

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCHES, "SMC"
JODHPUR
BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT**

ITA No.301/Jodh/2019
Assessment Year : 2014-15

The ITO Ward-I, Bhilwara	Vs.	Shri Amar Singh Jain 22, Subhash Nagar, Extn. West Bhilwara
PAN NO: AASPJ5136G		
Appellant		Respondent

Assessee by : Smt. Raksha Birla, C.A
Revenue by : Shri Girish Mehta, JCIT DR

Date of Hearing : 25/11/2019
Date of Pronouncement : 25/11/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Department against the order dt. 03/07/2019 of Ld. CIT(A), Ajmer.

2. During the course of hearing the Ld. counsel for the assessee at the very outset stated that tax effect involved in this appeal is less than the amount specified by the CBDT in Circular No. 03/2018 dated. 11/07/2018 wherein it has been mentioned that the Department ought not to have filed the appeal before the ITAT even the tax effect involved is less than Rs. 50,00,000/-.

3. In his rival submissions the Ld. Sr. DR submitted that the appeal has been filed on the basis that Revenue Audit objected had been accepted by the Department and the case filed under Clause 10(c) of Circular No. 03/2018.

4. I have considered the submissions of both the parties, in the present case it is noticed that the Assessing Officer nowhere mentioned in his order dated

31/08/2018 passed under section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') that objection was raised by the Revenue Audit Department on the contrary the Ld. CIT(A) set aside the order passed by the Assessing Officer by mentioning that the amount considered by the Assessing Officer for rectifying the assessment order was not an unexplained expenditure under section 69C of the Act, rather it represented loss of sale of shares and this issue was a debatable which was outside the purview of section 154 of the Act.

5. I have considered the submissions of both the parties and perused the material available on the record, in the present case it is an admitted fact that this case falls under the category of tax effect for which the Department ought not to have filed the appeal as per the Circular No. 03/2018 dated 11/07/2018 issued by the CBDT. Even on merit also, the Ld. CIT(A) rightly held that the issue was a debatable, therefore the action of the Assessing Officer in charging the Income Tax on the amount of Rs. 5,44,306/- under section 115BBE was not within the scope of Section 154 of the Act as the mistake was not apparent from the record. I therefore do not see any valid ground to interfere with the findings given by the Ld. CIT(A).

6. In the result, appeal of the Department is dismissed.

(Order pronounced in the open Court on 25/11/2019)

Sd/-
(N.K. SAINI)
VICE PRESIDENT

AG

Date: 25/11/2019

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File