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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 318/2011

CIT

..... Appellant

Through: Mr.Puneet Rai, senior standing  
counsel for the Revenue.

versus

ASHOK MITTAL

..... Respondent

Through: Mr. Sandeep Mittal, Advocate.

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Date of Decision: 05<sup>th</sup> July, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, J (Oral):****CM APPL. 7597/2020 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**CM APPL.7578/2020 (for directions)**

1. Present application has been filed on behalf of the respondent seeking disposal of the appeal on the ground that the tax effect in the present case is lower than the threshold limit of Rs.1,00,00,000/- (Rupees One Crore) as stipulated in Circular No. 17/2019 dated 8<sup>th</sup> August, 2019 issued by the Central Board of Direct Taxes.



2. Learned counsel for the respondent relies upon a calculation sheet annexed at page 15 of the present application. The said calculation sheet is reproduced hereinbelow :

<i>ASHOK MITTAL A.Y. 2003-04 CALCULATION OF TAX EFFECT IN ITA 318/2011 BEFORE HON'BLE DELHI HIGH COURT</i>			
<i>S.No.</i>	<i>Particulars</i>		<i>Amount (Rs.)</i>
<i>I</i>	<i>Income returned by the respondent in his Income Tax Return for AY 2003-04 (As per Revised Return filed on 15.10.2004)</i>		<i>-4,017,829</i>
	<i>Income Tax (including surcharge, if any) payable thereon</i>		<i>NIL</i>
<i>II</i>	<i>Income assessed by Assessing Officer vide order dated 29.03.2006 passed under section 143(3) of the Income Tax Act. (After making various disallowances)</i>		<i>33,771,920</i>
	<i>Income Tax (including surcharge, if any) payable thereon</i>		<i>10,610,855</i>
	<i>Upto 50,000</i>		
	<i>50,000 to 60,000@ 10%</i>	<i>1,000</i>	
	<i>60,000 to 1,50,000 @ 20%</i>	<i>18,000</i>	
	<i>Above 1,50,000 @ 30%</i>	<i>10,086,576</i>	
	<i>Tax Liability</i>	<i>10,105,576</i>	
	<i>Surcharge @ 5%</i>	<i>505,279</i>	
	<i>Net Tax Liability</i>	<i>10,610,855</i>	
<i>II</i>	<i>Income after the effect of CIT(A) order dated 10.12.2008 in Appeal No. 165/06-07</i>		<i>-3,167,834</i>



	<i>Income Tax (Including surcharge, (if any) payable thereon.</i>		<i>NIL</i>
<i>III</i>	<i>Income after the effect of ITAT order dated 11.09.2009 in I.T.A. 414/DEL OF 2009 and I.T.A. 749/DEL OF 2009</i>		<i>-3,772,834</i>
	<i>Income Tax (Including surcharge, (if any) payable thereon.</i>		<i>NIL</i>
<i>IV</i>	<i>Department's Appeal against the above order of ITAT dated 11.09.2009 with Hon'ble Delhi High Court in ITA 318/2011 admitted on the following grounds. (persuant to Hon'ble Delhi High Court's order dated 07.12.2011)</i>		
	<i>Commitment charges</i>	<i>30,000,000</i>	
	<i>Redemption fine u/s 125 of custom duty</i>	<i><u>605,000</u></i>	
		<i>30,605,000</i>	
	<i>Income of the respondent after considering the above pending issues before Hon'ble Delhi High Court</i>		<i>26,832,166</i>
	<i>Income Tax effect (including surcharge, if any) thereon</i>		<i>8,424,832</i>
	<i>upto 50,000</i>		
	<i>50,000 to 60,000 @ 10%</i>	<i>1,000</i>	
	<i>60,000 to 1,50,000 @ 20%</i>	<i>18,000</i>	
	<i>Above 1,50,000 @ 30%</i>	<i><u>8,004,650</u></i>	
	<i>Tax Liability</i>	<i>8,023,650</i>	
	<i>Surcharge @ 5%</i>	<i><u>401,182</u></i>	
	<i>Net Tax Liability</i>	<i><u>8,424,832</u></i>	



3. However, learned counsel for the appellant-revenue vehemently disputes the calculation sheet filed by the respondent annexed at page 15 of the application. He states that the tax effect in the present appeal is Rs.1,23,48,242/- (Rupees One Crore Twenty Three Lacs Forty Eight Thousand Two Hundred and Forty Two only).

4. In rejoinder, learned counsel for the respondent admits that the calculation sheet, annexed at Page 15 of the application, has been prepared by the assessee. He further admits that, as this court had not framed any question under Section 41(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in respect of alleged unclaimed balances, the assessee had not taken the same into account while calculating the tax effect.

5. In the case of *Late Shri Gyan Chand Jain through LR vs. Commissioner of Income Tax-I, Civil Appeal No.2704/2022*, the Apex Court in its judgment dated 19<sup>th</sup> April, 2022 has held that in calculating the tax effect, what has to be considered is what was under challenge before the Tribunal as well as the High Court. The Supreme Court emphasized that what is relevant is the issues that were canvassed before the Tribunal as well as before the High Court. It further held that the reduction in penalty in view of the subsequent order could not oust the jurisdiction. The relevant portion of the Supreme Court's judgment is reproduced hereinbelow :

*“2.2 Now so far as the primary submission on behalf of the appellant assessee that as the penalty amount was substantially reduced to Rs.6 lakhs and even the subsequent demand notice was for an amount of Rs.6 lakhs (approximately) only and therefore in view of the CBDT Circular dated 10.12.2015 the tax effect being lower than the permissible limit to prefer the appeal before the High Court and therefore the appeal before*



*the High Court was not maintainable is concerned, at the outset it is required to be noted that what was assailed by the Revenue was the penalty amounting to Rs.29,02,743/ and not the penalty reduced by the CIT(A). Before the Tribunal, both the Revenue, as well as the assessee, preferred the appeals and the entire penalty amounting to Rs.29,02,743/ was an issue before the Tribunal as well as before the High Court. The subsequent reduction in penalty in view of the subsequent order cannot oust the jurisdiction. What is required to be considered is what was under challenge before the Tribunal as well as the High Court. At the cost of repetition, it is observed that what was challenged by the Revenue was the penalty amounting to Rs.29,02,743/ and not the subsequent reduction of penalty by the CIT(A). The aforesaid aspect has been dealt with by the High Court in paragraph 17 of the impugned judgment and order. We are in complete agreement with the view taken by the High Court. Therefore, it cannot be said that the appeal before the High Court at the instance of the Revenue challenging the order passed by the ITAT was not maintainable in view of CBDT circular dated 10.12.2015.”*

6. Consequently, this Court is of the view that even if this Court has not framed any question of law under Section 41(1) of the Act in respect of alleged unclaimed balances, yet the quantum of the same would have to be taken into account while calculating the tax effect involved in the present case.

7. Further, in the present case, when the appeal was filed before the Commissioner of Income Tax (Appeals), the tax/penalty amount in dispute was mentioned as Rs.1,46,41,840/- in the order passed by the appellate authority. The said computation has not been challenged till date. Consequently, this court is of the view that the tax effect in the present appeal is higher than the threshold limit of Rs. 1,00,00,000/- (Rupees One Crore). Accordingly, the present application is dismissed.



**ITA 318/2011**

List in due course.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**JULY 5, 2022**

**j/KA**

HIGH COURT OF DELHI



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