

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ ITA No. 171/JP/2012
निर्धारण वर्ष/ Assessment Year : 2005-06

Assistant Commissioner of Income Tax, Circle-1, Kota.	बनाम Vs.	Mohammad Miyan, Prop.- M/s Masoom Construction Co., 5-B-18, Vigyan Nagar, Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABYPM 2874 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Shailendra Sharma(Addl.CIT)
निर्धारिती की ओर से / Assessee by : Shri Aakash Jain (CA)

सुनवाई की तारीख / Date of Hearing : 21/04/2017
उदघोषणा की तारीख / Date of Pronouncement : 25/04/2017

आदेश / ORDER

PER: KUL BHARAT, J.M.

This is an appeal filed by the revenue against the order dated 29/12/2011 passed by the Id. CIT(A), Kota for the A.Y. 2005-06, wherein the Revenue has taken sole effective ground, which is against deleting the capital gain of Rs. 44,84,675/- assessed in the assessment year 2005-06.

2. The Id. Sr.DR has drawn our attention towards decision of the Hon'ble Supreme Court in the case of CIT Vs. K.Srinivasan order dated 05/11/1971 regarding surcharge is part of tax.

3. It is the contention of the Id. AR of the assessee that even if surcharge is included then also the tax effect is lesser than the prescribed limit. The Id. Counsel has placed on record the computation of tax, which reads as under:-

Particulars	Amount (In Rs.)
Additions	
i. On account of LTCG	44,84,675/-
Total additions	44,84,675/-
Tax on total additions @ 20%	8,96,935/-
Total tax	8,96,935/-

The Id. Counsel has also placed on record the computation of tax after adding surcharge @ 10%, which reads as under:-

Particulars	Amount (In Rs.)
Additions	
i. On account of LTCG	44,84,675/-
Total additions	44,84,675/-
Tax on total additions @ 20%	8,96,935/-
Surcharge @ 10%	89,694/-
	9,86,629/-
EC & SHEC @ 3%	19,733/-
Total tax	10,06,362/-

It is observed that the demand/ tax effect in the Revenue's appeal is less than Rs. 10 lacs. Under the powers vested by sec. 268A(1) of the I T Act, CBDT has recently issued Circular No.21 of 2015 dated 10.12.2015(F No. 279/Misc. 142/2007-ITJ(Pt) instructing the authorities below that the departmental appeal should not be filed before ITAT where the demand/tax effect does not exceed

less than Rs.10 lacs. The circular is specifically mentioned to be applicable for all pending appeals.

4. Subject to some exceptions, it is further directed by CBDT that all the departmental appeals pending before ITAT where the demand/tax effect is less than 10 lacs should be either withdrawn or not pressed by the departmental representatives.

5. The present appeal is not covered by any exceptions mentioned in the said CBDT circular. Since the tax demand in dispute in this departmental appeal is below the limit set out by CBDT for the appeal the same is not maintainable in view of fore goings.

6. The revenue has not given any other computation, therefore in view of this computation, we dismiss the appeal of the revenue as not maintainable as even if the surcharge is included then also the tax effect remains lesser than the prescribed limit i.e. Rs.9,86,629/-.

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

Order pronounced in the open court on 25/04/2017.

Sd/-
(भागचंद)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 25th April, 2017

*Ranjan

Sd/-
(कुल भारत)
(Kul Bharat)

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- The ACIT, Circle-1, Kota.
2. प्रत्यर्थी/ The Respondent- Shri Mohammad Miyan, Kota.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 171/JP/2012)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar