

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC-II” MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

ITA No. 792 & 795/Mum/2020 Assessment Year(s): 2007-08 & 2011-12	
Asst. Commissioner of Income-tax, Central Circle 1(3), Mumbai, 905, 9 th Floor, Pratishtha Bhawan, Old C.G.O Building (Annexe), M.K Road, Mumbai – 400 020. PAN : AAGFP9870P	M/s Poonam Builders, 66B, 3 rd Floor, Poddar Chambers, 22E Sayed Abdulla Barelvi Road, Fort, Mumbai – 400 001.

ITA No. 785/Mum/2020 Assessment Year(s): 2014-15	
Asst. Commissioner of Income-tax, Central Circle 1(3), Mumbai, 905, 9 th Floor, Pratishtha Bhawan, Old C.G.O Building (Annexe), M.K Road, Mumbai – 400 020. PAN : AAHFP4019R	M/s Poonam Skyline Construction, 66B, 3 rd Floor, Poddar Chambers, 22E Sayed Abdulla Barelvi Road, Fort, Mumbai – 400 001

ITA No(s). 772, 783, 788-789/Mum/2020 Assessment Year(s) : 2007-08 to 2009-10 & 2012-13	
Asst. Commissioner of Income-tax, Central Circle 1(3), Mumbai, 905, 9 th Floor, Pratishtha Bhawan, Old C.G.O Building (Annexe), M.K Road, Mumbai – 400 020. PAN : AABPM8016F	Shri. Manek J. Mehta, 66B, 3 rd Floor, Poddar Chambers, 22E Sayed Abdulla Barelvi Road, Fort, Mumbai – 400 001

Assessee by : Shri Prateek Jain, A.R
Revenue by : Shri Sanjay J. Sethi, D.R

Date of Hearing : 04/08/2021
Date of pronouncement : 05/08/2021

ORDER

PER BENCH:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-47, Mumbai, dated 08.11.2019, which in turn arises from the orders passed by the AO u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, (for short 'Act'). As the 'tax effect' involved in all the aforementioned respective appeals is below the monetary limit prescribed by the CBDT for filing of appeals by the Department before the Tribunal, vide its Circular No. 17/2019, dated 08.08.2019 r.w Circular No. 3/2018, dated 11.07.2018, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. The counsel for the assessee has filed before us a letter dated 03.08.2021, wherein it is stated that as the 'tax effect' involved in all the captioned appeals is below the monetary ceiling of Rs. 50 lac provided in the CBDT Circular No. 17/2019, dated 08.08.2019 r.w Circular No. 3/2018, dated 11.07.2018, therefore, the same on the said count itself were not maintainable and liable to be dismissed.

3. Per contra, the Id. Departmental Representative (for short 'D.R') rebutted the aforesaid claim of the assessee. It was submitted by the Id. D.R that the aforesaid contention of the assessee's counsel was based on misconceived facts. Elaborating on his said contention, it was submitted by the Id. D.R that though the 'tax effect' involved in the present appeals was admittedly below the monetary ceiling contemplated in the CBDT Circular No. 17 of 2019, dated 08.08.2019, however, the said appeals were saved by the exception carved out in Para (e) of the CBDT Circular No. 3/2018, dated 11.07.2018, and thus, maintainable. In order to buttress his aforesaid claim, it was submitted by the Id. D.R that as the additions in all the aforementioned appeals was based on the information that was received by the A.O from the DDIT(Inv.), Unit IX(2), Mumbai that the assessee as a beneficiary had obtained accommodations entries from certain benami concerns of Shri. Bhanwarlal Jain, an infamous accommodation entry provider, therefore, the same would safely fall within the realm of information that was received from an external source as provided in the exception contemplated in Para (e) of the CBDT Circular No. 3/2018, dated 11.07.2018. In order to drive home his aforesaid claim, it was submitted by the Id. D.R that the authorities listed in the exception carved out in Para (e) of Circular No. 3/2018, dated 11.07.2018 were not exhaustive. Also, the Id. D.R in order to fortify his aforesaid

contention had drawn support from the Schedule II of the Right to Information Act, 2005 (No. 22 of 2005).

4. We have heard the Id. Departmental Representative and perused the letter dated 03.08.2021 filed by the assessee's counsel and the orders of the lower authorities. Central Board of Direct Taxes (CBDT) vide Circular No. 17/2019 dated 08.08.2019 has amended Circular No. 3/2018 dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the department before the ITAT, High Courts and SLPs/Appeals before Supreme Court as measures for reducing litigation.

5. CBDT vide Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty order, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

At para 13 of the above Circular, it has been mentioned that:

"13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed."

6. As a step towards further management of litigation, CBDT vide Circular No. 17/2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

7. In the present appeals filed by the Department the 'tax effect' involved in all the said appeals is admittedly below the monetary limit of Rs.50,00,000/-. As regards the claim of the Id. D.R, that though the 'tax effect' involved in all the present appeals is below the monetary ceiling provided for filing of an appeal before the Tribunal as per CBDT Circular No. 17 of 2019, dated 08.08.2019, however, as the additions made in all the said appeals was based on the information received from DDIT(Investigation), Mumbai i.e an external source, therefore, they were covered by the exception carved out in Para (e) of Circular No. 3/2018, dated 11.07.2018, we are afraid that the same does not find favor with us.

Admittedly, the CBDT vide its Circular No. 3/2018, dated 11.07.2018 had carved out certain exceptions which override the non-maintainability of an appeal filed by the revenue involving 'tax effect' below the prescribed monetary ceiling. However, we find that the exception carved out in Para 10(e) of the CBDT Circular No. 3/2018, dated 11.07.2018, as had been relied upon by the Id. D.R would not come to the rescue of the revenue insofar the appeals in question are concerned. Exception carved out in Para 10(e) envisages such cases where addition is based on information received from certain specified external sources, and the same reads as under:

“10(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 GSC Intelligence (DGGI).”

However, the additions that forms the subject matter of all the captioned appeals is based on the information received by the A.O from the Investigation Wing of the Income-tax department, Mumbai, therefore, the same would not fall within the meaning of “external sources” as had been specified in Para 10(e) of the CBDT Circular No. 3/2018, dated 11.07.2018. Accordingly, not being persuaded to accept the aforesaid claim of the revenue that the captioned appeals of the revenue are covered by the exception carved out in Para 10(e) of the CBDT Circular No.3/2018, we reject the same.

8. Resultantly, in the backdrop of our aforesaid observations the present appeals involving a 'tax effect' of less than Rs.50 lac, in each case are accordingly dismissed.

Order pronounced in the open Court on 05/08/2021.

Sd/-
(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 05/08/2021

**PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)