

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./M.A. No. 32 & 33/JP/2020
(Arising out of ITA Nos. 592 & 593/JP/2015)
निर्धारण वर्ष/Assessment Years : 2010-11 & 11-12.

The ACIT, Circle-1, Ajmer.	बनाम Vs.	M/s. Raj Auto Wheels Pvt. Ltd., 424/24, Ravan Ki Bagichi, Kaiser Ganj, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AADCR 3896 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Runi Pal, (Addl. CIT)

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya, Advocate
Shri Devang Gargieya, Advocate

सुनवाई की तारीख / Date of Hearing : 14.09.2022.
घोषणा की तारीख / Date of Pronouncement : 28/09/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

By way of these two Miscellaneous Applications, the Revenue is seeking recalling of the order of the Tribunal dated 21.08.2019 whereby the appeals of the revenue were dismissed on the basis of CBDT Circular No. 17/2019 dated 08.08.2019 and held that the appeal is not maintainable being tax effect below the monitory limit prescribed for filing of the appeal before the ITAT. The Tribunal while deciding the appeal of the revenue has given liberty to the department to file Miscellaneous Application in case the tax effect is found to be more than the

monitory limit of Rs. 50,00,000/- or the case falls in any of the exceptions of the CBDT Circular.

First, we take up M.A. No. 32/JP/2020 arising out of ITA No. 592/JP/2015 for the assessment year 2010-11.

2. The present Miscellaneous Application has been filed by the revenue for recalling of the Tribunal's order dated 21.08.2019 passed by the Coordinate Bench of the Tribunal in ITA No. 592/JP/2015 for the A.Y. 2010-11. It was submitted by the Id. D/R that in this case prosecution sanction was granted by worthy PCIT for prosecuting the Directors as well as the assessee company. Thereafter, the assessee approached the Hon'ble Rajasthan High Court for stay of proceedings and the Hon'ble High Court has granted stay on prosecution proceedings vide order dated 21.02.2019. It was also submitted by Id. D/R that at the time of passing the order in ITA No. 592 & 593/JP/2015, it was categorically mentioned by the Bench that the Department is at liberty to file the Miscellaneous Application in case the tax effect in these appeal are found to be more than Rs. 50,00,000/- or the case falls in any of the exceptions of the Circular. According to Id. D/R, since the prosecution was pending against the assessee company as well as the Directors, therefore, this case falls under the exception and thus could not be dismissed on account of low tax effect by relying upon the Circular of CBDT.

3. On the contrary, the Id. A/R appearing on behalf of the assessee submitted that prosecution in one of the cases for Assessment Year 2010-11 was sanctioned by the Id. PCIT against which the assessee filed petition before the Hon'ble Rajasthan High Court and the Hon'ble High Court was pleased to stay the

proceedings/prosecution vide order dated 21.02.2019. Thus in this way no prosecution is pending as on the date. Thus the present Miscellaneous Application deserves to be dismissed.

4. We have heard rival contentions and also perused the material available on record. From the facts on record, we noticed that appeals filed by the Department in ITA Nos. 592 & 593/JP/2015 for assessment years 2010-11 & 11-12 were dismissed by the Coordinate Bench of the Tribunal by relying upon CBDT Circular No. 17 of 2019 by concluding that the appeals of the department are not maintainable as the monetary limit in these appeals was less than Rs. 50,00,000/-. However, at the time of dismissal of the appeals, the Coordinate Bench had given liberty to the Department to file Miscellaneous Application in case the tax effect in these appeals are found to be more than Rs. 50,00,000/- or the case falls in any of the exceptions of the circular. Now, the Id. D/R has placed on record the copy of Circular as well as the report of DCIT dated 19.07.2022 and 02.08.2022 wherein it is categorically mentioned that the prosecution against the assessee company and its erstwhile and present Directors was filed before the Economic Offence Court, Jaipur in March, 2018 under section 276C(2) read with section 278B for A.Y. 2010-11 after taking approval from the then PCIT, Ajmer and the assessee thereafter approached the Hon'ble Rajasthan High Court for granting of stay and ultimately the Hon'ble High Court has granted stay on prosecution vide order dated 09.05.2018 and further order dated 21.02.2019. However, merely granting of stay does not mean that the prosecution launched by the Department has come to an end. The requirement of the Circular is very clear wherein as per clause (f) it has been categorically

mentioned that "cases where prosecution has been filed by the department and is pending in the Court", then in that eventuality this condition falls in exception to Circular No. 3 of 2018 dated 11.07.2018. Thus in our view, since assessment year 2010-11 regarding which prosecution has already been launched by the Department falls under the exception clause and thus the appeal for A.Y. 2010-11 bearing ITA No. 592/JP/2015 could not have been dismissed on account of low tax effect, therefore, in our view, the decision to dismiss the appeal of the revenue on low tax effect by ignoring the exception clause of CBDT Circular is an error which is apparent on record. Therefore, we recall the order dated 21.08.2019 passed in ITA No. 592/JP/2015 for assessment year 2010-11 and restore the appeal filed by the department with a direction to the Registry to list the appeal in the regular course and notice be issued to both the parties.

5. Now we take up M.A. No. 33/JP/2020 arising out of ITA No. 593/JP/2015. In this regard our attention is drawn towards the report of DCIT dated 19.07.2022 wherein it has categorically been mentioned by the Department that no prosecution for assessment year 2011-12 was filed against the assessee company. Therefore, considering the said report of the Department it is crystal clear that the case of the assessee does not fall under the exception clause of CBDT Circular. Therefore, the revenue has no case to point out the error while passing order by the Coordinate Bench in ITA No. 593/JP/2015 for A.Y. 2011-12. Therefore, Miscellaneous Application bearing no. 33/JP/2020 arising out of ITA No. 593/JP/2015 filed by the Department for the assessment year 2011-12 stands dismissed as discussed above.

6. No order as to cost.

Order pronounced in the open court on 28/09/2022.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/09/2022.

das/

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

1. अपीलार्थी / The Appellant-The ACIT, Circle-1, Ajmer.
2. प्रत्यर्थी / The Respondent-M/s. Raj Auto Wheels Pvt. Ltd., Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {M.A No. 32 & 33/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar