

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.5350/Del/1994
Assessment Year: 1991-92

ITO Ward 14(5), New Delhi	vs.	Subhash Chand Rastogi, 2195, Bagichi Raghunath, Sadar Bazar, Delhi 110006
(Appellant)		(Respondent)

For Revenue:	Shri Vivek Kumar Upadhyay, Sr. DR
For Assessee:	None

Date of Hearing :	03.08.2023
Date of Pronouncement :	03.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

First of all, it is pertinent to mentioned that this Departmental appeal has been restored to the Tribunal by Hon'ble High Court of Delhi judgment dated 09.09.2014 in ITA No. 161/2002. In para 12 of said judgment of Hon'ble High Court has directed the Tribunal to decide the issue whether the exported goods were is a 'mineral' and therefore, not eligible for deduction in view of section 80HHC(2)(b)(ii) of the Income Tax Act 1961 (for short the 'Act').

2. When the case was called for the hearing neither the assessee nor any authorized representative or counsel appeared nor any adjournment application has been filed. On perusal of the copy of the judgment of Hon'ble High Court dated 09.09.2014 (supra) and after consultation with Ld. Senior DR, we are of the view that the matter can be adjudicated on the basis of material available on record without complete construction of appeal file and ex-parte qua assessee.

3. At the very outset, the Ld. Senior DR submitted that the department had filed extant appeal in the year 1994 challenging the order of Ld. CIT(A) wherein the Ld. CIT(A) directed the A.O. to allow deduction u/s. 80HHC of the Act on the alleged export of zinc oxide and allowing deduction of Rs. 45,51,898/- u/s. 80HHC of the Act. The Senior DR, in all fairness, submitted that the tax effect in the sole issue agitated by the revenue in this appeal is less than Rs. 50 lacs.

4. Therefore, in view of the recent CBDT Circular No.17/2019 dated 8th August, 2019, raising the monetary limit for filing of the appeal by the Revenue before the Tribunal to Rs.50 lakhs and the subsequent clarification of the CBDT, vide Notification dated 20th August, 2019 stating that the said Circular is applicable even to pending appeals, the appeal filed by the Revenue is not maintainable.

5. As we have noted above, the Id. Senior DR, fairly conceded that the tax effect involved in the grounds raised by the Revenue being below Rs.50 lakhs, the appeal filed by the Revenue squarely falls within the ambit of the recent CBDT Circular No.17/2019 dated 8th August, 2019 and the subsequent clarification dated 20th August, 2019.

6. In view of above, we find the tax effect involved in the grounds raised by the Revenue is admittedly below Rs.50 lakhs. Therefore, in view of the CBDT Circular No.17/2019 dated 8th August, 2019 raising the monetary limit for filing of the appeals by the Revenue before the Tribunal to Rs.50 lakhs and the subsequent clarification dated 20th August, 2019 to the effect that the said Circular is applicable even to pending appeals, the appeal filed by the Revenue is not maintainable. Accordingly, the same is dismissed.

7. However, if the Revenue at any point of time finds that the tax effect involved in the grounds of the Revenue is more than Rs.50 lakhs or that the same is falling under the exceptions provided in the said Circular, the Revenue may move necessary application for recall of this order.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 03.08.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 03rd August, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi