

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai**

**Before Shri R.V. Easwar, President  
and Shri B. Ramakotaiah, Accountant Member**

**ITA No. 2165/Mum/2010**  
(Assessment Year: 2004-05)

Income Tax Officer - 8(2) - 2  
Room No. 212, 22nd Floor  
Aayakar Bhavan, M.K. Road  
Mumbai 400020

**Appellant**

M/s. Laxmi Jewel Pvt. Ltd.  
Vs. GJ/66, SDF-VII, SEEPZ  
Andheri (E), Mumbai 400096  
PAN - AAACJ 7385 G

**Respondent**

Appellant by: Shri Shravan Kumar  
Respondent by: Shri K.A. Vaidyalingan

**ORDER**

**Per B. Ramakotaiah, A.M.**

This appeal by Revenue is against the order of the CIT(A) XVII, Mumbai dated 23.12.2009.

2. Revenue has raised two grounds on the issue of directing the A.O. to allow deduction under section 10A amounting to ₹5,78,432/- in respect of interest income, which according to the A.O. was not derived from the business or profession.

3. Briefly stated, assessee, engaged in the business of manufacturing and export of studded jewellery, claimed exemption under section 10A in respect of the income of its industrial undertaking at SEEPZ, Mumbai. As a part of business assessee had kept margin money deposit of ₹1 crore in Bank of India and obtained credit facility against the deposit. Assessee received an interest income of ₹5,78,432/- and paid interest of ₹68,55,835/- during year under consideration. In the P & L Account of the assessee the above amounts are credited and debited, respectively. The A.O. was of the opinion that interest earned on fixed deposit has to be treated as income from other sources. It was assessee's contention that the interest earned has a link with the interest paid and the deposit was made out of borrowed funds only for the purpose of margin money. The A.O. did not agree and

treated the interest income as income from other sources and completed the assessment while allowing deduction under section 10A to the rest of income. The CIT(A), after considering the submissions and provisions of section 10A, following the ITAT order in the case of Living Stones Jewellery (P) Ltd. vs. DCIT 31 SOT 323 observed that the interest earned has nexus with the business of the undertaking which will qualify for deduction. Accordingly he directed the A.O. to grant exemption under section 10A. Revenue is aggrieved.

4. At the outset the learned counsel submitted that the tax amount involved in this appeal is only ₹2,07,512/- and as per instruction No. 3/2011 the Revenue should not contest appeal upto ₹3,00,000/- as per the new monitory limit. It was further submitted that the Hon'ble Bombay High Court in the case of CIT vs. Madhukar K. Inamdar (HUF) 318 ITR 149 considered the maintainability of the appeals on small tax basis and held that CBDT circular issued later would be applicable to all the appeals pending in appellate forums and, therefore, relying on the CBDT instruction No. 5 of 2008 the appeals were dismissed where the tax effect was less than the prescribed limit. The learned counsel relied on the principles established in the above said case to submit that the present limit of ₹3,00,000/- make the Revenue appeal non-maintainable as the tax effect is less than ₹3,00,000/-. He further submitted that the Hon'ble Delhi High Court in the case of CIT vs. Delhi Race Club Ltd. in ITA No. 128 of 2008 dated 03.03.2011 relied on the latest CBDT Instruction to dismiss the appeal as not maintainable. It was the submission of the learned counsel that the appeal is not maintainable.

5. The learned D.R., however, objected to the submissions stating that at the time of preferring the appeal the tax limit was only ₹2,00,000/- and that instruction was followed.

6. We have considered the issue. There is no doubt that the tax effect in this case is only ₹2,07,512/-. As per Instruction No. 3 of 2011 dated 09.02.2011 appeal before appellate Tribunal can be filed where the tax effect exceeds the monitory limit of ₹3,00,000/-. However, considering the similar

situation where tax limits were modified by the CBDT Instruction No. 5 of 2008 the Hon'ble jurisdictional High Court in the case of CIT vs. Madhukar K. Inamdar (HUF) (supra) held that the circular will be applicable to the cases pending before the court either for admission or for final disposal. In view of the order of the jurisdictional High Court we hold that Instruction No. 3 dated 09.02.2011 is applicable for the appeal preferred by the Revenue. Therefore, the appeal is dismissed on the issue of tax effect involved. Even otherwise there is no case for the Revenue on merits as the issue was held in against the Revenue by the ITAT order in the case of Living Stones Jewellery (P) Ltd. vs. DCIT 31 SOT 323, which the CIT(A) followed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court at the time of hearing on 12<sup>th</sup> April 2011.

Sd/-  
**(R.V. Easwar)**  
**President**

Sd/-  
**(B. Ramakotaiah)**  
**Accountant Member**

Mumbai, Dated: 12th April 2011

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – XVII, Mumbai*
4. *The CIT– VIII, Mumbai City*
5. *The DR, “A“ Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'I' MUMBAI

BEFORE SHRI R.K. PANDA (AM) AND SMT. ASHA VIJAYARAGHAVAN (JM)

ITA Nos. 648 to 651/Mum/2010  
Assessment years-2006-07 & 2007-08

The ITO (TDS) 2(1), Smt. K.G. Mittal Ayurvedic Hospital Bldg., Charni Road, Mumbai-400 002	Vs.	M/s. India Safety Vaults Ltd., White Hall, 143, August Kranti Marg, Mumbai-400 036  PAN-AAACI 1002M
(Appellant)		(Respondent)

Appellant by: Shri Chandrajit Singh  
Respondent by: Shri Sanjiv M. Shah

**ORDER**

**PER ASHA VIJAYARAGHAVAN (JM)**

This appeal preferred by the Revenue is directed against the order dated 30.11.2009 passed by the Id. CIT(A)-14 Mumbai for the Assessment Years 2006-07 & 2007-08.

2. The Ld. Counsel for the assessee Shri Sanjiv M. Shah pointed out that by Instruction No. 3 dt. 9.2.2011, the monetary limit for filing the departmental appeal before the Appellate Tribunal has been fixed at Rs. 3 lacs i.e. to say that department appeals shall not be filed in cases where the tax effect does not exceed the monetary limit of 3 lakhs.

3. The Ld. Departmental Representative Shri Chandrajit Singh objected to the Ld. Counsel's plea. The Ld. DR further relied on the decision of CIT Vs Chhajer Packaging & Plastics Pvt. Ltd. 300 ITR 180.

The Ld. DR further argued that the Board's Instruction is to be applied prospectively and that it makes no reference to pending matters.

4. The Ld. Counsel for the assessee on the other hand relied on the decision of the Bombay High Court in the case of CIT Vs. Madhukar K. Inamdar (HUF) 318 ITR 149 and CIT Vs Pithwa Engg. Works 276 ITR 519 (Bom) .

5. We heard both the parties. The case of CIT Vs Chhajer Packaging & Plastics Pvt. Ltd. 300 ITR 180 relied on by the DR is distinguishable from the facts of the present case. At para 12 page 184 of the decision in the case of Chhajer Packaging & Plastics Pvt. Ltd. it has been held as follows:

*Otherwise also, paragraph 3 of this circular itself saves certain appeals from being obstructed due to financial limits. Paragraph 3 reads :*

*"The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar cases, should be separately considered on the merits without being hindered by the monetary limits."*

*It is evident that, whenever there is a substantial question of law, or question of law which is likely to recur in future, the Department is not prohibited from filing and pursuing appeals. We believe that the saving clause saves the present appeal since it involves a question of law regarding interpretation of section 275(1)(c) of the Act, and more particularly the aspect of manner in which the limitation should be computed in the light of the said provisions. We have, therefore, proceeded to hear the advocates on the merits.*

6. In our opinion the case of CIT Vs Chhajer was with respect to interpretation of 275 (1)(c) of the Act and hence came under the exception clause under the CBDT Circular and was not obstructed by the monetary limit of Rs. 3 lacs prescribed by the Circular. Therefore the case of 300 ITR 180 is inapplicable to the facts of our case.

7. Further the ITAT Mumbai 'A' Bench in ITA No. 2165/M/2010 for assessment year 2004-05 in the case of M/s. Laxmi Jewel Pvt. Ltd. has held as follows:

*"We have considered the issue. There is no doubt that the tax effect in this case is only ₹. 2,07,512/-. As per Instruction No. 3 of 2011 dt. 9.2.2011 appeal before appellate Tribunal can be filed where the tax effect exceeds the monetary limit of ₹. 3,00,000/-. However, considering the similar situation where tax limits were modified by the CBDT Instruction No. 5 of 2008 the Hon'ble Jurisdictional High Court in the case of CIT Vs Madhukar K. Inamdar (HUF) (supra) held that the circular will be applicable to the cases pending before the court either for admission or for final disposal. In view of the order of the Jurisdictional High Court we hold that Instruction No. 3 dt. 9.2.2011 is applicable for the appeal preferred by the Revenue. Therefore, the appeal is dismissed on the issue of tax effect involved. Even otherwise there is no case for the Revenue on merits as the issue was held in against the Revenue by the ITAT order in the case of Living Stores Jewellery (P) Ltd. Vs. DCIT 31 SOT 323, which the CIT(A) followed.*

*In the result, appeal of the Revenue is dismissed.*

Respectfully following the above decisions, we dismiss the Revenue's appeals.

8. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced on this 29<sup>th</sup> day of April, 2011

Sd/-  
(R.K. PANDA)  
Accountant Member

Sd/-  
(ASHA VIJAYARAGHAVAN)  
Judicial Member

Mumbai, Dated 29<sup>th</sup> April, 2011  
Rj

*Copy to :*

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT-concerned*
- 4. The CIT(A)-concerned*
- 5. The DR '1' Bench*

*True Copy*

*By Order*

*Asstt. Registrar, I.T.A.T, Mumbai*

		Date	Initials	
1	Draft dictated on:	27.04.2011		Sr. PS/PS
2.	Draft placed before author:	27.04.2011	_____	Sr. PS/PS
3.	Draft proposed & placed before the second member:	_____	_____	JM/AM
4.	Draft discussed/approved by Second Member:	_____	_____	JM/AM
5.	Approved Draft comes to the Sr. PS/PS:	_____	_____	Sr. PS/PS
6.	Kept for pronouncement on:	_____	_____	Sr. PS/PS
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9.	Date on which file goes to AR			
10.	Date of dispatch of Order:	_____	_____	