NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 622 of 2019

- The Income Tax Officer Aaykar Bhawan, Behind Jhankar Talkies, Civil Lines, Jagdalpur, District- Bastar, Chhattisgarh.

---- Applicant

Versus

- Smt. Sarla Gupta W/o Mukesh Gupta Prop. M./s Electronic Traders Vadhera Complex, Jagdalpur, District- Bastar, Chhattisgarh.

---- Respondent

MCC No. 624 of 2019

- The Income Tax Officer Aaykar Bhawan, Behind Jhankar Talkies, Civil Lines, Jagdalpur, District Bastar Chhattisgarh.

---- Applicant

Versus

- Smt. Sarla Gupta W/o Mukesh Gupta, Prop. M/s Electronic Traders Vadhera Complex, Jagdalpur, District Bastar Chhattisgarh.

---- Respondent

MCC No. 625 of 2019

- The Income Tax Officer Aaykar Bhawan, Behind Jhankar Talkies, Civil Lines, Jagdalpur, District- Bastar, Chhattisgarh.

---- Applicant

Versus

- Smt. Sarla Gupta W/o Mukesh Gupta Prop. M/s Electronic Traders Vadhera Complex, Jagdalpur, District- Bastar, Chhattisgarh.

---- Respondent

For Applicant :- Shri Amit Chaudhari, Advocate and Ms. Naushina Afrin Ali, Advocate.

Hon'ble Shri Prashant Kumar Mishra
Hon'ble Shri Parth Prateem Sahu, JJ.

Order On Board

By

Prashant Kumar Mishra, J.

16/09/2019

1. This order shall govern disposal of MCC Nos. 622 of 2019, 624 of 2019 and 625 of 2019. The relevant tax cases were dismissed for the reason that they were hit by the monetary limit of Rs.50 Lacs fixed by the CBDT in its circular dated 11.07.2018. The tax liability for the relevant assessment year was less than Rs.50 Lacs, therefore, the appeals were dismissed as not maintainable.

2. In these MCCs, it is argued by learned counsel for the Revenue that the tax cases were maintainable on merits for the reason that they were in the category of exception as

mentioned in clause 10(c) of the CBDT circular dated 11.07.2018. He would submit that there was an audit objection in respect of the assessee's return, therefore, under clause 10 (c), the tax cases should be heard on merits.

3. We have seen the order passed by the AO for each of the assessment year. The AO would refer to reference made by the department to the Comptroller and Auditor General seeking correct interpretation of the provisions. The CAG, in its turn, observed that " the reply submitted is not accepted". Reliance placed on the judgment of Kolkata High Court decision in the case of **Bharti Cellular Ltd. Vs. ACIT Circle 57, Kolkata (2011) 12 Taxman 30 (Cal)** wherein it was decided "that there was principal agent relationship and the discount was, in real sense, commission paid to resellers and same would attract to the provisions of section 195H".

4. Bare perusal of the above observation of the CAG would make it manifest that the same was a reply to the query raised by the revenue and there was no audit objection by the CAG of its own referring to any mistake in the order of the AO. Clause 10(c) refers to the word **<u>Revenue Audit Objection</u>**, it does not refer to any observation by the CAG on reference made by the department. There is difference between Audit objection and an answer to the query raised

by department. Thus, the argument raised by learned counsel for the revenue that the appeal preferred by the department would be within the exception clause 10(c), is not acceptable.

5. Our earlier order dismissing the appeal being hit by the monetary limit does not call for reconsideration.

6. Accordingly, the MCCs deserve to be and are hereby dismissed.

SD/-
(**Prashant Kumar Mishra**)
Judge

SD/-
(**Parth Prateem Sahu**)
Judge

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