

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.2568/M/2024
Assessment Year: 2021-22**

The Assisstant Commissioner Of Income Tax 3(2)(1), R. No.1613, Air India Building, 16 Floor, Nariman Point, Mumbai - 400021	Vs.	M/s. Mckinsey and Company Lme Limited, Ernst and Young LLP CAs, Senapati Bapat Marg, Dadar, Mumbai, Maharashtra - 400021 PAN: AAKCM0197M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Divesh Chawla, Ld. A.R.
Revenue by : Shri Krishna Kumar, Ld. Sr. D.R

Date of Hearing : 04.12. 2024
Date of Pronouncement : 04.12. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 26.02.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 143(3)/144C(B) of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

2. At the outset, we observe that there is a delay of 21 days in filing the instant appeal, on which the Ld. D.R. has submitted that due to official exigencies, the appeal could not be filed within the limitation period as prescribed and therefore delay of 21 days in filing the appeal has been occurred. The delay occurred was neither intentional nor malafide by the same was bonafide and genuine. On the contrary the Ld. A.R. refuted the claim of the Revenue Department. We considering the delay as miniscule and bonafide, un-intentional and genuine, are inclined to condone the delay. Thus, the delay is accordingly condoned.

3. Though, admittedly the tax effect involved in the instant case is Rs.53,00,597/- and therefore as per latest CBDT circular No.09/2024 dated 17.09.2024, whereby the monetary limit for filing the appeal before the appellate tribunal is fixed to the tune of Rs.60 lakhs, the instant appeal is liable to be dismissed. However, the Ld. D.R. has submitted that *“where appeals of international taxation charges where the deposits relate to applicability of provision is of Double Taxation Avoidance Agreement (in short “DTAA”) or otherwise the exception carved out in clause 3.1(l)(ii) of the circular No.5/2024 dated 15.03.2024,”* the monetary limit will not be applicable. As in this case, the issue involved relates to the applicability of the provisions of DTAA and therefore such exception would not be applicable.

4. On the contrary, the Ld. A.R. refuted the claim of the Revenue Department and drew our attention to the judgment passed by the Hon’ble Punjab & Haryana High Court in the case of Commissioner of

Income Tax (International Taxation-2), New Delhi vs. Perfetti Van Mellié ICT B.V., Global Business Park Tower {ITA-40-2023 (O&M) decided on 14.10.2024}, wherein the Hon'ble High Court has considered the identical exception to clause (l)(ii) of para 3.1 of the circular dated 15.03.2024 (supra) and held as under:

“Firstly, as we accept the argument raised by learned counsel for the respondent with regard to clause l(ii) of para 3.1 which is only with respect to litigation out of disputes related to TDS/TCS matters in both domestic and international taxation charges, wherein disputes relating to appeals of international taxation charges Double Taxation Avoidance Agreement would fall”.

5. We observe that co-ordinate Bench of the Tribunal in the identical addition and facts by considering the tax involved below than the prescribed limit in the Assessee's own case for the A.Y. 2019-20 in ITA No.17/2024 decided on 18.07.2024 has dismissed the Revenue's appeal.

6. Having heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties, it is clear that admittedly the tax effect involved is below than the monetary limit of Rs.60,00,000/- as prescribed under the latest CBDT circular No.09/2024 (supra) and in our considered view the case of the Assessee also does not fall under any of the exceptions as prescribed in the aforesaid circular as the disputes involved is not related to TDS/TCS matters in both domestic and international taxation charges, therefore, the appeal of the Revenue Department is liable to be dismissed, however, with liberty to seek recall of this order, on finding any judgment contrary by the Jurisdictional High Court and/or on substantive reason.

7. In the result, the appeal filed by the Revenue Department stands dismissed with liberty as mentioned in para no. 6 of this order.

Order pronounced in the open court on 04.12.2024.

**Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.