

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES :E: NEW DELHI

BEFORE SHRI J.SUDHAKAR REDDY, AM &
SHRI SUDHANSHU SRIVASTAVA, JM

ITA No: 3122/Del/2013
AY: - 2008-09

Income Tax Officer,
Ward-33(4), Room No. 1603
E-2 Tower, Dr. S.P. Mukherjee
Civic Centre, J.L. Nehru Marg
New Delhi.

Shri Narender Kumar Gaur,
Tower-1, 1104, Sushant Estate,
Sushant Lok, Phase-1, Gurgaon,
Haryana.
(PAN AAEPG3182B)

(Appellant)

(Respondent)

Appellant by : Sh. P Dam Kanunjna, Sr. DR
Respondent by : None
Date of hearing : 22.12.2015
Date of pronouncement : 31.12.2015

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This is an appeal filed by the Revenue directed against the order of Ld. Commissioner of Income Tax (Appeals)-XXVI dated 28.2.2013 pertaining to the assessment year 2008-09. The relevant Assessment Year is 2003-04. The grounds of appeal of the revenue are as under:-

1. *"The CIT(A) has erred in deleting addition of Rs. 18,06,000/- made by the AO on account of unexplained cash in hand.*
 2. *The CIT(A) has erred in allowing benefit of Rs. 5 lakh surrendered during AY 2007-08 on account of expenditure made out side books of accounts".*
2. During the course of hearing, the Id. D.R., although supported the order of the Assessing Officer, but could not controvert the fact that tax effect involved in this appeal is less than Rs.10,00,000/-.

3. The CBDT in its Circular No. 21/2015 dated 10th December, 2015 has revised the monetary limit for filing of the departmental appeals to the ITAT at Rs. 10 lakhs which is evident from paragraph 3 of the Circular, which reads as under :-

"3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

<i>S. No.</i>	<i>Appeals in Income-tax matter</i>	<i>Monetary Limit (in Rs.)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>10,00,000/-</i>
<i>2.</i>	<i>Before High Court</i>	<i>20,00,000/-</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>25,00,000/-</i>

*It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case."*

4. In paragraph 10 of the Circular, such monetary limits have been made applicable retrospectively. For ready reference, we reproduce paragraph 10 below :-

"10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed."

5. Therefore, the above Circular would be squarely applicable to the appeal under consideration before us.

6. Learned CIT-DR who appeared at the time of hearing before us stated that he needs some time to call for the report from the Assessing Officer as well as

instructions from Administrative CIT for withdrawing this appeal because the appeal was filed with the approval of Administrative CIT. Learned CIT-DR further pointed out that in paragraph 7 of the said Circular, it has been clarified by the CBDT that withdrawal of this appeal by the Revenue on account of low tax effect should not be considered as a precedent in the subsequent year of the acceptance of issues involved in these appeals and, therefore, if in the subsequent year similar issue arises before the ITAT where the appeal is above the tax limit as prescribed in this Circular, the same should be decided on merits.

7. After considering the submissions of learned DR, the fact of the case and the Circular of the CBDT, we are of the opinion that there is no necessity for adjourning the appeal and calling the report from the Assessing Officer because apparently, the tax effect involved in this appeal of the Revenue is below Rs. 10 lakhs. However, we add here that if on receipt of order, the Assessing Officer finds that the tax effect is above Rs. 10 lakhs or, in any other manner, the Circular is not applicable, he will be at liberty to file a Miscellaneous Application. We also agree with the contention of the learned CIT-DR that this order would not be considered as an acceptance by the Revenue on the issue involved in these appeals and will not be an estoppel for the Revenue to take up the issue involved in these appeals before the ITAT on merits if the tax effect in those years is more than Rs. 10 lakhs. With this remark, we deem it proper to dismiss the appeals in the light of the Circular No. 21/2015 of CBDT dated 10th December, 2015.

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

Order Pronounced in the open Court on 31.12.2015.

sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated 31.12.2015

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.

		Date
1.	Draft dictated on	28.12.2015
2.	Draft placed before the author	29.12.2015
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	File sent to the Bench Clerk	
6.	Date on which file goes to the Head Clerk.	
7.	Date on which file goes to the AR	
8.	Date of dispatch of Order.	