



ITA No.3607/Mum/2017  
Nidhi Premises Pvt. Ltd.  
Assessment Year :2007-08

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

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

आयकर अपील सं./ I.T.A. No 3607/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2007-08)

ITO-13(1)(1) R. No. 225, Aaykar Bhavan Mumbai – 400020.	<b>बनाम/</b> Vs.	<b>Nidhi Premises Pvt. Ltd.,</b> B-16, Roopkamal, SV Road, Kandivali (W) Mumbai – 400067.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AACCN-3605-K</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Ms. Kavita P. Kaushik-Ld.DR
<b>Assessee by</b>	:	Shri Dhaval Shah-Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30/01/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/02/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-21, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-21/ITO-13(1)(1)/IT-187/2015-16 dated 20/03/2017*. The revenue is aggrieved by deletion of addition of Rs.73.50 Lacs as made by Ld. AO in an assessment framed u/s 143(3) r.w.s. 147 on 27/03/2015.



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2. This a recalled matter since the appeal was initially disposed-off by the Tribunal *ex-parte qua* the assessee vide order dated 16/01/2019. However, the order has subsequently been recalled by the coordinate bench vide MA No.428/Mum/2019, order dated 27/09/2019. Accordingly, the appeal has come up for fresh hearing before this bench.

3. The Ld. Authorized Representative for Assessee, at the outset, submitted that the tax effect of quantum additions being contested by revenue 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. Reliance has been placed on the decision of this very bench in **ITO V/s M/s Nishdish Infrastructure P.Ltd. (ITA No. 6003/Mum/2017 dated 28/11/2019)** rendered on similar factual matrix. The Ld. AR submitted that Directorate of Income Tax (investigation) is a law enforcement agency under the control of Ministry of Finance and would thus constitute internal agency / wing of Income Tax Department which works under the aegis of its controlling authority CBDT and therefore, it could not be considered as 'external source' as is referred to in para 10(e) of CBDT circular dated 20/08/2018. When CBDT is referring to external sources, it is certainly referring to sources which are not internal sources within the Income Tax Department and various wings functioning within its aegis. It has further been submitted that the subsequent CBDT Circular No. 23 of 2019 dated 06/09/2019 read with office memorandum dated 16/09/2019 applies only to cases involving



bogus long-term capital gains (LTCG) / Short Term Capital Loss (STCL) on penny stocks.

4. *Au Contraire*, Ld. DR submitted that the additions were made on account of accommodation share application money pursuant to search action being carried out by DGIT (Investigation) in the case of *Shri Praveen Jain group of cases* and therefore, 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.

5. Upon perusal of case records, *prima facie*, it emerges 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. The co-ordinate bench of this Tribunal in **ITO V/s Late Shri Amarchand P.Shah (ITA No.818-820/Mum/2017 dated 08/07/2019)** has already held that Directorate of Income Tax (investigation) is a law enforcement agency under the control of Ministry of Finance and would thus constitute internal agency / wing of Income Tax Department which works under the aegis of its controlling authority CBDT and therefore, the same could not be considered as 'external source' as is referred to in para 10(e) of CBDT circular dated 20/08/2018. No contrary decision is on record.



6. 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 do not apply to the cases of accommodation share application money.

7. We have gone through the circulars 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	<i>Before Appellate Tribunal</i>	<i>50.00,000</i>
2	<i>Before High Court</i>	<i>1,00.00,000</i>
3	<i>Before Supreme Court</i>	<i>2,00.00,000</i>

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 same, we dismiss the revenue's appeal.

8. 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.



9. In the result, the appeal stands dismissed.

*Order pronounced in the open court on 05<sup>th</sup> February, 2020.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020  
Sr.PS, Jaisy Varghese

**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.**