

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

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

ITA No. 831/Mum/2020 Assessment Year 2011-12	
Income-tax Officer 10(2)(3), 2 nd Floor, Room No. 212, aaykar Bhawan, Churchgate, Mumbai – 400 020. PAN : AABCH7565B	M/s Makesure Properties Pvt. Ltd. 104, 1 st Floor, Shri Krihna Complex, New Link Road, Oshiwara, Andheri West, Mumbai – 400 053.

(Revenue)

(Assessee)

Assessee by : None
Revenue by : Shri. Sanjay J. Sethi

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

ORDER

PER RAVISH SOOD, J.M:

The captioned appeal filed by the revenue is directed against the order passed by the CIT(A)-17, Mumbai, dated 29.11.2019, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, (for short 'Act'), dated 11.12.2018.

2. As the assessee respondent despite having been intimated about the hearing of the appeal had neither put up an appearance before us nor applied for any adjournment, therefore, we proceed with the hearing of the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963 and dispose off the same after hearing the appellant revenue and perusing the orders of the lower authorities.

3. The Id. Departmental Representative (for short 'D.R') at the very outset submitted that though the 'tax effect' involved in the present appeal was admittedly below the monetary ceiling contemplated in the CBDT Circular No. 17 of 2019, dated 08.08.2019, however, the same was 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 addition in the aforementioned appeal was based on the information that was received by the A.O from the

Investigation Wing, Kolkata that the assessee was a beneficiary of certain accommodations entries 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.

4. We have heard the Id. D.R and perused 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 appeal filed by the Department the 'tax effect' involved 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 the present appeal 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 addition in the case was made on the basis of the information that was received by the A.O from the Investigation Wing, Kolkata i.e an external source, therefore, the same was 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 appeal in question is 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, as stated by the Id. A.R, and rightly so, as the addition that forms the subject matter of the captioned appeal is based on the information received by the A.O from the Investigation Wing, Kolkata, 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 appeal of the revenue is covered by the exception carved out in Para 10(e) of the CBDT Circular No.3/2018, we reject the same.

9. Resultantly, in the backdrop of our aforesaid observations the present appeal involving a 'tax effect' of less than Rs.50 lac is 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)