

THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 2862/Mum/2018 (Assessment Year 2014-15)

DCIT-12(2)(1) Room No. 223 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020.	Vs.	M/s. D.V. Builders & Developers Pvt. Ltd. B-29, Shop No. 8&9, Dreamland CHS Ltd. Sector-11, Shanti Nagar Mira Road East Thane-4011 107.  PAN : AACCD1205B
(Appellant)		(Respondent)

Assessee by	Shri Hitesh Shah
Department by	Shri Akhtar Ansari
Date of Hearing	15.10.2020
Date of Pronouncement	19.10.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 19.12.2017 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :

1. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that assessee company has followed the mercantile system of accounting and book the expenses on payment basis which is contradict the accounting policy.

2. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that during the course of assessment proceedings, the AO has done in depth scrutiny thereafter addition was made on the basis of that such expenses is not related to business activity.

3. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that AO has correctly apportioned the depreciation between different projects of the assessee.

4. The appellant prays that the order of the CIT (A) on the grounds be set aside and that of the Assessing Officer be restored.
3. At the outset Ld counsel of the assessee submitted that the tax effect in this case is below the limit of Rs. 50,00,000/- fixed by CBDT vide Circular No. 17/2019 dated 8/8 2019 for filing appeal before the ITAT. For this he submitted following computation :-

Ground	Description	Disallowance in the assessment order Amount (Rs.)	Relief granted by learned CIT(A)-20 (Rs.)
Ground No. 1	Labour charges disallowed	109,32,534	80,16,086
Ground No. 2	Compensation disallowed	56,91,750	39,33,675
Ground No. 3	Depreciation disallowed	23,17,965	23,17,965
Ground No. 4	Service tax disallowed	7,05,540	7,05,540
	<b>Aggregate total</b>	<b>196,47,789</b>	<b>149,73,226</b>

Addition contested by revenue in second appeal	Tax effect @ 33.99%
109,32,534	37,15,968
23,17,965	7,64,928
<b>132,50,499</b>	<b>44,80,897</b>

Tax effect as income tax thereon @ 33.99%

Hence, Ld counsel submitted that this appeal by the revenue is not maintainable.

4. Per contra learned Departmental Representative could not dispute that the tax effect is below the said limit. He could not point out that the appeal falls in any of the exceptions carved in said circular.

5. Upon careful consideration we find that, as the tax effect is below the limit fixed by CBDT for filing appeals before the ITAT, this appeal by the revenue is liable to be dismissed in limine.

6. Accordingly the appeal stands dismissed as such.

Order pronounced under Rule 34(4) of the ITAT Rules on 19.9.2020.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 19/10/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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