आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 6809/Mum/2017

(निर्धारण वर्ष / Assessment Year 2009-10)

DCIT, CC-5(1), R.No. 1928, 19th Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	Halan International (Prop. Om Hari Halan) 20, 4th Floor, Bhatia Niwas, 233/235, Samuel Street, Mumbai-03
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN NO. AAAPH1353B**		

अपीलार्थी की ओर से / **Appellant by**	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / **Respondent by**	:	None

आयकर अपील सं./ ITA No. 6752/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 6753/Mum/2016

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 6755/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

ACIT, 5(3)(2) Room No. 573, Aayakar Bhavan, 5th Floor, Mumbai-20	Vs.	Sterling Jewels Private Ltd. Unit No.208, A-Z, Industrial Estate, Ganprao Kadam, Lower Parel, Mumbai-13
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAJCS3316D**		

अपीलार्थी की ओर से / **Appellant by**	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / **Respondent by**	:	None

आयकर अपील सं./ ITA No. 6761/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

DCIT-1(1) 579, Aayakar Bhawan, M.K. Road, Mumbai-20	Vs.	Benham Estate & I.T. Parks Ltd. 5th Floor, Times Tower, Kamala Mills Compound, Lower Parel, Mumbai-13
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAACB2190F**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6802/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

ITO (IT) 3(3) (1) Room No. 1631, 16th Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	Mrs. Aditi Bharat Parulekar 163D, Harihar Niwas, Dr. Ambedkar Road, Dadar, Mumbai-400 014
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN NO. BGKPP2934H**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6806/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

DCIT, CC-5(4), R.No. 1927, 19th Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	Wadhwan Retail Pvt. Ltd. Ground Floor, Madhava Building, Bandra Kurla Complex, Andheri Ghatkopar Link Road, Bandra (E), Mumbai-400 051
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAACW6147R**		

अपीलार्थी की ओर से / **Appellant by**	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / **Respondent by**	:	None

आयकर अपील सं./ ITA No. 7476/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

DCIT-CC-1(4), Room No. 902, Pratistha Bhavan, 9th Floor, Old CGO building Annexe, Mumbai-20	Vs.	BD & P Hotels India P. Ltd. DB house, Yashodham, Gen. A.K. Vaidya Marg, Goregaon (E), Mumbai-400 063
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AABCB4615J**		

अपीलार्थी की ओर से / **Appellant by**	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / **Respondent by**	:	None

आयकर अपील सं./ ITA No. 6453/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

ACIT-3(1)(2) Room No. 607, 6th Floor, Aayakar Bhavan, Mumbai-20	Vs.	Coral India Finance & Housing Ltd. 4th Floor, Dalamal House, nariman Point, Mumbai-21
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAACC4449C**		

अपीलार्थी की ओर से / **Appellant by**	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / **Respondent by**	:	Shri Kumar Kale, AR

आयकर अपील सं./ ITA No. 6494/Mum/2017

(निर्धारण वर्ष / Assessment Year 2004-05)

ITO-1(2)(3) 527, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	Mangalaum Drugs & Organics Pvt. Ltd. Rupam Build. 3rd Floor, P.D. Mello Road Near GPO Mumbai-400 0 01
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAACM7880P**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से **/ Respondent by** : None

आयकर अपील सं./ ITA No. 6563/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

आयकर अपील सं./ ITA No. 6565/Mum/2017

(निर्धारण वर्ष / Assessment Year 2014-15)

ACIT, 23(1) Room No. 113, Matru Mandir, 1st Floor, Tardeo Rd, Mumbai-400 007	Vs.	Aura Medical Technologies B-406, Deeraj Sneh, 30th Road, Pali Naka, Bandra (West), Mumbai-400 050
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAOFA6499F**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से **/ Respondent by** : None

आयकर अपील सं./ ITA No. 6572/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

Acit-18(2), 302, 3rd Floor, Earnest House, NCPA Marg, Mumbai-400 021	Vs.	M/s Munot Ornaments Annex, Shop No. A-14, Glitz Mall, 99, Vithalwadi, ChampaGali Cross Lane, Kalbadevi, Mumbai-02
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**

स्थायी लेखा सं./**PAN No. AASFM6304R**

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6576/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

ACIT-16(2) Room No. 479, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	Shri S. Ganesh 10, 2nd Floor, Fair Field, J.S. Malani Road, Churchgate, Mumabi-20
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAGPS5047M**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6594/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

ACIT, 14(2)(2) 461, Aayakar Bhavan, 4th Floor, M.K. Marg, Mumbai-20	Vs.	Milestone City Complex Pvt. Ltd. 602, Hallmark Business Palaza, Sant Dyaneshwar Marg, Opp. Gurunanak Hospital, Bandra (East), Mumbai-51
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AAFCM4859H**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6630/Mum/2017

(निर्धारण वर्ष / Assessment Year 2009-10)

ITO, 2(2)(3) Room No. 542, 5th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-20	Vs.	Nicco Securities Pvt. Ltd. 96/98, 3rd Floor, Dhanji Street, Mumbai Devi Road, Mumbai-02
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AABCN1737D**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6786/Mum/2017

(निर्धारण वर्ष / Assessment Year 2014-15)

DCIT-Circle 4(1)(2) Room No. 640, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	Creative Labels Pvt. Ltd Room No. 305, Sharaf Mansion, 3rd Floor, Princess Street, Kalbadevi, Mumbai-400 002
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AACCC6150G**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6787/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

ITO, Ward 16(2)(5) Rom No. 443, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	Ketan Nemchand Chedda C-4, Big Spalsh, Sector No. 17, Vashi, Mumbai-705
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AFIPC3658K**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6890/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

ITO-13(3)(1) Room No. 227, 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	Radhe Krishna Agencies Pvt. Ltd. A-201, Raghav Vasant Vally, Near Dindoshi Bus Depot, Film City Road, Malad East, Mumbai-400 097
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AADCR4869A**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : None

आयकर अपील सं./ ITA No. 6923/Mum/2017

(निर्धारण वर्ष / Assessment Year 2014-15)

DCIT, Cir. 6(3)(1) R.No. 506, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	India Fashions Ltd. 369, A-2, Shah and Nahar Industrial Estate, Lower Parel, Mumbai-400 013
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./**PAN No. AABCI4292A**		

अपीलार्थी की ओर से / **Appellant by** : Shri DG Pansari, DR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Mahesh Rajora, AR

सुनवाई की तारीख / **Date of hearing:**	10-08-2018
घोषणा की तारीख / **Date of pronouncement :**	10-08-2018

आदेश / O R D E R

PER BENCH:

All these appeals pertains to Revenue and when called for hearing and pointed out to the learned Sr. DR that the tax effect in these appeals is below the prescribed limit as prescribed by the Central Board of Direct Taxes (CBDT) vide circular F.No. 279/Misc. 142/2007-ITJ (Pt) dated 11.07.2018, wherein monetary limits and other conditions for filing of departmental appeal before Tribunal has been revised and fixed at ₹ 20 lacs for filing of the Departmental appeal, the learned Sr. DR could not controvert the fact that the tax effect in all these appeals of Revenue is below the prescribed limit as prescribed by CBDT circular dated 11.07.2018.

2. We have gone through the circular and noticed that this circular will apply to pending appeals also & we are referring to Para 13 of the circular for this proposition, which reads as under: -

> *"13. This Circular will apply to SLPs/appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/cross objections/ references.* ***Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed****."*

3. In view of the above, we are of the view that the Revenue's appeals are fully covered by CBDT circular No. 3 of 2018 and there is no exception brought out by the Revenue that these appeals falls under any of the exception as provided in Para 10 which reads as under: -

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule IS under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection m the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts."

4. When this was confronted to the learned Sr. Departmental Representative Shri DG Pansari, he could not point out that these appeals falls under any of the exception as provided in Circular No. 3 of 2018 but he only requested that a liberty be given to Revenue for recalling of the order in case the AO found that these cases falls under any of the exceptions as provided in this circular. Admittedly, the tax effect in these appeals of Revenue is much below the prescribed limit of filing appeal before the Tribunal i.e. ₹ 20 lacs as per CBDT circular No. 3 of 2018. In view of the above, these appeals of Revenue are dismissed as withdrawn in view of Circular No 3 of 2018. However, the Revenue is at liberty to get the order recalled in case any of the above appeals falls under the exceptions as provided in above CBDT circular.

5. **In the result, all these appeals of Revenue are dismissed as withdrawn.**

Order pronounced in the open court on 10-08-2018.

आदेश की घोषणा खुले मे दिनंक 10-08-2018 **को की गई ।**

Sd/-	Sd/-
(जी. मंजुनाथ /G MANJUNATHA)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 10-08-2018

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
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 (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**