



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL
MEMBER, AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.353/PUN/2024

निर्धारण वर्ष / Assessment Year: 2011-12

The Assistant Commissioner of Income Tax, Circle-5, Pune.	V s	Renu Electronics Private Limited, S.No.2/6, Near Baner Telephone Exchange, Baner, Pune – 411045. PAN: AAACR8741G
Appellant / Revenue		Respondent / Assessee

Cross Objection No.18/PUN/2024

निर्धारण वर्ष / Assessment Year: 2011-12

The Assistant Commissioner of Income Tax, Circle-5, Pune.	V s	Renu Electronics Private Limited, S.No.2/6, Near Baner Telephone Exchange, Baner, Pune – 411045. PAN: AAACR8741G
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Nikhil Pathak – AR
Revenue by	Shri Arvind Desai – Addl.CIT(DR)
Date of hearing	03/10/2024
Date of pronouncement	28/10/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These are two appeals ITA No.353/PUN/2024 filed by the
Revenue and Cross Objection C.O. No.18/PUN/2024 filed by the



Assessee; are directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] u/sec.250 of the Act, dated 29.12.2023 emanating from the assessment order u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 dated 28.12.2018. The Revenue has raised the following grounds of appeal :

“1) One the facts and circumstances of the case and in law, CIT(A) erred in allowing the claim of additional depreciation u/s 32(1)(iia) of I.T.Act, 1961 to the assessee without ensuring that all of the essential conditions laid down for eligibility of excess depreciation u/s.32(1)(iia) are actually fulfilled by the assessee or not.

2. The appellant craves leave to add, amend, or alter any ground(s) of appeal at the time of hearing before the Hon'ble Tribunal.”

Submission of Id.AR:

2. Ld.AR submitted that Departmental Appeal is not maintainable as Tax Effect is below Rs.60 lakhs. Rather the Tax Effect is only Rs.2,15,304/-. Ld.AR submitted that as per Instruction No.03/2018, dated 11.07.2018, there was a list of exception categories for which Tax Effect was not applicable. Audit Objection was one of the category mentioned in the Exception Categories in Circular No.03/2018. However, CBDT issued Circular No.5 of 2024 dated 15.03.2024 in which there is no



mention of Audit Objection in Exception Categories. Ld.AR read out all the Exception Categories mentioned in the Circular No.05/2024 and pleaded that assessee's case does not fall in any of the categories. Ld.AR also submitted that Circular No.05/2024 specifically mentions that Circular No.05/2024 is in supersession of all earlier circulars. Therefore, ld.AR pleaded that as per Circular No.05/2024, Department's Appeal is not maintainable. Ld.AR relied on the order of ITAT Indore Bench in the case of CIT Vs. M.P.PoliceSakh Sahakari Sanstha Maryadit 164 taxmann.com 412(Indore Tribunal).

Submission of ld.DR :

3. Ld.DR could not rebut any of the pleadings of the ld.AR. Ld.DR accepted that in the Circular No.05/2024, there is no mention of Audit Objection in the Exception Categories.

Findings & Analysis :

4. We have heard both the parties and perused the records. In this case, the Assessing Officer(AO) in the order under section 147 read with section 142(3) had disallowed Rs.6,48,164/- on account of depreciation and disallowed Rs.98,42,886/- which were claimed



under section 10A of the Act. Admittedly, the reopening notice was issued as there was audit objection, copy of the same has been filed by ld.AR at page no.102 and 103 of the paper book. Assessee filed an appeal against the assessment order before the ld.CIT(A). Ld.CIT(A) allowed the appeal of the assessee and directed the Assessing Officer(AO) to delete the addition of Rs.98,42,886/- and Rs.6,48,164/-, vide para 9.4 and 10.3 respectively of the order.

4.1 Aggrieved by the order of the ld.CIT(A), the Revenue filed appeal only with reference to issue of depreciation before this Tribunal. Thus, the Tax Effect with reference to issue of depreciation is only Rs.2,15,304/- which is below the monetary limit fixed by CBDT for filing the appeal. However, Revenue had pleaded that the case falls in the category of Exceptions, namely Audit Objection. Admittedly, in the Circular No.03/2018 dated 11.07.2018, one of the Exception Category was Audit Objection. Therefore, it was the case of the Revenue that though Tax Effect was below the monetary limit, the case falls in the category of Exceptions mentioned in Circular No.03/2018. The Circular No.03/2018 has been superseded by Circular No.05/2024.



Therefore, now we need to consider Circular No.05/2024 dated 15.03.2024. As per Circular No.05/2024 issued by CBDT, the Exceptions are as under :

- “a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or*
- b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or*
- c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or*
- d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or*
- e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or*
- f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections*



10(23C), 12A/ 12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.

- g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or*
- h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or*
- i. Where mandated by a Court's directions, or*
- j. Writ matters, or*
- k. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or*
- l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-*
 - i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or*
 - ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise*



m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.”

5. In this case, it is an admitted fact that there was an audit objection and based on the audit objection, notice u/sec.148 of the Act was issued to the assessee. In this case, the Tax Effect as per Form No.36 is Rs.2,15,304/-.

6. Since Circular No.5/2024 specifically mentioned that it is issued in supersession of Circular No.03/2018. Therefore, the Circular No.05/2024 prevails over Circular No.03/2018. We have perused all the Clauses mentioned in Para 3.1 of Circular No.05/2024. Audit Objection is nowhere mentioned in any of the Exceptions.

6.1 Though it is mentioned in Circular No.05/2024 that the impugned Circular will apply to all appeals filed henceforth before the SC/HC/Tribunals. However, the Hon'ble Rajasthan High Court in the case of CIT Vs. Satish Kumar Agarwal & Others in ITA No.08/2021, vide order dated 27.09.2024 held as under:

“17. Circular 9 of 2024 albeit, enhanced the monetary limits but retained the exceptions in Para 3.1 & 3.2 of Circular 5 of 2024. From perusal of Para 5 of Circular 9 of 2024, it is evident that the circular shall apply to the appeals to be filed henceforth and also to the



appeals pending before the Supreme Court, High Court and the Tribunal. Thereby making monetary limit specified in it and exceptions in Para 3.1 & 3.2 of Circular 5 of 2024 applicable to all the pending appeals. In other words, Circular 5 of 2024 was applicable prospectively but Circular 9 of 2024 while enhancing the monetary limit, retaining the exceptions of Circular 5 of 2024 made it applicable to the pending appeals also.

18. The contention of learned counsel for the appellant that the Circular give retro respective effect only to the monetary limit lacks merit. In case the argument is accepted, the result would be of adding words to the clear and plain language of Para 5 of Circular 9 of 2024.

19. The reliance of the counsel for the appellant on the exceptions carved out in Circular 3 of 2018 cannot be sustained. Circular 3 of 2018 was superseded by Circular 5 and the exceptions of Circular 5 with the enhanced monetary limits in Circular 9 of 2024 were made applicable to pending appeals.”

6.2 Thus, the Hon’ble Rajasthan High Court held that Circular No.09/2024 is applicable to all the pending appeals, therefore, the exceptions clauses mentioned in Circular No.05/2024 have retrospective effect.

6.3 The Hon’ble Bombay High Court in the case of Smt.Godavaridevi Saraf Vs. CIT, 113 ITR 589(Bom) has held as under :

Quote , “ Until contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land.” Unquote.



6.4 The Hon'ble Bombay High Court has explained that in the absence of contrary decision of Hon'ble Jurisdictional High Court, the decision of Non-jurisdictional High Court is binding on Tribunal. No contrary decision of Hon'ble Bombay High Court on the impugned issue has been brought to our notice by the Revenue. Therefore, in the absence of contrary decision of Hon'ble Bombay High Court on the impugned issue, the decision of Hon'ble Rajasthan High Court is binding on us.

6.5 Therefore, respectfully following the Co-ordinate Bench's Decision in ITO Vs. M.P.Police Sakh Sahakari Sanstha Maryadit(Supra) and the Hon'ble Rajasthan High Court(supra), we hold that Revenue's Appeal is not maintainable as Tax Effect is below the monetary limit specified by CBDT's Circular No.09/2024 read with Circular No.05/2024. Accordingly, Revenue's appeal is dismissed as not maintainable.

7. In the result, appeal of the Revenue is dismissed.

C.O.No.18/PUN/2024 :

8. Assessee has filed cross objection vide CO.No.18/PUN/2024 raising following grounds of appeal :



“1) The assessee submits that the reopening u/s 148 is bad in law and accordingly, the reasst. order passed u/s 147 be declared null and void.

2) The assessee submits that in this case, the original asst, was completed u/s 143(3) and the reopening is beyond four years from the end of the relevant asst, year and since there was no failure on the part of the assessee to disclose fully and truly the material facts, the reopening u/s 148 be declared null and void.

3) The assessee submits that in this case there was no fresh tangible material with the A.O. for reopening the case and hence, the reopening u/s 148 is invalid in law and accordingly, the reasst. order be declared null and void.

4) The respondent craves leave to add, alter, amend or delete any of the above cross objections.”

8.1 Since we have dismissed the Revenue’s appeal, the Cross Objection appeal becomes academic in nature, accordingly, it is dismissed as unadjudicated.

9. In the result, Cross Objections appeal of the assessee is dismissed.

Order pronounced in the open Court on 25th October, 2024.

Sd/-
(MS.ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th Oct, 2024/ SGR*



आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.