date of Hearing: 29/08/2019
Date of Pronouncement: 29/08/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 26.03.2018 passed by the Commissioner of Income Tax (Appeals)-32 (for short the CIT(A), Mumbai, for the assessment year 2013-14, 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. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is justified in confirming the addition of 10% of the amount of Sundry Creditors of Rs. 83,33,782/- being the difference between Opening Creditors Closing Creditors and deleting the balance*

40% without appreciating the action of the Assessing Officer in this regard.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in not appreciating the fact that the Sundry Creditors who could not be verified by the Assessing Officer, even after the issue of notices u/s 133 (6) of the Act (as these notices were either unserved or not replied to or where these parties were not produced by the assessee before the Assessing Officer) were correctly disallowed by the Assessing Officer and added back as assessee's income u/s 41 (1) of the Income Tax Act, 1961."*

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.

4. The Ld. Departmental Representative (DR) fairly admitted 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, 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 2013-2014 is dismissed.

Order pronounced in the open court on 29th August, 2019.

Sd-

(M. BALAGANESH)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/08/2019

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