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

% *Date of Decision : 07.05.2025*

+ **ITA 173/2024**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3Appellant

Through: Mr Anant Mann, JSC

versus

SIS LIVE

.....Respondent

Through: Mr P.Roy Chaudhuri with Mr Rishi
Bhatnagar and Mr Rishabh Gaur,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 8660/2025

1. The respondent has filed the present application, *inter alia*, praying as under:

“Allow the present application and dismiss the present appeal, being ITA No. 173/2024 on the ground of low tax effect as per CBDT Circular No. 09/2024 dated 17.09.2024 read with CBDT Circular No. 05/2024 dated 15.03.2024.”

2. The Assessee has also placed on record the computation of tax effect in the present case, which indicates that it is below the threshold limit of ₹2 crores as stipulated in Circular No.5 of 2024 dated 15.03.2024 as modified by the Circular No.9 of 2024 dated 17.09.2024 issued by Central Board of



Direct Taxes [CBDT]. In terms of the said circular, the threshold tax limit for appealing before this court was stipulated at ₹2 crores. The Assessee has set out a tabular statement computing the tax effect in the present case as ₹1,13,33,599/-. Paragraph 5 of the present application that includes the said tabular statement is set out below:

“5. That in the present case, the loss of Rs.28050853.00 has been converted into profit/income of Rs.10011906.00. Therefore, the notional addition comes to Rs.38062759.00 (28050853.00 + 10011906.00). The tax effect on Rs.38062759.00 for the relevant Assessment Year is Rs.11333599.00 the calculation of which is shown below:

Particulars	Amount (INR)
Tax@ 30% on Rs. 28199882.00 (Rs. 38062759.00 - Rs.9862877.00)* *This amount of Rs.9862877.00 to be taxed @15% as per Assessment Order	8459965.00
Tax@ 15% on interest income of Rs. 9862877.00	1479432.00
Total notional tax	9939397.00
Add Surcharge @ 12%	1015196.00
Add cess @ 4% on tax and surcharge	379006.00
Total tax effect in terms of CBDT Circular	11333599.00

”

3. There is no cavil with the calculation as set out by the Assessee.



However, according to the Revenue the tax effect in the present case would be higher as the AO has also observed that the losses of earlier years cannot be permitted to be brought forward. Thus, the Revenue contends that the tax on the losses which were assessed in the assessment years prior to Assessment Year [AY] 2018-19 must also be taken into account to determine the overall tax effect.

4. The learned counsel appearing for the Revenue has referred paragraph 5.1 of the Circular which provides for the manner in computing the tax effect ascertaining whether the same exceeds the threshold as specified in the said circular. We consider it apposite to set out the said paragraph 5.1 of the CBDT's Circular:

“5.1 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 issues against which appeal is intended to be filed (hereinafter referred to as ‘disputed issues’). Further, ‘tax effect’ shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.”

[emphasis added]

5. It would be necessary to refer to the assessment order for determining the tax effect in accordance with paragraph 5.1 of the said Circular as mentioned above. Paragraph 23 of the assessment order assesses the total income of the Assessee at ₹91,06,616/-. Paragraph 23 of the assessment



order is set out below:

“23. Pursuant to directions of Hon'ble DRP-2, New Delhi, the income of the assessee is re-computed as below;

Particulars	Amount (in Rs.)
Income from business & profession as reported in ITR	(4,54,08,852/-)
Disallowance of expenses	4,53,42,685/-
Net business income	(66,167/-)
Interest from refund	2,62,230/-
Interest income as discussed above to be taxed @15%	89,10,553/-
Total income	91,06,616/-

”

6. In the present case, the Assessee had filed an income returning a loss, however, the AO had enhanced the income of the Assessee to reflect the assessed income at ₹1,00,11,906/-. Thus, the first step for calculating the tax effect would be to determine the quantum by which the returned loss is reduced. In the present case, the entire returned loss of ₹4,54,08,852/- has been wiped out by the additions made by the AO and further the AO has assessed the income at ₹91,06,616/-. Thus, the total tax effect is to be determined on an amount of ₹5,45,15,468/- [₹4,54,08,852/- + ₹91,06,616/-]. Concededly, the tax effect on the said amount is less than the stipulated limit of ₹2 crores.

7. The contention that the losses assessed in the previous assessment years must also be taken into account as the carry forward of the same has been disallowed is unmerited. We do not find the machinery to compute the



tax effect as posited in paragraph 5.1 of the aforementioned Circular contemplates taking into account the observations made by the AO in regard to the losses assessed in the previous years which have been carried forward. Thus, although the AO in the present case has noted that the business losses of prior years amounting to ₹56,40,20,407 are also required to be disallowed. The same does not require to be included for the purposes of computing the tax effect under paragraph 5.1 of the aforementioned CBDT Circular.

8. In the aforesaid event, the Revenue is required to accept the decision of the Income Tax Appellate Tribunal, which is the subject matter of appeal in the present petition as final.

9. There is also no cavil that losses for prior assessment years cannot be disallowed without reopening of the assessments for prior years, which in this case have attained finality.

10. The application is accordingly allowed.

ITA 173/2024 and CM APPL. 15027/2024

11. In view of the above, the appeal is dismissed. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 07, 2025/tr

[Click here to check corrigendum, if any](#)