

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

BEFORE SHRI S. RIFAUH RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3272/MUM/2013
Assessment Year: 2009-2010**

The Income Tax Officer-4(3)(3), R. No. 637, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Mahakosh Holdings Pvt. Ltd., 202, Hemlok, Kilachand Road, Kandivali (West), Mumbai - 400067 PAN: AAACM3739M
(Appellant)		(Respondent)

Revenue by : Ms. Kavita Kaushik (Sr. DR)
Assessee by : Shri Poojan Mehta (AR)

Date of Hearing: 14/11/2019
Date of Pronouncement: 14/11/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 04.02.2013 passed by the Commissioner of Income Tax (Appeals)-8 (for short 'the CIT(A), Mumbai, for the assessment year 2009-10, 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. The revenue has challenged the impugned order passed by the Ld. CIT (A), on the following effective grounds:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not treating loss of Rs. 63,63,773/- in delivery based trading as speculation loss applying provisions of explanation to section 73 of the Act.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not apportioning administrative expenses to the extent of Rs. 30,65,751/- treating the same as having been incurred towards speculation activity.*
3. *On the facts and in the circumstances of the case and in law, the impugned order of the Ld. CIT (A) is contrary to law and*

consequently merits to be set aside and that of the Assessing Officer be restored.”

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 conceded 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, then 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 2009-2010 is dismissed.

Order pronounced in the open court on 14th November, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 14/11/2019

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