

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “D”, MUMBAI**

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

**ITA No. 4264/MUM/2018
Assessment Year: 2013-2014**

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| The DCIT (LTU)-1, World Trade Centre, Centre No. 1, 29 th Floor, Cuffe Parade, Mumbai 400005 | Vs. | M/s Rashtriya Chemicals Fertilizers Ltd., Priyadarshini, Eastern Express Highway, Sion, Mumbai - 400022 PAN: AAACR2831H |
| (Appellant) | | (Respondent) |

Revenue by : Shri D.G. Pansari (DR)
Assessee by : Shri Ketan Ved (AR)

Date of Hearing: 04/09/2019
Date of Pronouncement: 04/09/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 19.03.2018 passed by the Commissioner of Income Tax (Appeals)-1 (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 the Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective ground:-

“On the facts and in the circumstances of the case & in law, the ld. CIT (A) erred in extending the benefit of section 32(1) (iia) of the Act to the next assessment year, when the Income-tax Act does not provide such carryover, thereby violating the legal principle of “cassus omissus” which states that the courts cannot compensate for what the legislature has omitted to enact?”

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 below 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 4th September, 2019.

Sd/-
(M. BALAGANESH)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 4/09/2019

Alindra, PS

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