

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1369/Mum/2022 (A.Y. 2012-13)

DCIT-1(2)(1) Room No. 535 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Pabal Housing Pvt. Ltd. 66B, Podar Chamber Mumbai Samachar Marg Fort, Mumbai-400001. PAN : AABCP9574G
(Appellant)		(Respondent)

Assessee by	Shri Mani Jain
Department by	Shri Vivek Upadhyay
Date of Hearing	18.08.2022
Date of Pronouncement	22.08.2022

ORDER

The revenue has filed this appeal challenging the order dated 16-02-2022 passed by Learned CIT(A)-47, Mumbai and it relates to the assessment year 2012-13. The revenue is aggrieved by the decision of Learned CIT(A) in granting relief in respect of addition of Rs.1,20,00,000/- made u/s 68 of the Act.

2. The assessee had taken loan from M/s Bhanwarlal Jain Group, which was found to be an accommodation provider. Accordingly, the AO added the above said amount of Rs.1,20,00,000/- u/s 68 of the Act and the same was deleted by Ld CIT(A). Aggrieved, the revenue has filed this appeal.

3. At the time of hearing, the Ld A.R pointed out that the tax effect involved in this appeal is less than the monetary limit of Rs.50.00 lakhs prescribed by CBDT for filing appeal before the Tribunal. The Ld D.R, on the contrary, submitted that the present appeal will be covered by the exception provided in the Circular as amended by Circular dated 20th August, 2018. He submitted that clause (e) of paragraph 10 (as amended) shall apply to the facts of present case and the said clause (e) reads as under:-

“(e) where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Director General of GST intelligence (DGGI).”

4. The Ld A.R, however, submitted that the information about M/s Bhanwarlal Jain group has not been received by the assessing officer from any external sources, i.e., it was furnished by the investigation wing of the income tax department only. Accordingly, the Ld A.R submitted that clause (e), referred above, would not apply to the facts of the present case. He further placed his reliance on the decision rendered by the division bench of Mumbai Tribunal in the case of ITO vs. Amarchand P Shah (2019)(111 taxmann.com 385)(Mum) in support of his contentions.

5. I heard the parties and perused the record. The question as to whether the information received from investigation wing of income tax department could be considered as “external source” within the meaning of clause (e) referred above, was examined by the division bench of Tribunal in the case of Amarchand P shah (supra) and it was decided as under by the Tribunal:-

3. We have considered rival contentions and perused the material on records. We have observed that undisputedly tax effect in all these three appeals filed by Revenue is not exceeding Rs. 20 lacs(computed in each of the appeal separately) . The CBDT came out with circular on 11.07.2018 wherein it is stipulated that wherein tax effect does not exceed monetary limit of Rs. 20 lacs, the appeals shall not be filed henceforth by Revenue with Income-Tax Appellate Tribunal and further all pending appeals filed by Revenue with ITAT shall be withdrawn or not pressed. The aforesaid CBDT circular stood modified on 20.08.2018 wherein exceptions were enlarged. Both CBDT circular dated 11.07.2018 as well its modification dated 20.08.2018 are reproduced in preceding para's of this order. The Revenue main bone of contention in these three appeals is that these three appeals are covered by exceptions as carved out in para 10(e) vide modification dated 20.08.2018 to CBDT Circular dated 11.07.2018, which provides that when additions are based on information received from 'external sources' in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI), then these appeals shall not be withdrawn owing to low tax effect. The para 10(e) of the aforesaid CBDT circular is reproduced hereunder:

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(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 GST Intelligence"

We are afraid that contentions of learned DR cannot be accepted because para 10(e) clearly stipulates that additions should be based on information received from 'external sources' in the nature of 'law enforcement agencies' such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligences (DGGI) and as could be seen from para 10(e) that the thrust in this exception is that additions should be based on information received from 'external sources' and secondly these external sources should be in the nature of 'law enforcement agencies'. These two conditions are necessarily and mandatorily required to be fulfilled to be covered under exception. Since, these exceptions take away the benefit granted by Revenue to the tax-payers by way of withdrawal of pending appeals with low tax effect, the onus is on the Revenue to show that taxpayer's case is covered by these exceptions and the taxpayer is not entitled to seek protection granted by CBDT circular. Further, these exceptions are penal in nature as it seeks to withdraw the benefit granted by Revenue to tax-payers, it is to be strictly construed. Thus, it is for Revenue to demonstrate that additions were made based on information received from external sources being law enforcement agencies. It can be further seen that para 10(e) further listed certain agencies as illustrations which are not exhaustive. Thus, agencies as listed in para 10(e) vide illustrations can be expanded provided these are 'external sources' and secondly they are in the nature of 'law enforcement agencies'. Thus, fulfillment these two conditions of being 'external source' and being 'law enforcement agency' is a mandatory stipulation which must be adhered to come within the ambit of exception. When language used is simple, plain, unambiguous and clear, there is no scope of intendment. Taxing statutes are to be strictly construed. There is no scope of intendment when the language is simple, plain, clear and unambiguous. The word 'External Sources' in our considered view, is used by CBDT to be an information received from sources which are external to Income-Tax Department and various departments/wings which works under its aegis. Directorate of Income-tax (Investigation) is 'law enforcement agency' under the Ministry of Finance and controlling authority is Investigation division of CBDT. Thus, Directorate of Income-tax(Investigation) an internal agency/wing of Income-tax Department which works under the aegis of its controlling authority CBDT and can not be considered to be an 'external source' as is referred to vide communication dated 20.08.2018 in para 10(e). When CBDT is referring to an external sources, it is certainly referring to sources which are not internal sources within Income-tax Department and various wings functioning within its aegis. Our view is further fortified by careful perusal of illustrations referred to in para 10(e) of modification dated 20.08.2018 namely CBI/ED/DRI/SFIO/Directorate General of GST Intelligence, none of these agencies listed in para 10(e) works under the aegis of Income-tax Department and are in-fact 'external sources' so far as Income-tax Department is concerned . **Thus, this plea of learned DR cannot be accepted that Directorate of Income-tax(Investigation) is an 'external source' for the purposes of interpreting para 10(e) of CBDT circular, and we hold that information received by AO from Directorate of Income-tax**

(Investigation) is an information received from internal sources and is not covered by exception as is contained in para 10(e) of CBDT circular dated 11.07.2018 as modified on 20.08.2018 as this information is received from sources which are from sources 'internal' to Income-tax Department. The interpretation placed by learned DR that CBDT meant in the aforesaid circulars as to all information received by AO from sources which are outside of the 'assessment unit' to be taken as 'external source' cannot be accepted as such interpretation is too wider and could not have been intended by CBDT. Moreover, as we have seen above that in para 10(e), none of the agencies listed therein work under the aegis of Income-Tax Department, while Directorate of Income-tax(investigation) works under the aegis of Investigation Division of CBDT who is its controlling authority and hence could not be called as an 'external source'. The policy of non filing of appeal by Revenue in low tax effect matter is part of litigation policy followed by Revenue wherein keeping in view low tax effect in its appeal, the Revenue choose not to pursue its appeal further with higher forums keeping in view cost benefit analysis. The Revenue has chosen to free its resources by not perusing un-important and routine low tax effect appeals and instead direct its limited resources to bigger and important matters to generate higher resources more effectively and efficiently. This is purport of litigation policy wherein appeals filed by Revenue below threshold limits of tax effects are withdrawn by Revenue before Hon'ble Courts/tribunal. Thus keeping in view CBDT circular no. 3/2018 dated 11-07-2018 and as modified *vide* communication dated 20.08.2018, we are inclined to dismiss these three appeal filed by Revenue due to low tax effect involved in this appeal which is below Rs. 20 lacs being covered by circular dated 11.07.2018 as further modified on 20.08.2018. While disposing of these three appeals filed by Revenue due to low tax effect *vide* CBDT Circular no. 3/2018 dated 11.07.2018 and as further modified by communication dated 20.08.2018, we clarify that we have not commented on the merits of the issue's in these three appeals. However, at the same time we are granting liberty to Revenue that if at any stage Revenue wants to agitate the matter/issue in these three appeals in accordance with the clauses as are contained in the afore-stated circular number 3/2018 dated 11.07.2018 and modification dated 20.08.2018 based on cogent reasons/evidences that these appeals are covered under exceptions carved out in aforesaid CBDT circular, the Revenue is hereby granted liberty to file miscellaneous application(s) praying for recall of these orders in accordance with law. We order accordingly.

4. In the result, all the three appeals filed by the Revenue in ITA no. 818-820/Mum/2017 are dismissed owing to low tax effect as indicated above.”

I notice that the division bench has categorically held that the information received from Directorate of Income tax (investigation) cannot be considered to be an information received from an external source. In the instant case also, the addition has been made by the AO on the basis of information received from investigation wing, meaning thereby, it cannot be said that the facts of

the present case would be covered by the exception mentioned in clause (e) of paragraph 10 of the Circular issued by CBDT, referred above. Accordingly, I hold that the present appeal of the assessee is hit by the monetary limits and hence the revenue is precluded from pursuing this appeal. Accordingly, I reject the appeal of the revenue holding that the tax effect involved in the issues contested by the revenue is less than the monetary limits prescribed by the CBDT.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/08/2022

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,

(Assistant Registrar)
ITAT, Mumbai

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