

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **844/Chny/2022**

**&**

**CO No: 18/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2012-13

Deputy Commissioner of  
Income Tax,  
Central Circle -3(1),  
Chennai.

M/s. Aditya Realty Solutions  
v. Private Limited,  
25 G9, Gems Court,  
Khader Nawaz Khan Road,  
Nungambakkam,  
Chennai – 600 34.

**[PAN: AAFCA-5857-P]**

(अपीलार्थी/Appellant)

(Cross Objector)

अपीलार्थी की ओर से/Appellant by  
Respondent/Cross Objector by

: Shri. S. Senthil Kumaran, CIT-DR  
: Shri. I. Dinesh, Advocate

सुनवाई की तारीख/Date of Hearing

: 15.06.2023

घोषणा की तारीख/Date of Pronouncement

: 28.06.2023

**आदेश / O R D E R**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the revenue and cross objection filed by the assessee are directed against the order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 22.06.2022 and pertains to assessment year 2012-13.

Since, facts are identical and issues are common, for the sake of convenience, the appeal filed by the revenue and the cross objection filed by the assessee are being heard together and are being disposed off, by this consolidated order.

2. The brief facts of the case are that, the assessee is engaged in the business of guest house maintenance, filed its return of income for the assessment year 2012-13 on 16.05.2013, admitting a total income of Rs. 2,34,200/-. The assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 31.03.2015 and determined total income of Rs. 1,16,34,200/-, by making additions towards unexplained credits u/s. 68 of the Act for Rs. 1,14,00,000/-. The assessee carried the matter in appeal before the first appellate authority and the Id. CIT(A), for the reasons stated in their appellate order dated 22.06.2022 allowed appeal filed by the assessee and directed the Assessing Officer to delete additions made towards unexplained credit u/s. 68 of the Act. Being aggrieved by the CIT(A) order, the revenue is in appeal before us and the assessee has filed cross objections in support of CIT(A) order.

3. The Ld. Counsel for the assessee, at the time of hearing submits that the appeal filed by the revenue is not maintainable, because the tax effect involved in appeal filed by the revenue is less than the monetary limit prescribed by CBDT Circular no. 17 of 2019 issued by the CBDT and thus, appeal filed by the revenue needs to be dismissed.

4. The Id. CIT-DR, Mr. S. Senthil Kumaran, referring to OM dated 16.09.2019 and Circular No. 23 of 2019 issued by the CBDT submits that, although tax effect involved in present appeal filed the revenue is less than monetary limit prescribed for filing appeal before Tribunal, but fact remains that the issue involved in present appeal is relates to organized tax evasion activity and thus, the appeal filed by the revenue should be heard on merits.

5. Per contra, Ld. Counsel for the assessee referring to Circular no. 23 of 2019 submits that, the circular issued by the CBDT covers the cases of bogus long term capital gains/ short term capital gains through penny stock, but not cases like unsecured loans/share capital. Therefore, he submits that there is no merit in arguments of the Id. DR that the case

comes under exception and needs to be heard on merit. He further, referring to the decision of ITAT Mumbai Benches in the case of DCIT vs Anupam G. Mittal in MA No. 313/Mum/2021 submits that, although the tribunal held that cases of organized tax evasion activity comes under exception as per Circular No. 23/2019 dated 06<sup>th</sup> September, 2019, but fact remains that facts involved in the above case is claim of bogus short term capital gains from penny stock companies, but in the present case, it is a case of unexplained cash credits and thus, the case law relied upon by the Id. DR has no application.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that tax effect involved in the present appeal filed by the revenue is at Rs. 36,98,730/-, which is below the tax effect prescribed by Circular No. 17/2019 for filing of appeal before the tribunal and thus, the same needs to be dismissed as not maintainable. But, we need to consider the arguments of the Id. DR in light of Circular No. 23/2019 dated 06.09.2019, that whether the issue involved in appeal is a case of organized tax evasion as

per said circular or not. The CBDT clarified vide circular no. 23/2019 dated 06.09.2019 that even in a low tax effect case, the appeal needs to be filed in case the issue involved in such appeal involved organized tax evasion activity. The arguments of the Id. DR is that additions made in the present case is on the basis of investigation carried out by the Income Tax Department at Kolkata on entry providers and this activity is coming under organized tax evasion. Therefore, the appeal needs to be heard on merit. We find that the circular issued by the CBDT no. 23/2019 dated 06.09.2019 is in the context of claiming benefit of exemption towards long term capital gains/short term capital gains through penny stocks, but it does not satisfy the case of share capital and unsecured loan taken from the parties. Therefore, we are of the considered view that the case of the assessee does not come under the exception provided under Circular no. 23/2019. We have also gone through the decisions cited by the Id. DR in the case of DCIT vs Anupam G. Mittla in MA No. 313/Mum/2021 and we find that in the above case, the issue involved was claiming deduction towards short term capital gains derived from penny stock companies and under those facts, the tribunal held that the Circular No. 23/2019 dated 06.09.2019 covers the cases of

organized tax evasion activity and thus, appeal can be filed even though disputed tax limit is less than the monetary limit fixed by the CBDT. In our considered view, the issue involved on merit does not come under organized tax evasion activity and thus, the circular relied upon by the Id. DR and consequent decision of ITAT Mumbai is not applicable.

7. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the appeal filed by the revenue is not maintainable, because the tax effect involved in the present case is less than the prescribed limit for filing appeal before the tribunal as per Circular No. 17/2019 and thus, we dismiss appeal filed by the revenue.

8. The assessee has filed cross objection in support of the order of the Id. CIT(A). Since, we have dismissed appeal filed by the revenue in light of CBDT Circular No. 17/2019 on monetary limit fixed for filing appeal before Tribunal, the cross objection filed by the assessee in support of the order of the Id. CIT(A) becomes infructuous and thus, the same is dismissed.

9. In the result, appeal filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the court on 28<sup>th</sup> June, 2023 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(मंजुनाथ. जी)  
**(MANJUNATHA. G)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28<sup>th</sup> June, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF