

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘D’

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND**

**SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
ITA No.1964/Ahd/2017**

[निर्धारण वर्ष/ Asstt.Year: 2013-14]

DCIT, Cir.4(2) Ahmedabad.	Vs.	Dr.Chaitanya B. Nagori Kedar Opp: Petrol Pump Nr. Parimal Garden Ellis bridge, Ahmedabad 380 006. Pan : AAVPN 7145 c
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(Applicant)		(Responent)
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Revenue by :	Shri Vinod Tanwani, Sr.DR
Assessee by :	Shri P.B. Parmar, AR

सुनवाई की तारीख/Date of Hearing : 02/03/2020

घोषणा की तारीख /Date of Pronouncement: 03/03/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT:

Present appeal is directed at the instance of the Revenue against order of Id.CIT(A)-4, Ahmedabad dated 20.6.2017 passed for the Asstt.Years 2013-14.

2. Revenue has raised as many as four grounds in appeal memo, which in fact raise only one issue i.e. the Id.CIT(A) has erred in deleting the addition of Rs.3,19,00,000/- made by the AO under the head “long term capital gain” in place of “Income from other sources”.

3. The Id.counsel for the assessee at the very outset submitted that tax effect involved in the present appeal by virtue of relief given by the Id.CIT(A) is less than Rs.50 lakhs. He pointed out that the assessee has declared long term capital gain on which tax effect was applicable at 20%. The AO did not accept this stand of the assessee, and treated such gain under the head “income from other sources”. Rate of tax on such treatment is 30%. Thus, net tax dispute relates to 10% of tax on this addition of Rs.3.19 crores. If we look into this net effective tax rate, then the tax would come around Rs.31

lakhs, which is less than Rs.50 lakhs as stipulated by the CBDT in the above circular. In view of this, he submitted that by virtue of recent CBDT Circular No.17 of 2019 dated 8.8.2019, Department has been instructed not to file appeal before the Tribunal where tax effect is below Rs.50 lakhs. This instruction is applicable to the pending cases also. Therefore, the present appeals of the Revenue are liable to be dismissed at the threshold. Per contra, the Id.DR did not dispute applicability of the recent CBDT circular and he, however, left the issue to the Tribunal to pass appropriate order in the matter.

4. After hearing both the sides and after perusal of the above CBDT Instruction, we are of the view that the present appeal of the Revenue falls within the purview of the CBDT Instruction cited (supra).

5. It is not disputed by the Revenue that tax effect on the disputed addition is more than Rs.50 lakhs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeals of the Revenue deserve to be dismissed. Both are dismissed.

However, it is observed that in case on re-verification at the end of the AO it can be demonstrated that the tax effect is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act. In view of the above, the appeals of the Revenue are dismissed due to low tax effect.

6. In the result, appeal of the Revenue is dismissed due to low tax effect.

Order pronounced in the Court on 3rd March, 2020 at Ahmedabad.

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 03/03/2020