

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' : NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER,

ITA No. 1332/Del/2014
Assessment Year: 2009-10

The A.C.I.T.
Circle - II
Faridabad

Vs.

M/s K.B. Hydraulic Engineering Works
Plot No. 284-285, Sector 24
Faridabad

[Appellant]

PAN : AADFK 2266K

[Respondent]

Date of Hearing : 20.01.2016

Date of Pronouncement: 27.01.2016

Appellant by : Ms. Richa Rastogi, CIT-DR

Respondent by : Shri Sanjay Kakkar, CA.

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the Revenue is directed against the order of the CIT(A), Faridabad dated 17/12/2013 for A.Y 2009-10.

2. This appeal has been fixed for hearing in view of the recent CBDT Instruction No. 21/2015 dated 10.12.2015, revising the monetary limit of Rs.10.00 lakhs for not filing the appeal before the Tribunal in terms of section 268A(1) of the Income-tax Act.

3. The CBDT in its recent Circular No. 21/2015 dated 10.12.2015 has provided that no departmental appeal shall be filed before the 1TAT wherein the tax effect involved is less than Rs.10 lakhs. Further, in para 10 of the Circular, it is provided that this instruction would apply retrospectively and the pending appeals below the specified tax limit of Rs.10 lakhs may be withdrawn/not pressed.

4. The learned CIT-DR appearing on behalf of the Revenue before us, at the outset, submitted that appeal can be withdrawn only after getting the approval of competent authority. He further referred to para 7 of the Circular to submit that dismissal of appeal, however, in any case, on account of low tax effect should not be considered as a precedence in the matters of subsequent years where the tax effect is above the monetary limit prescribed by this Circular and the issue should be decided on merits.

5. The learned counsel for the assessee, on the other hand, stated that the Circular is squarely applicable to the present appeal of the Revenue.

6. After considering the submissions of both the parties, we find that prima facie, the tax effect involved in this appeal by the Revenue is below Rs. 10.00 lakhs and, therefore, we deem it proper to dismiss the appeal particularly because the pending appeal is covered by Circular in view of para 10 of the circular. However, we may clarify that if on receipt of this order, the Assessing Officer finds that the tax effect is above Rs.10 lakhs or in any other manner, the Circular is not applicable in view of exceptions culled out in the Circular, he will be at liberty to file miscellaneous application for recalling of this order which the Tribunal will consider in accordance with law. We further find considerable force in the contention of the CIT/DR that this order cannot be considered as an acceptance by the Revenue on the issue involved in this appeal and will not be an estoppel for the Revenue to take up the issue, involved in this appeal, before ITAT on merits if the tax effect in those years is more than Rs.10 lakhs.

7. Keeping in view the above Circular and the provisions of section 268A of the Income-tax Act, 1961 and without going into merits of the case, we dismiss the instant appeal filed by the Revenue as tax effect in the appeal is less than Rs.10 lakhs.

8. In the result, the appeal of the Revenue stands dismissed.

The order is pronounced in the open court on 27.01.2016.

**Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER**

**Sd/-
(C.M. GARG)
JUDICIAL MEMBER**

Dated: 27th January, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi