

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI**

**[Coram: Justice P. P. Bhatt (President)
And Pramod Kumar (Vice President)]**

ITA Nos. 3533-3534/Mum/2013
Assessment Years: 2008-09 & 2009-10

**Deputy Commissioner of Income Tax, 10(1)
Mumbai.**

..... Appellant

Vs.

M/s. North Karnataka Expressway Ltd.,
*Plot C-22, 6-Block, The IL & FS Financial
Centre, Bandra Kurla Complex, Bandra (E),
Mumbai 400051 [PAN: AABCN3062F]*

.....Respondent

Appearances:

Tharian Oommen *for the appellant*
Sandeep Bhalla *for the respondent*

Date of concluding the hearing: : July 01, 2021
Date of pronouncement : July 01, 2021

O R D E R

Per Bench:

1. By way of these appeals, the Assessing Officer has challenged correctness of the order dated 19th February 2013 passed by the learned CIT(A)-21, Mumbai for the assessment years 2008-09 & 2009-10.

2. Grievances raised by the Assessing Officer are as follows:

1(i) On the facts and circumstances of the case as well as in law, the Ld. CIT(A) erred in deleting the addition made by the A.O. on account of differential rate of interest being Rs. 76,48,193/-.

2(ii) On the facts and circumstances of the case as well as in law, the Ld. CIT(A) erred in misrepresenting the fact that the A.O. has charged notional interest whereas the A.O. has disallowed the differential interest out of the claim of the interest expenditure.

1(iii) On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in appreciating that the assessee company misutilised its surplus business receipts by advancing a huge sum of Rs. 29 crores to its sister concern at an interest rate at 6% p.a. and instead continued to pay an interest rate of 8% on the borrowings.

1(iv) On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in appreciating that the assessee company did not justify how the rate of interest charged @6% p.a. on advances given to sister concern, is arrived at when it was paying an interest @ 8.5% p.a. on the borrowings.

3. When these appeals were called out for hearing, learned counsel for the assessee submitted that the present appeal of the Revenue needs to be dismissed on account of low tax effect in view of the recent CBDT Circular No. 17 of 2019 dated 08.08.2019 whereby the monetary limits for filing the appeal by the Revenue before the Tribunal was enhanced from Rs.20 lakhs to Rs.50 lakhs. This instruction is applicable to the pending cases also. Therefore, the present appeal of the Revenue is liable to be dismissed as non-maintainable as held by this Tribunal in the case of **ITO Vs. Dinesh Madhavlal Patel** in ITA No.1398/Ahd/2004 for AY 1998-99 vide a consolidated order dated 14.08.2019.

4. The learned Departmental Representative fairly admitted that the tax effects involved in these appeals are less than the limit prescribed by the aforesaid CBDT Circular.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position. As learned counsel rightly contends, these appeals of the Revenue are no longer maintainable in view of the recent CBDT Circular No. 17 of 2019 dated 08.08.2019. The mandatory limit for cases in which Revenue can challenge the relief granted by the CIT(A) now stands enhanced to Rs.50 lakhs. This concession granted by the Central Board of Direct Taxes (CBDT) is retrospective in effect inasmuch as it applies to all pending appeals as well. In view of the above position, the appeals of the Revenue are no longer maintainable and must be dismissed as such.

6. It is, however, made clear that on re-verification at the end of the Assessing Officer it comes out that the tax effect of more than Rs.50 lakhs is being involved in the appeal or the appeal falls within the exemption clause of the Circular, then the Revenue will be at liberty to

file Miscellaneous Application to recall the Tribunal order. The application should be filed within time limit prescribed in the Act.

5. In the result, these appeals are dismissed as withdrawn. Pronounced in the open court today on the 01st day of July 2021.

Sd/-
Jutice P.P Bhatt
(President)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 01st day of July 2021.

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*