

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.2480/Mum/2012
Assessment Year: 2007-08**

DCIT, Circle 3(1), R. No.607, 6 th Floor, Aayakar Bhavan, Mumbai-400020	बनाम/ Vs.	M/s. Dome Bell Electronics India Ltd., 171-C, Mittal Court, 17 th Floor, Nariman Point, Mumbai-21
(Revenue)		(Respondent)
P.A. No.AAACD6266G		

Revenue by	Shri B.B. Rajendra Prasad (DR)
Respondent by	Shri Vijay Mehta (AR)

सुनवाई की तारीख / Date of Hearing :	30/06/2016
आदेश की तारीख / Date of Order:	22/07/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Revenue against order of Ld. order of Ld. Commissioner of Income Tax (Appeals)-6 Mumbai, {(in short 'CIT(A)}}, dated 31.08.2013 passed against

assessment order u/s 143(3) 31.12.2009 for the Assessment Year 2007-08.

2. During the course of hearing, arguments were made by Shri Vijay Mehta, Authorised Representative (AR) on behalf of the Assessee and by Shri B.B. Rajendra Prasad, Departmental Representative (DR) on behalf of the Revenue.

3. In this case Ld. Counsel of the assessee at the very outset brought to our notice that tax effect in this case is for Rs. 9,35,762/- and therefore, this appeal was not maintainable in view of Board's Circular Dated 10th December 2015 No. 21/2015. But, it was fairly submitted by him that on the amount of tax, amounts of surcharge and education cess were also payable amounting to Rs.9,35,76/- & Rs.30,880/- respectively. It was further submitted by him that for the purpose of computing 'tax effect' for the purpose of aforesaid circular, only 'tax' amount is to be seen as defined u/s 2(43) of the Act and surcharge/education excess are not to be considered for this purpose. He relied upon decision of Hon'ble Chennai Bench of the Tribunal in the case of ACIT vs. Shri R. Viswanathan dated 23.09.2011 (ITA No.30/Mds/2011) M.P. No.155/Mds/2011.

3.1. Per contra Ld. DR was not in a position to point out any contrary judgments.

3.2. We have gone through the facts of this case and also gone through the aforesaid circular as well as sub-section (43) of section 2 of the Act which defines word 'tax'. It is noted that

the identical issue came up before the Hon'ble Chennai Bench wherein Hon'ble Bench held as under:

"We find that in clause (4) of Instruction No.5 of 2008 dated 15th May, 2008 of CBDT, tax effect is defined as under:-

"4. For this purpose, "tax effect" means 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 issue against which appeal is intended to be filed (hereafter referred to as "disputed issues"). However, the tax will not include any interest thereon. Similarly, in loss cases notional tax effect should be taken into account. In the case of penalty orders, the tax effect will mean 3 M.P. No. 155/Mds/11 quantum of penalty deleted or reduced in the order to be appealed against."

Nothing has been mentioned in the above definition to show that tax will include surcharge for the purpose of applying the said Circular. Now if we look at the definition of "tax" as per sub-section (43) of Section 2 of Income-tax Act, 1961, it runs as under:-

"(43) "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income-tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date [and in relation to the assessment year commencing on the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under Section 115WA]"

It is clear that tax, as per the above definition, would include supertax and also fringe benefit tax but not surcharge. Admittedly, here, the tax was only Rs. 2,90,250/- which is below the limit of Rs.3 lakhs prescribed in the Circular for filing appeals before this Tribunal. Resultantly, we do not find any mistake in the order of this Tribunal much less any mistake apparent on record.

3.3. We have also gone through sub-section (43) of section 2 which defines 'tax'. The perusal of the definition shows that whatever was intended to be included in tax has been mentioned therein. When the legislature has mentioned the words 'super-tax' and 'fringe benefit tax', then, it could have also mentioned the words 'surcharge' and 'education cess' as well, if there was any intention to include them in the word 'tax'. Thus, we respectfully agree with the decision taken by the Chennai Bench. In our view, surcharge and education cess shall not be include in word 'tax' for the purpose of examining of tax effect as envisaged in circular of Board dt 10th December 2015 No.21/2015. Thus, the tax effect being less than 10 lakhs, impugned appeal filed by the revenue is not maintainable and therefore same is hereby dismissed. Our order has no effect on the merits of this case.

4. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 22nd July, 2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 22/07 /2016

Patel, P.S. नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.

4. आयकर आयुक्त / CIT(A)- , Mumbai
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**