

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - 'E', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADI N. MISHRA, ACCOUNTANT MEMBER

ITA No. 3449/Del/2011

AY: 2008-09

ITO Ward-13(1), Room No. 219 C.R. Building, New Delhi.	vs.	Nancy Sales Pvt. Ltd. UP-12, Pitampura, New Delhi – 110 088 PAN AACCN2492G
(Appellant)		(Respondent)

Appellant by : Shri U.C. Dubey, Sr. DR
Respondent by : Shri Ved Jain, Adv.

Per ANADI N. MISHRA, Accountant Member

ORDER

This appeal has been filed by Revenue against order dated 31.3.2011 of Ld. CIT(A) - XVI, New Delhi. The grounds of appeal are as under:

- 1. "On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs. 10,00,000/- made by the AO u/s 68 of the I.T. Act, 1961 on account of alleged share application money and share premium shown to have been received from M/s. Thar Steels P. Ltd. entry operator, being operated by Shri Tarun Goyal, an entry operator identified by the Investigation Wing of the Department. Ld. CIT(A) has not appreciated the fact that the assessee has failed to establish the physical identity and creditworthiness of concerned parties and genuineness of transactions in terms of section 68 of the Income-tax Act, 1961.*
- 2. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in ignoring the fact that the judgment of the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. 216 CTR 199 (SC) cannot be extended to a situation where a mechanism has been formed to introduce unaccounted money in the books of accounts with the help of accommodation entry providers which has been exposed by deep and detailed investigation carried out by the Investigation Wing of the Department. Moreover, the facts in the present case are distinguishable from the above cited case in so far as that the assessee could not produce*

any of the principal officers/directors of companies for examination whereas in the case cited above the AO never asked the assessee company to produce any of the share applicants for cross examination.

3. *That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in ignoring the fact that the directors of the share applicant companies were the employees of Shri Tarun Goyal, who worked in his office as peons, receptionists etc. These facts were revealed during the search proceedings made on 15.09.2008, which was also admitted by Shri Tarun Goyal that he provided accommodation entries and his various companies were used for this purpose.*
4. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal."*

2. We have heard both sides and we have also perused the materials on record. From the above, we find that the tax effect in Revenue's Appeal is less than Rs.10,00,000/- . Therefore, this appeal is covered by Instruction No. 21/2015 dated 10th December, 2015 of CBDT, issued vide F.No. 279/Misc. 142/2007-ITJ (Pt.) . For the sake of convenience, the relevant portion of the aforesaid CBDT Circular is reproduced as under:

"

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

<i>S No</i>	<i>Appeals in Income-tax matters</i>	<i>Monetary Limit (in Rs)</i>
<i>1</i>	<i>Before Appellate Tribunal</i>	<i>10,00,000/-</i>
<i>2</i>	<i>Before High Court</i>	<i>20,00,000/-</i>
<i>3</i>	<i>Before Supreme Court</i>	<i>25,00,000/-</i>

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

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10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed."

3. We are of the view that the aforesaid CBDT Instruction No. 21/2015 dated 10th December, 2015 is applicable for the pending appeals filed by Revenue, as well as for the appeals to be filed by Revenue henceforth. In view of the aforesaid Instruction, therefore, Revenue should have withdrawn / not pressed the present Appeal, since the tax effect in the instant appeal is less than the prescribed limit of Rs. 10,00,000/- , specified in the aforesaid CBDT Instruction No. 21/2015 dated 10th December, 2015.

4. In view of the foregoing, we conclude that the appeal is inconsistent with the aforesaid CBDT Instruction No. 21/2015 dated 10th December, 2015; and hold that the appeal is, therefore, not maintainable. Accordingly, we dismiss the appeal *in limine*, appeal being not maintainable; without going into the merits.

5. In the result, this appeal, filed by Revenue; stands dismissed.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

**sd/-
(ANADI N. MISHRA)
ACCOUNTANT MEMBER**

Dated: 2nd August, 2016

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Copy forwarded to: -

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

TRUE COPY

By Order,

ASSISTANT REGISTRAR