

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'D', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5654/Del/2016
(for Assessment Year : 2013-14)

Deputy Commissioner of Income Tax (International Taxation) Circle – 3(1)(2), New Delhi - 110002 PAN No. AADCC 2848 Q (APPELLANT)	Vs.	M/s SMS Concast AG C/o. Mohinder Puri & Co., CAs, 1A-D, Vandhna Building, 11, Tolstoy Marg, New Delhi-110001 (RESPONDENT)
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Assessee by	Shri Perey Pardiwala, Sr. Adv.
Revenue by	Dr. Prabha Kant, CIT

Date of hearing:	13/04/2021
Date of Pronouncement:	13/04/2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 17.08.2016 passed by the Commissioner of Income Tax (Appeals) - 43, New Delhi relating to Assessment Year 2013-14.

2. Revenue has raised the following grounds of appeals:

- (i) *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,06,87,179/- on account of business profit from supply of plant & machinery even when the assessee had a supervisory PE and risk undertaken in India.*
- (ii) *Whether on the facts and circumstances of the case, the CIT(A) has erred in ignoring AO's detailed findings regarding the contracts in India being composite works contract, for setting up plants where the title in "works" was transferred on y on successful installation, commissioning and performance test for which risk undertaken in India and the payments were merely a mode of disbursement of provisional progressive payments for the part of the work executed, and that these were taxable in India especially since the assessee had an installation PE in India as per Article 7 of Indo-Swiss DTAA.*
- (iii) *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in holding that the "works" contract could be split based on milestones payment which were merely a mode of provisional progressive payment of work certified as having been executed and could not be the basis for splitting a contract tendered and allotted as composite "works" contract wherein final payment was contingent on successful installation, commissioning and performance testing, all corroborating the composite nature of the contract taxable in India through PE.*
- (iv) *Whether on the facts and circumstances of the case, the order of the CIT(A) is perverse and liable to be quashed.*
- (v) *The appellant prays for leave to add, amend, modify or alter any ground of appeal at the time or before the hearing of the appeal."*

3. Before us, at the outset, Ld. A.R. submitted that in the impugned appeal of Revenue, the tax involved is less than the monetary limit of Rs.50 lakh and therefore, the appeal is not

maintainable. Learned DR did not controvert the submissions made by Ld. A.R.

4. We have heard the both the parties and perused the material on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of Learned CIT(A) in respect of the relief given by him. We find that CBDT vide Circular No. 3/2018 dated 11.07.2018 had increased the limit for filing appeal before ITAT at Rs. 20 lakhs. The limit for filing appeals before ITAT and other authorities were enhanced by CBDT vide Circular No.17 of 2019 dated 08.08.2019. As per the aforesaid CBDT Circular dated 08.08.2019, no Department appeals are to be filed against relief given by the Learned CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.50 lakhs. We find that in the present case, the tax effect involved is less than Rs.50 lakhs. In the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular of 11.07.2018, we are of the view that the monetary limit prescribed by the instructions of the CDBT Circular dated 08.08.2019 would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it

would be open to the Revenue to seek revival of the appeal. **Thus the appeal of the Revenue is dismissed.**

5. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 13.04.2021, immediately after conclusion of the hearing of the matter in virtual mode.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 13.04.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI