

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" New Delhi**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.401/Del/2016

निर्धारणवर्ष/Assessment Year:2012-13

ACIT Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extn. New Delhi.	बनाम Vs.	Jai Beverages R/o 52, Janpath, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent
PAN No. AAACJ6275H		

&

Cross Objection No. 90/Del/2016

(आ.अ.सं./I.T.A No.5068/Del/2016)

निर्धारणवर्ष/Assessment Year:2012-13

Jai Beverages R/o 52, Janpath, New Delhi.	बनाम Vs.	ACIT Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extn. New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent
PAN No. AAACJ6275H		

निर्धारितकीओरसे /Revenue by	Shri Sanjog Kapoor, Sr. DR
राजस्वकीओरसे /Assessee by	Shri Mayank Patawari, CA

आदेश / O R D E R

PER H.S. SIDHU, J.M.

1. This appeal filed by the Revenue and Cross Objection filed by the assessee against the impugned order dated 30.11.2015 passed by the Ld.

CIT(Appeals)-24, New Delhi in relation to assessment year 2012-13 on the following grounds:

Grounds of ITA No. 401/Del/2016: -

1. *“The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty u/s 271AAA of the Act, amounting to Rs. 38,49,680/-.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in holding that the inclusion of additional income without any documentary evidence after the search, in P&L Account by the assessee does not represent undisclosed income of the assessee.*
4. *On the facts and circumstances of the case, the CIT(A) has erred in holding that the “inclusion of income in P&L Account” does not constitute an entry in “books of account”.*
5. *On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of ITAT, Delhi in case of Neeraj Signal vs. ACIT Central Circle (2013) 37 taxman.com 189 when the facts of this case are different.*
6. *On the facts and circumstances of the case, the CIT(A) has erred in holding that payment of tax and interest on undisclosed income was done by the assessee, in absence of any specific proof in this regard.*
7. *The appellant craves leave to add, amend any/all grounds of appeal before or during the course of hearing of the appeal.”*

Grounds of Cross Objection No. 90/Del/2016 : -

1. *“That on the facts and circumstances of the case, the Ld. CIT(Appeals) erred both in facts and in law in upholding the*

validity of penalty proceedings u/s 271AAA of the Income Tax Act, 1961, though no reasonable opportunity of being heard was afforded to the assessee before imposing penalty as contemplated in section 271AAA(4) read with section 274(1) of the Income Tax Act, 1961.

2. *That on the facts and circumstances of the case, the Ld. CIT(Appeals) erred both in facts and in law in upholding the contention of the AO that imposition of penalty u/s 271AAA of the Income Tax Act, 1961 is mandatory and not discretionary in nature.”*

2. We have heard the learned CIT (D.R.), who has pointed out the tax effect involved in this appeal, is below monetary limit prescribed by the CBDT. We find that the CBDT vide Circular No.17/2019 dated 8th August 2019 [F.No.279/ Misc.142/ 2007-ITJ (Pt)] by amending para 3 of CBDT Circular No.3/2018 dated 11.07.2018 has enhanced the monetary limit for filing of appeal before Tribunal to Rs.50 lakhs and has also removed the anomaly in para 5 of said Circular No. 3/2018. We find that the present case does not fall within the exceptions clause 10 of said CBDT Circular No. 3/2018. Therefore, the present appeal is not maintainable as per above Circular No. 17/2019, hence dismissed. This Circular is applicable to all pending appeals as clarified by CBDT letter dated 20.08.2019 [F. No. 279/Misc./M-93/2018-ITJ] and in the light of judgement of Hon`ble Supreme Court in the case of Pr. CIT, Jaipur v. Meenakshi Modi SLP (Civil) Diary No. 25076 of 2019-dated 16.08.2019

wherein the Hon`ble Supreme Court has dismissed the appeal of Revenue, as tax involved was less than Rs. 2 Crores. However, the Revenue is at liberty to approach to this Tribunal for recalling this order, if it is comes to the notice of the AO that the tax effect is more than the monetary limit provided under above Circular or the appeals is fall within ambit of the exceptions provided under the said Circular.

3. At the time of hearing, Ld. Counsel for the assessee stated that the tax effect in the Departmental appeal is less than 50 lakhs. Keeping in view the latest Instructions, it may be dismissed.

4. As regards Assessee's Cross Objection is concerned, since we have already dismissed the Revenue's Appeal on account of low tax effect, as aforesaid, hence, the Cross Objection filed by the assessee has become infructuous and dismissed as such.

5. In the result, the appeal filed by the Department as well as Cross Objection of the assessee stand dismissed.

The order pronounced in the open court on 21.11.2019

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 21st November, 2019
*Kavita Arora, Sr. PS

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi