

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

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

**ITA No. 4264/MUM/2013
Assessment Year: 2008-09**

The DCIT 8(3), Room No. 217, Aayakar Bhavan, M.K.Marg, Mumbai- 400 020.	Vs.	M/s. Shingar Ltd. Kalpataru 71, Nutan Laxmi Society, N.S.Road, No.9 Juhu Scheme, Vile Parle(W), Mumbai- 400 049. PAN- AABCS4563J
(Appellant)		(Respondent)

Appellant by : Captain. Pradeep Arya.
Respondent by : Shri. N.K.Bhuta

Date of Hearing: 29/09/2016
Date of Pronouncement: 29/09/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 19/03/2013 passed by the Ld CIT(Appeals)-18, Mumbai for the assessment year 2008-09.

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

1. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in quashing the proceedings u/s 147 of the Act by relying on the decision of the Hon'ble Supreme Court in CIT vs. Kelvinator of India Ltd., 320 ITR 561, without appreciating that unlike in the case cited supra, in the instant case the issue of*

computing Book Profit u/s 115JB had not been considered by the A.O. at the time of passing the original assessment order.”

2. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in not deciding the issue of MAT on Book Profit u/s 115JB without appreciating that the assessee was liable for the same".*

3. At the outset, the Ld. Counsel 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. DR fairly admitted that the tax effect in department's appeal is below Rs.10 Lakhs, 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 29th September, 2016

Sd/-

(B.R.BASKARAN)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/09/2016

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