



ITA No.6003/Mum/2017  
Assessment Year :2010-11  
M/s. Nishdish Infrastructure P.Ltd.

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.6003/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Income Tax Officer -15(2)(2)</b> Room No.15B Aaykar Bhavan, M.K. Road Mumbai- 400 020.	<b>बनाम/ Vs.</b>	<b>M/s. Nishdish Infrastructure P.Ltd.</b> 410, Devarata Building 4th Floor, Plot No.83 Sector-17, Vashi Navi Mumbai- 400 705.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AADCN-0103-F</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Dharan Gandhi – Ld. AR
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	28/11/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	28/11/2019

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24, Mumbai, [CIT(A)] Appeal No. CIT(A)-24/ITO-15(2)(2)/IT-41/2016-17 dated 14/06/2017 *qua* deletion of addition of Rs.100 Lacs u/s 68 as made by Ld. AO on account of unexplained share application money.



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2. The Ld. Authorized Representative for Assessee, at the outset, submitted that the tax effect of quantum under dispute is less than monetary limit of Rs.50 Lacs as prescribed by Central Board of Direct Taxes in its recently issued Circular No.17/2019 dated 08/08/2019 [F.No.279/Misc.142/2007-TTJ(Pt.) Government of India, Ministry of Finance, Department of Revenue] and therefore, the appeal is not maintainable.
3. The Ld. DR controverted the same by submitting that the additions were made on account of unexplained share application money pursuant to search action being carried out by DGIT (Investigation) in the case of Shri Pravin Kumar Jain and the factual matrix was covered by exception provided in CBDT Circular No. 23 of 2019 dated 06/09/2019 read with office memorandum dated 16/09/2019.
4. Upon perusal of case records, *prima facie*, it appears that the tax effect being contested by the revenue is less than prescribed limit of Rs.50 Lacs and the same is covered by recently issued *low tax effect* Circular No.17/2019 dated 08/08/2019 issued by *Central Board of Direct Taxes [CBDT]*. This recent circular further enhances the monetary limit fixed in earlier Circular No.3 of 2018 dated 11/07/2018 issued by CBDT as amended on 20/08/2018. Undisputedly, the factual matrix is not covered by any of the exceptions as provided in para-10 of Circular no. 3 of 2018 dated 11/07/2018. So far as the exceptions as provided in subsequent CBDT Circular No. 23 of 2019 dated 06/09/2019 read with office memorandum dated 16/09/2019 is concerned, upon perusal of the same, we find that the same applies only to cases involving bogus long term capital gains (LTCG) / Short Term Capital Loss (STCL) through



penny stocks and not applicable to the cases of unexplained share application money.

5. We have gone through the circular and find that the tax effect in dispute is below prescribed limit of Rs.50 Lacs and the assessee stood benefitted by the above circular issued by CBDT wherein the minimum monetary limit for filing the appeals before various appellate authorities have been fixed as under: -

<b>S. No.</b>	<b>Appeals/ SLPs in Income-tax matters</b>	<b>Monetary Limit (Rs.)</b>
1	Before Appellate Tribunal	50.00,000
2	Before High Court	1,00.00,000
3	Before Supreme Court	2,00.00,000

The aforesaid limits, as per *para 13* of the Circular no. 3 of 2018 dated 11/07/2018, applies to pending appeals also. In view of the admitted position, we dismiss the revenue's appeal.

6. At the same time, a liberty is given to revenue to seek recall of the appeal, if at a later stage, it is found that the matter is covered by any exceptions provided in any of the circular or in case the tax effect as agitated by revenue exceeds the prescribed monetary limit.

7. In the result, the appeal stands dismissed.

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

Sd/-

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28/11/2019

Sr.PS, Jaisy Varghese



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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**