

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 7019/MUM/2019
Assessment Year: 2010-11**

Income Tax Officer 6 (2)(1), 5 th Floor, Room No. 510, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s Captain Properties and Investments Pvt. Ltd., 3 rd Floor, Happy Home, 380, Shankar Matham Road, Matunga, Mumbai - 400019 PAN: AACCD8906F
(Appellant)		(Respondent)

Revenue by : Shri Shiddaramappa (DR)
Assessee by : Shri Dharan Gandhi (AR)

Date of Hearing: 25/05/2021
Date of Pronouncement: 09/07/2021

ORDER

This is an appeal by the revenue against order dated 03.07.2019 of learned Commissioner of Income Tax (Appeals)-12, Mumbai for the assessment year 2010-11.

2. At the outset, learned Authorized Representative of the assessee submitted that the appeal is not maintainable due to low tax effect. In support, he relied upon the following decisions:-

- i) ITO Vs Late Shri Amarchand P. Shah, ITA no.818-820/Mum/2017 dated 08/07/2019;*
- ii) ACIT Vs M/s. Nocil Steel, ITA no.3483/Mum/2017 dated 05.02.2020;*
- iii) ITO Vs M/s. Nishdish Infrastructure P. Ltd., ITA no.6003/Mum/2017 dated 28.11.2019;*
- iv) ACIT Vs M/s. Giriraj Civil Developers Pvt. Ltd., ITA no.1183/Mum/2017 dated 20.08.2019;*
- v) ITO Vs Nidhi Premises Pvt. Ltd., ITA no.3607/Mum/2017 dated 05.02.2020*

3. Whereas, learned Departmental Representative vehemently opposing the aforesaid contention, drew my attention to ground no. 5 and submitted that the appeal is protected under the exception provided in paragraph 10(e) of Circular No. 3/2018 dated 11.07.2018 as amended by the Central Board of Direct Taxes vide letter dated 20.08.2018. Thus, he submitted, the appeal being covered under the aforesaid exception has to be decided on merits.

4. I have heard the appeal on the preliminary and limited issue of maintainability due to low tax effect as per the Circular No. 17/2019 dated 08.08.2019. As far as the quantum of dispute for computing tax effect is concerned, undisputedly, the total addition made by assessing officer (AO) in the assessment order is to the tune of Rs. 9,45,000/-. Learned Commissioner (Appeals) has deleted the entire addition made by the AO. Therefore, admittedly, the tax effect on the amount disputed by the revenue in the present appeal is below the threshold limit of Rs. 50 lakh fixed in Circular No. 17/2019 dated 08.08.2019 for filing of appeal before the Tribunal. It is also a fact on record that the aforesaid appeal has been filed after the issuance of Circular No. 17/2019 referred to above. Therefore, there is no doubt that Circular No. 17/2019 would be applicable to the present appeal. Though, of course, it is also applicable to all pending appeals. The stand of the revenue is, the appeal is protected under the exceptions provided under paragraph 10(e) of CBDT Circular F No. 279/Misc.142/2007-ITJ/(Pt.) dated 20.08.2018. Though, there is no specific ground in the grounds of appeal regarding maintainability of the appeal, however, learned Departmental Representative has drew my attention to ground no. 5 of the grounds contained in the authorization memo.

5. Be that as it may, paragraph 10 (e) of the Circular noted above reads as under:-

“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less

than the monetary limits specified in para 3 above or there is no tax effect.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI)”

6. On a specific query from the Bench to demonstrate, whether the AO had received information from external sources in the nature of law enforcement agencies as mentioned in paragraph 10(e) (supra), the learned Departmental Representative drew our attention to the opening paragraph of the assessment order.

7. As discussed earlier, paragraph 10(e) of the circular reproduced above clearly speaks of information received from external sources in nature of law enforcement agencies like CBI/ED/DRI etc. Whereas, in the assessment order, the AO has very clearly and categorically stated that he has reopened the assessment based on information received from the office of DGIT (Inv.), Mumbai. On a careful reading of assessment order, I have not found any reference to information received from any of the external sources as mentioned in paragraph 10(e) of circular dated 20.08.2018. Even, in course of hearing, learned Departmental Representative was unable to demonstrate that any information from external sources as per paragraph 10(e) of circular noted above was received by the AO. Thus, it is to be concluded that the only information available with the AO was the information received from DGIT (Inv.).

8. In case of ITO vs. Late Amarchand P. Shah (supra), the Tribunal has held that DGIT (Inv.) since works under the CBDT, could not be called an external source. The aforesaid decision has been followed in a number of decisions of the Tribunal as cited by the learned Authorized Representative. Thus, as per the ratio laid down in the decisions referred to above, information received from DGIT (Inv.) is not of the nature as referred to in paragraph 10(e) of CBDT Circular dated 20.08.2018. That being the case, the present appeal of the

department will not be protected under the exception provided therein. Since, aforesaid decisions are by various Division Benches of the Tribunal, they are binding precedents. Accordingly, respectfully following the aforesaid decisions cited by the learned Authorised Representative, I hold that the instant appeal of the revenue is not protected by paragraph 10(e) of CBDT circular dated 20.08.2018. Hence, would not be maintainable in view of the CBDT circular No. 17/2019 dated 08.08.2019. Accordingly, I dismiss the appeal.

9. In the result, appeal is dismissed.

Order pronounced in the open court on 9th July, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021
Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai