

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.931/Ind/2019
Assessment Year:2010-11**

DCIT-3(1) Indore (Revenue)	<u>बनाम/</u> Vs.	Shri Manoj Daga, Indore (Respondent)
P.A. No.ABZPD1724G		
Revenue by	Shri Ashish Porwal, Sr. DR	
Respondent by	Shri S.N. Agrawal, CA	
Date of Hearing:	09.11.2020	
Date of Pronouncement:	08.01.2021	

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the Revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)(in short 'Ld. CIT(A)-II, Indore dated 21.08.2019 pertaining to assessment year 2010-11.

The assessee has raised following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of

Rs.90,00,000/- on account of bogus incurred loan u/s 68 and Rs.1,18,330/- on account of interest paid thereon as bogus loan are received from M/s. Purvi finvest Ltd., M/s. East West Finvest Ltd. and M/s. Trimurti Finvest Ltd, who have procured bogus share application money/premium from the paper companies of Kolkata and thereafter advances loan to the assessee and also many persons/entry/companies as per enquiries carried out through investigation Wing Kolkata.

2. Whether on the facts and in the circumstances of the case, The Ld. CIT(A) was justified in deleting the additions of Rs.90,00,000/- + interest of Rs.1,18,330/- inspite of specific findings of the Assessing Officer in the assessment order.

3. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.”

2. The facts giving rise to the present appeal are that the case of the assessee was reopened for assessment, on the ground that the assessee had obtained bogus share application money of premium. Therefore, the assessment was reopened, the assessing officer was found to have framed the assessment u/s 147 r.w.s 143(3) of the Income Tax Act 1961 (hereinafter referred as the Act) while framing the assessment, assessing officer noticed that perusing the details of “Loan and Advances” it was found that the assessee company had taken ‘Loan and Advances’ from three companies namely M/s. Purvi finvest Ltd., M/s. East West Finvest Ltd. and M/s. Trimurti Finvest Ltd and has charged interest thereon. The assessing officer did not

accept the explanation of the assessee and made addition of Rs.90,00,000/- in respect of the loan received from the said companies and also made addition of the interest paid to such companies of Rs. 1,18,330/-.

3. Aggrieved against this assessee preferred an appeal before Ld. CIT(A) who after considering the submissions deleted the addition.

4. Now the Revenue is in appeal before this Tribunal.

5. At the outset Ld. Counsel for the assessee submitted that the present appeal is not maintainable in the light of the Circular of the CBDT. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The submissions of the assessee are under ;

SYNOPSIS IN THE CASE OF DEPARTMENTAL APPEAL:

A.1] The present appeal is filed by the Department against the order of the Ld CIT (A)-2, Indore.

A.2] The grounds of appeal taken by the Department in the present appeal are summarized hereunder for your ready reference:

1. Whether on the facts and in the circumstances of the case, the CIT(A) was justified in deleting the addition of Rs. 90,00,000/- on account of bogus unsecured loan u/s 68 and Rs. 1,18,330/- on account of interest paid thereon as bogus loan are received from M/ s Purvi Finvest Ltd., M/ s East West Finvest Ltd. and M/ s Trimurti Finvest Ltd., who have procured bogus share application money/ premium from the paper companies of Kolkata and thereafter advanced loan to the assessee and also many persons/ entity/

companies as per enquiries carried out through Investigation Wing Kolkata.

2. Whether on the facts and in the circumstances of the case, the CIT(A) was justified in deleting the additions of Rs. 90,00,000/- + interest of Rs. 1,18,330/- in spite of specific findings of the Assessing Officer in the assessment order.

The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.

GROUND NO. 1 & 2 OF THE DEPARTMENTAL APPEAL:

1.1] The Department in these grounds of appeal has challenged the deletion of additions made by the assessing officer of Rs. 90,00,000/- and Rs. 1,18,330/- to the total income on account of unsecured loans received and interest paid thereon respectively thereby aggregating to Rs.91,18,330/-.

1.2.1] At the outset, **it is pertinent to mention that the present appeal as filed by the Department is not maintainable before the Hon'ble ITAT, Indore Bench** in light of the Circular No. 17/2019 dated 8th August, 2019 as issued by the Hon'ble CBDT wherein monetary limit of tax effect for filing of appeals by the Department before the Hon 'ble Income Tax Appellate Tribunal was enhanced to Rs. 50,00,000/- from the erstwhile monetary limit of Rs. 20,00,000/-

1.2.2] The Hon'ble CBDT in Para 4 of the Circular No. 3/2018 dated 11th July, 2018 defined the term 'tax effect' as the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed. The Circular also specifically mentioned that 'tax effect' shall be tax including applicable surcharge and cess but will not include any interest thereon.

1.2.3] The 'tax effect' involved in the present appeal as filed by the Department is computed hereunder for your ready reference:

S.No	Particulars	Amount [in Rs.]
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1.1	Amount of income assessed in the assessment order passed under section 147 r.w.s. 143(3) of the Act	1,14,65,710
1.2	Tax on the amount of income assessed inclusive of surcharge and cess	34,44,024
2.1	Amount of income as per the income-tax return filed in response to the notice issued under section 148 of the Act/ Amount of income assessed in the assessment order passed under section 143(3) of the Act	23,47,380
2.2	Tax on the amount of income returned inclusive of surcharge and cess	6,26,460
3	Tax Effect - Difference in the amount of tax on income assessed and income returned inclusive of surcharge and cess [1.2 (-) 2.2]	28,17,564

1.2.4] On perusal of the above table, it is quite clear that 'tax effect' involved in the present appeal was of Rs. 28,17,564/- which was less than Rs. 50,00,000/- and therefore, the present appeal as filed by the Department is not maintainable before the Hon'ble ITAT, Indore Bench.

1.3.1] However, the Hon'ble CBDT in Para 3 of its Circular No. 23 of 2019 dated 6th September, 2019 stated that **appeal may be filed on merits as an exception to the Circular** issued by the Hon'ble CBDT specifying monetary limits for filing of departmental appeals **in cases where Board, by way of special order, directs filing of appeal on merit in cases involved in organized tax evasion activity.**

1.3.2] The **Hon'ble CBDT** vide its Notification F. No. 279/Misc./M-93/2018-ITJ (Pt.) dated 16th September, 2019 **issued a Special Order exempting cases involving bogus Long Term Capital Gains (LTCG)/ Short Term Capital Loss (STCL) through penny stocks** from monetary limits specified in any Circular issued under section 268A of the Income-Tax Act, 1961.

1.3.3] In the facts of the present case, the respondent assessee

received unsecured loan of Rs. 90,00,000/- and paid interest thereon of Rs. 1,18,330/- which was duly substantiated with ample supporting documentary evidences. The case of the respondent assessee was not a case involving bogus Long Term Capital Gains (LTCG)/ Short Term Capital Loss (STCL) through penny stocks.

1.4] In view of the above, the present appeal as filed by the Department is not maintainable due to low tax effect.

6. Ld. Departmental Representative opposed the submissions and submitted that the issue fall in the exception clause of the circular issued by CBDT.

7. We have heard rival submissions and materials placed before us and gone through the orders of lower authorities. The contentions of the assessee are that case does not fall in the exception clause. He brought to our notice, Circular No.23 of 2019 dated 06.09.2019 and Office Memorandum dated 16.09.2019, for the sake of clarity both the Circular and Office Memorandum are reproduced as under;

Circular No. 23 of 2019

F, No . 279/Misc./M-93/2018-ITJ (Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes
Judicial Section

New Delhi, 6th September 2019

Subject: -Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income-tax Act, 1961-reg

Reference is invited to the Circulars issued from time to time by Central Board of Direct Taxes (the Board) under section 268A of the Income-tax Act, 1961 (the Act), for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court.

2. Several references have been received by the Board that in large number of cases where organised tax-evasion scam is noticed through bogus Long-Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial fora on account of enhanced monetary limits. It has been reported that in large number of cases, ITA Ts and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate fora have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.

3. In this context, Board has decided that notwithstanding anything contained in any circular issued U/S 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

4. Hindi version follows.

Sd/-
(Neetika Bansal)
Director (ITJ)
CBDT, New Delhi

Copy to:

1. Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.

2. All Chief Commissioners of Income tax and all Directors General of Income Tax.

3. ADG (PR, P&P), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
4. The Comptroller and Auditor General of India.
5. ADG (Vigilance), Mayur Bhawan, New Delhi
6. Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi
7. All Directorates of Income-tax, New Delhi and Pr. DGIT(NADT), Nagpur
8. ITCC (3 copies).
9. ADG (System)-4, for uploading on the Department's website.
10. Data Base Cell for uploading on irsofficersonline.gov.in.
11. njrs_support@nsdl.co.in for uploading on NJRS
12. Hindi Cell for translation .
13. Guard file

*F. No. 279/Misc./M-93/2018-ITJ(Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated: 16th September, 2019

OFFICE MEMORANDUM

Subject: -Special Order of Board exempting cases involving bogus Long Term Capital Gains(LTCG)/Short Term Capital Loss (STCL) through penny stocks from monetary limits specified in any Circular issued under Section 268A of the Income-tax Act, 1961-reg

*The undersigned is directed to refer to **Circular No. 23 of 2019 dated 6th September, 2019** and to say that by virtue of powers of the Central Board of Direct Taxes u/s 268A of Income-tax Act,1961, the monetary limits fixed for filing appeals before ITAT/HC and SLPs /appeals before*

Supreme Court shall not apply in case of assesses claiming bogus LTCG/STCL through penny stocks and appeals/SLPs in such cases shall be filed on merits.

Sd/-

*(Abh hek Gautam)
DCIT(OSD)(ITJ-1),
CBDT, New Delhi.*

Copy to:

- 1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.*
- 2. All Principal Chief Commissioners of Income-tax and Director Generals of Income-tax.*
- 3. ADG (PR, PP& OL), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.*
- 4. The Comptroller and Auditor General of India.*
- 5. ADG (Vigilance), Mayur Bhawan, New Delhi.*
- 6. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.*
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- 11. njrs_support@nsdl.co.in for uploading on NJRS.*
- 12. Guard file.*

DCIT(OSD)(ITJ-1),

8. We find that Ld. A.O has made addition in respect of loan and advances and interest thereon by observing as under;

5. While perusing the details of 'Loan and Advances' it was found that the assessee company has taken 'Loan and Advances' from three companies namely M/s East West Finvest India Ltd, M/s Purvi Finvest Limited & M/s Trimurthi Finvest Limited and has charged interest thereon. Hence, details of the said 'Loans and advances' vis-a-vis 'Unsecured loans' were called for and it was found that the assessee company had paid interest on the unsecured loans @9 to 12% .

5.1 The authorized representative of the assessee has appeared and submitted the explanation and submission vide letter dated 22.12.2017 and 27.12.2017. The details and the explanations submitted by the assessee are given due consideration and they are found to be not

acceptable. The assessee has taken 'Loan and Advances' from three companies namely M/s Purvi Finvest Limited, East West Finvest Limited and Trimurti Finvest Limited of Rs. 25,00,000/- , Rs. 25,00,000/- and Rs. 40,00,000/- respectively during the year 2009-10. The information has been received from DCIT1(1) Bilaspur stating that the companies M/s East West Finvest India Ltd, M/s Purvi Finvest Limited & M/s Trimurthi Finvest Limited that During the assessment proceedings for the A.Y. 2014-15 in the case of above mentioned companies it has come to notice that the company namely M/s Purvi Finvest Limited, East West Finvest Limited and Trimurti Finvest Limited has procured bogus share application money/premium from paper companies of Kolkata and thereafter advance loan to various persons/entity/companies. The directors of these concerns were found to be dummy directors to the entry operators. The lender company has given merely an entry as unsecured loan to assessee and assessee has used its unaccounted money in shadow of these companies as creditors. The assessee Shri Manoj Daga is also one of the beneficiary who has obtained entry as unsecured loan from M/s Purvi Finvest Limited, East West Finvest Limited and Trimurti Finvest Limited of Rs. 25,00,000/-, Rs. 25,00,000/- and Rs. 40,00,000/- respectively and the assessee has introduced his unaccounted money in shadow of these companies. Hence, the amount of Rs. 90,00,000/- is added as unexplained credits u/s 68 of the LT. Act. Hence the amount of interest paid by the assessee for those loans taken by above mention companies of Rs. 34,521/-, Rs.34,521/- and Rs.49,288/ respectively is disallowed and added back to the total income of the assessee for the A.Y. under reference. Penalty is initiated u/s 271 (1)(c) for concealment of income and furnishing inaccurate particulars of income.

9. Hence, from the assessment order it is evident that it is not the case where claim of bogus long term capital gain or short term capital gain is made. It could be a case of suspicious loan transaction. Since the suspicious loan transaction is not covered in the exceptions clause of CBDT circular. We find merit in the contention of the Ld. counsel for the assessee. Hence, we hold that

the present appeal is not maintainable in view of the monetary limit prescribed by CBDT Circular No.17 of 2019 dated 8th August 2019.

The appeal in ITANo.931/Ind/2019 is dismissed as not maintainable.

10. In result, appeal filed by the assessee is dismissed as not maintainable.

Order was pronounced in the open court on 08 .01.2021.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 08/01/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore