

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5973/MUM/2012
Assessment Year: 2009-10**

The ACIT, Circle- 3(3), Room No. 609, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. Stup Consultants Pvt. Ltd., 1004-5, Raheja Chambers, 213, Free Press Journaj Marg, Nariman Point, Mumbai- 400 021. PAN- AABCS1945E
(Appellant)		(Respondent)

Appellant by : Shri. Nitin Waghmode
Respondent by : Shri. S.H. Subramanian

Date of Hearing: 17/10/2016
Date of Pronouncement: 17/10/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 07/05/2012 passed by the Ld CIT(Appeals)-7, Mumbai for the assessment year 2009-10, whereby the Ld. CIT(A) partly allowed the appeal filed by the assessee against assessment order dated 30/11/2011 passed by the Addl. Commissioner of Income-tax, Range-3(3), Mumbai.

2. The revenue has challenged the impugned order on following effective grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) was justified in deleting the disallowance of claim of*

write-off of excess amount deposited with Income-Tax Department while depositing deduction on payments towards TDS account. (Rs. 10,74,176/-) without appreciating the fact that expenses claimed were gross of TDS and hence the loss claimed by the assessee would amount to double deduction to the assessee and also that the refund due on TDS return is to be claimed in the TDS return filed in the TDS section.”

2. "Whether on the facts and circumstances of the case and in law, the ld. CIT(A) was justified in deleting the addition of Rs. 6,47,816/- being cost of furniture reduced from the Project fee Account without appreciating the fact that the project fee already includes payment towards office furniture as indicated by the relevant contract sheet.”

3. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) was justified in holding that receipt of Rs. 66,82,143/- from letting out the property be taxed under the head “Income from Business and Profession instead of “Income from House Property, as held by the Assessing Officer, without appreciating the fact that the intention of the assessee was to let out the property on rent as such the income there from should be assessed as “Income from House Property” as held by the Hon’ble Supreme Court in the case of Shambhu Investment Pvt. Ltd. (129 Taxman 70). ”

3. At the outset, the Ld. Authorised Representative for the assessee submitted that the tax effect in this case is below Rs.10,00,000/- and as per the CBDT Circular No. 21 of 2015, dated 10/12/2015, the present appeal is not maintainable.

4. The Ld. Departmental Representative fairly admitted that the tax effect in the present case is Rs.7,13,370/- as worked out by the respondent/assessee.

5. We find that the issue raised in appeal does not fall under any of the exceptions specified in para 8 of the Circular. Since, it has been specifically clarified in the Circular aforesaid that the instruction will apply retrospectively to all the pending appeals; the present appeal filed by the revenue is not maintainable. We, therefore, dismiss the same *in limine*.

Order pronounced in the open court on 17th October, 2016

Sd/-

(B.R.BASKARAN)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 17/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila