

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4178/Del/2018
(for Assessment Year : 2010-11)

Deputy Commissioner of Income Tax, Central Circle-I, Gurgaon	Vs.	M/s BSL Casting Pvt. Ltd., F-1098, Chitranjan Park, New Delhi PAN No. AACCB 6031 D
(APPELLANT)		(RESPONDENT)

Revenue by	Shri Satpal Gulati, CIT DR
Assessee by	Shri. Deepesh Garg, Adv

Date of hearing:	22/04/2021
Date of Pronouncement:	22/04/2021

ORDER

PER MS. SUCHITRA KAMBLE, JM:

This appeal filed by the Revenue is directed against the order dated 26.03.2018 passed by the Commissioner of Income Tax (Appeals) -3, Gurgaon relating to Assessment Year 2010-11.

2. Revenue has raised the following grounds of appeals:

i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,10,46,480/- made by the Assessing officer on account of short term capital gain.

(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition relying upon the judgment of Hon'ble Supreme Court in the case CIT v. Singhad Technical Education Society despite the fact that the present assessment was framed u/s 153A of the Act in pursuance of search u/s 132 conducted in the case of the assessee.

(iii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition whereas the document was found and seized during course of search viz. page no. 118-119, AnnexureA-38, party no. 7, from the premises pertaining to Urbtech Group and the documents is relating to the assessee company containing information of the land procurement in the case of the assessee company.

(iv) Whether on the facts and in the circumstances of the case the Ld. CIT (A) was right in concluding that there was a difference in scope of proceeding under section 153C of the Income Tax Act, 1961 for an abated assessment and for a completed assessment.

(v) Whether on the facts and in the circumstances of the case the Ld. CIT (A) was right in holding that no addition can be made u/s 153A in respect of completed assessment if no incriminating material is found during search.

(vi) Whether there is any restriction on the powers of the Assessing officer under section 153C of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se.

(vii) Whether on the facts and in the circumstances of the case the Ld. CIT (A) was correct in interpreting section 153C which starts with a non-obstinate clause stating therein that the operation of section 139,147,148,149,151&153 was deposed meaning thereby that in such cases the Assessing officer in duty bound to take up the assessment u/s 153C and that the above mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if any escaped income or under-assessed income undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceedings u/s 153C in such case as during the pendency of the proceedings u/s 153C, the proceedings u/s 147 of the Income Tax Act, 1961 cannot be initiated.

(viii) Whether on the facts and in the circumstances of the case the Ld. CIT (A) has erred in ignoring the principles of strict interpretation

of statute when the words used in the statute i.e. sec 153A(1)(b) of the IT Act, 1961 are assess or reassess the "Total Income".

(ix) Whether on the facts and in the circumstances of the case, the CIT (A) was justified in not deciding the addition on merits overlooking the fact that the assessment was completed in one of the group cases, in the case of M/S Nelson projects Pvt. Ltd. for A.Y 2011-12 on the same ground by ITO ward 13(2), New Delhi vide order dated 30.01.2014 and the same was not challenged before any appellate authority.

(x) The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing."

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 CIT 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 CBDT 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 22.04.2021, immediately after conclusion of the hearing of the matter in virtual mode.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Date:- 22.04.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI