



आयकर अपीलीय न्यायाधिकरण, न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND

SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 346/BIL/2016
निर्धारण वर्ष / Assessment Year : 2012-2013

Income Tax Officer, Ward-2(1),
Central Revenue Building,
Civil Lines, Raipur (C.G)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s Avinash Select Builders & Developers Pvt. Ltd.
193, Aasra, Near Pandey Nurshing Home,
Raipur, (C.G)
PAN : AAJCA3939Q

.....प्रत्यर्थी / Respondent

Appearances

Assessee by : Shri Amit M. Jain
Revenue by : Shri Shravankumar Meena

सुनवाई की तारीख / Date of conclusive Hearing : 09/03/2022
घोषणा की तारीख / Date of Pronouncement : 09/03/2022

आदेश / ORDER

PER JAMLAPPA D. BATTULL, AM;

The present appeal of the Revenue is against the first appellate order of Commissioner of Income Tax – Appeals-I, Raipur [for short “CIT(A)"] passed u/s 250 vide order dt 02/08/2016, which in turn sprung from the assessment order [for short “AO”] dt 20/03/2015 passed for assessment year [for short “AY”] 2012-2013 by the Assessing Officer [for short “Ld AO”] u/s 144(1) of the Income-tax Act, 1961 [for short “the Act”].

2. Before advancing the matter on facts for adjudication, it is necessary to reproduce **grounds challenged** by the appellant revenue as under;

1. *"Whether on points of Law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.1,42,00,000/- made by the AO u/s 68 of the Income tax Act, 1961 on account of bogus share capital and share premium, though the assessee failed to establish identity, creditworthiness and genuineness of transactions?"*

2. *"Whether on facts & circumstance of the case, and on points of law, the Ld. CIT(A) has erred by giving a finding which is contrary to the ratio of the decision of Hon'ble ITAT, Kolkata Bench in the case of M/s Bisakha Sales(P) Ltd. Vs. CIT-II, Kolkata [ITA No. 1493/Kolkata/20134]?"*

3. *"Whether on points of law, the Ld. CIT(A) has erred by giving a finding which is contrary to the ratio of the decisions of ITAT, Kolkata 'B' Bench in the case of M/s Subhalakshmi Vanijya (P) Ltd. Vs CIT-1, Kolkata in ITA No. 1104/Kol/2014 and other cases dated 30.07.2015."*

4. *"Whether on points of law and on facts and circumstances of the case, the Ld. CIT(A) was justified by giving a finding which is contrary to the evidence on record, as the Ld. CIT(A) has accepted the identity, capacity and the genuineness of the three subscribers namely, M/s Looklike Infrabuild Pvt. Ltd, M/s sukhsagar Vyapar Pvt. Ltd, M/s Ratanmnani Advisory Services Pvt. Ltd., a finding which is factually incorrect, thereby rendering the decision, which is perverse?"*

5. *"Whether the Ld. CIT(A) has not erred in law by holding the decision in favour of the assessee and against the revenue, though there is no direct nexus between the conclusion of the fact and primary fact upon which that conclusion is based?"*

6. *"The order of Ld. CIT(A) is erroneous both in law and on facts."*

7. *"Any other ground that may be adduced at the time of hearing."*

3. **The brief facts of the case under appeal are;** The assessee is engaged in the business of real estate has filed its e-return with declared income of ₹.NIL for AY 2012-2013. The return of income [for short "ITR/ROI"] was selected under CASS for scrutiny u/s 143(2) of the Act, and the regular assessment were completed with an addition of

₹1,42,00,000/- u/s 68 of the Act. Aggrieved by such an addition, the assessee challenged the same before first appellate authority, wherein the Ld CIT(A) after considering the facts of the case in the light of legal precedents, deleted the addition made u/s 68. Not accepting the adjudication of first appellate authority, the revenue is before the Tribunal seeking reversal of order passed by Ld CIT(A) u/s 250 of the Act.

4. On this date of hearing, the learned counsel for the assessee [for short “AR”] referring to an application dt 07/03/2022, brought to the notice of the bench that, the appeal of the revenue falls below the tax effect within the purview of Central Board of Direct Taxes [for short “CBDT”] Circular 17/20119 r.w. Circular 3/2018.

5. The learned departmental representative [for short “DR”] admitting the fact submitted before the bench that;

5.1 As per Circular No 3/2018, F. No. 279/Misc.142/2007-ITJ (Pt) dt 11/07/2018 issued by CBDT, Department of Revenue, Ministry of Finance, Government of India, no appeal shall be filed by the Revenue in respect of an assessment year or years in which the tax effect is less than the monetary limit as specified in para 3 as under;

Sr	Appeals/SLPs in the Income Tax Matters	Monetary Limit (₹)
1	Before Appellate Tribunal	20,00,000
2	Before High Court	50,00,000
3	Before Supreme Court	1,00,00,000

5.2 And the para 3 of the aforementioned circular modified by CBDT by a subsequently Circular No 17/2019 dt 08/08/2019 thereby enhancing aforesaid monetary limit to the followings;

Sr	Appeals/SLPs in the Income Tax Matters	Monetary Limit (₹)
1	Before Appellate Tribunal	50,00,000
2	Before High Court	1,00,00,000
3	Before Supreme Court	2,00,00,000

5.3 The para 13 of 3/2018 stipulated that, this instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in Hon'ble Supreme Court/High Courts/Tribunals, thus all pending appeals below the specified monetary tax limits may be withdrawn / not pressed.

5.4 The Ld DR further conceded that, the tax effect in the present Revenue's appeal is below monetary limit of ₹50 Lakhs, however prayed that, a liberty should be given to Revenue to contest this appeal at any subsequent stage for the reasons stipulated in the foresaid circular by filing a Miscellaneous Application before the Tribunal to revive this appeal for an order of recalling.

6. Undisputedly the tax effect in this appeal filed by the Revenue is below ₹50 Lakhs, ergo keeping in view the CBDT Circular No. 3/2018 r.w.c. 17/2019, we are inclined to dismiss this appeal due to low tax effect [for short "LTE"] without going into the merits of the case. While disposing so, we are granting a liberty to the appellant revenue to revive the same by filing a miscellaneous application [for short "MA"] for recalling of this order at any stage to agitate the matter/issue set forth in this appeal in accordance with the clauses as are contained in the respective circulars of the CBDT, we order accordingly.

6. Resultantly, the appeal of the revenue is dismissed, with no order as to cost.



Order pronounced in the open court on this Wednesday 09th day of March, 2022.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(JAMLAPPA D. BATTULL)
ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक / Dated : 09th day of March, 2022

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur(C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजीसचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.