

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

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

**ITA No. 753/MUM/2020  
Assessment Year: 2007-08**

Asst. Commissioner of Income Tax,  
Central Circle 1(3),  
905, 9<sup>th</sup> floor, Pratishtha Bhavan,  
Old CGO Bldg. (Annexe), M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Poonam Construction,  
66B, 3<sup>rd</sup> floor, Poddar Chambers,  
22E Sayed Abdulla Barelvi Road,  
Fort,  
Mumbai-400 001.  
**PAN No. AAGFP 9871 N**  
**Respondent**

**ITA No. 744/MUM/2020  
Assessment Year: 2012-13**

Asst. Commissioner of Income Tax,  
Central Circle 1(3),  
905, 9<sup>th</sup> floor, Pratishtha Bhavan,  
Old CGO Bldg. (Annexe), M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Yesh Poonam Developers,  
66B, 3<sup>rd</sup> floor, Poddar Chambers,  
22E Sayed Abdulla Barelvi Road,  
Fort,  
Mumbai-400 001.  
**PAN No. AAAFY 8687 K**  
**Respondent**

**ITA No. 750/MUM/2020  
Assessment Year: 2013-14**

**&**

**ITA No. 754/MUM/2020  
Assessment Year: 2014-15**

Asst. Commissioner of Income Tax,  
Central Circle 1(3),  
905, 9<sup>th</sup> floor, Pratishtha Bhavan,  
Old CGO Bldg. (Annexe), M.K. Road,  
Mumbai-400020.

**Vs.** M/s Poonam Realty,  
66B, 3<sup>rd</sup> floor, Poddar Chambers,  
22E Sayed Abdulla Barelvi Road,  
Fort,  
Mumbai-400 001.

**Appellant**

**PAN No. AAMFP 5852 B  
Respondent**

Revenue by : Mr. Sanjay J. Sethi, DR  
Assessee by : Mr. Prateek Jain, AR

Date of Hearing : 03/08/2021  
Date of pronouncement : 03/08/2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

All these appeals are filed by the Revenue which belongs to common group of Bhanwarlal Jain group.

2. 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.

3. 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.”

4. 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/-.

5. In the instant appeal filed by the Department, the tax effect involved is below the monetary limit of Rs.50,00,000/-. The said fact as was brought to our notice by the Ld. Counsel for the assessee was confronted to the Ld. Departmental Representative (DR).

6. Before us, the Ld. DR fairly admitted that the present appeal is covered by the monetary ceiling provided in CBDT Circular No. 17 of 2019; dated 08<sup>th</sup> August, 2019.

7. However, we find that the A.O *vide* ‘Ground of appeal No.4’ had claimed that though the ‘tax effect’ involved in the present appeal was Rs.40,44,810/- i.e below the monetary ceiling provided for filing of appeal before the Tribunal

as per CBDT Circular No. 17 of 2019, dated 08.08.2019, however, the same was covered by the exception carved out in Para (e) of Circular No. 3/2018, dated 11.07.2018. We after consideration to the aforesaid claim of the revenue and are unable accept the same. 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 would not be applicable to the present appeal 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 the addition in the case of the present assessee 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 case of the present assessee is covered by the exception carved out in Para 10(e) of the CBDT Circular No.3/2018, we reject the same.

8. With the above observations, these appeals involving tax effect of less than Rs.50,00,000/- are dismissed.

**Order pronounced in the open Court on 03/08/2021.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUH RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 03/08/2021

Rahul Sharma, Sr. P.S.

**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.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**