

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.5490/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

DCIT, Circle-1, Room No. 201, CGO Complex-1, Hapur Chungi, Ghaziabad, Uttar Pradesh.	<u>बनाम</u> Vs.	Brahmpal Panchal 515, New Vijay Nagar, Shiv Puri, Ghaziabad, Uttar Pradesh.
		PAN No. AFAPB7059K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

Cross Objection No. 65/Del/2020
(In I.T.A No.5490/Del/2019)

निर्धारणवर्ष/Assessment Year: 2009-10

Brahmpal Panchal 515, New Vijay Nagar, Shiv Puri, Ghaziabad, Uttar Pradesh.	<u>बनाम</u> Vs.	DCIT, Circle-1, Room No. 201, CGO Complex-1, Hapur Chungi, Ghaziabad, Uttar Pradesh.
PAN No. AFAPB7059K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri K.P. Garg, CA & Shri Abhishek Jain, CA
राजस्वकीओरसे /Revenue by	Shri Amaresh Singh, CIT DR

सुनवाईकीतारीख/ Date of hearing:	20.06.2022
उद्घोषणाकीतारीख/Pronouncement on	20.06.2022

आदेश / O R D E R

PER C.N. PRASAD, J.M.

The appeal filed by the Revenue and cross objection by the assessee are directed against the order passed by the ld. CIT(A)-2, Noida dated 30.01.2019 for A.Y. 2009-10.

2. The Revenue has raised the following grounds in its appeal: -
 1. *“The Ld.CIT(A)-2, Noida has erred in law and facts by deleting the entire addition made on account of undervaluation of imported cranes by the assessee as decided by the Hon’ble Settlement Commission even when the assessee had imported one crane during FY 2008-09 which was undervalued to the extent of Rs.84,84,717/- (representing the undisclosed investment) which was duly mentioned in the said order dated 29.06.2016 of Hon’ble Settlement Commission.*
 2. *The Ld.CIT(A)-2, Noida has erred in law and facts by not taking into account the quantum of difference in assessable value as determined and accepted by the assessee as part of Hon’ble Settlement Commission order dated 29.06.2016 in respect of the crane imported during FY 2008-09 relevant to AY 2009-10.*
 3. *The Ld.CIT(A)-2, Noida has erred in law and fact by deleting the addition of Rs.46,17,490/- on account undisclosed income without considering the fact that the assessee had failed to reconcile the gross receipts during the course of assessment proceedings and further Ld.CIT(A) has passed non speaking order on this issue.*

4. Therefore, the order of Ld.CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. The Ld. Counsel for assessee submitted that the Revenue in its appeal is contesting the additions in respect of difference in valuation of imported cranes to the extent of Rs.84,84,717/- and addition of Rs.46,17,490/- on account of undisclosed income on the ground that the assessee has not accounted for the receipts. The Ld. Counsel submits that the total additions contested by the Revenue amounts to Rs.1,31,02,207/- and the tax effect on these additions works out to Rs.44,53,440/-. The Ld. Counsel for the assessee submitted that the monetary limit fixed by CBDT in its Circular No. 17/2019 dated 08.08.2019 for filing appeal before the Tribunal is Rs.50,00,000/-. It is submitted that since the tax effect is less than Rs.50 lakhs in Revenue's appeal for the year under consideration the appeal is not maintainable. Coming to cross objection of the assessee it is submitted that the same becomes infructuous once the appeal of the Revenue is dismissed as not maintainable due to low tax effect.

4. The Ld. DR on the other hand except stating that its case would fall under its exceptions provided in the Circular he could not demonstrate how the additions contested in the appeal would fall under any exceptions provided in the circular.

5. We have heard the rival submissions, perused the orders of the authorities below. On perusal of the grounds of appeal of the Revenue we observe that the Revenue is contesting two additions one on account of difference of Rs.84,84,717/- in valuation of cranes imported and the second one on account of undisclosed income of Rs.46,17,490/- totalling to Rs.1,31,02,207/- on which the tax effect is Rs.44,53,440/- which is less than Rs.50,00,000/-.

6. The tax effect in the Departmental Appeal is less than Rs.50 lakhs. The CBDT Vide Circular No.17/2019 Dated 08.08.2019 amended the earlier Circular No.3/2018 dated 11.07.2018 whereby it has been directed that monetary limit for filing the Departmental appeal in Income Tax Cases may be enhanced further through this amendment in para-3 of the Circular mentioned above and accordingly, the monetary limit for filing the appeal before the Appellate Tribunal have been enhanced to Rs.50 lakhs. Since Circular No.17/2019 Dated 08.08.2019 have been issued to amend its earlier Circular No.3/2018 (supra), therefore, all the conditions of earlier Circular No.3/2018 shall apply accordingly. In view of the Departmental appeal is not maintainable as the appeal is filed against the Board instructions referred to above and, therefore, the appeal of the Department is liable to be dismissed.

7. Learned Counsel for the Assessee submitted that the Cross Objection No.65/2020 seeks permission to withdraw the cross objection. In view of the submissions the cross objection is dismissed as withdrawn.

8. In the result both the appeals filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order pronounced in the open court on 20/06/2022

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 20/06/2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi