

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 4105/Del/2013
Assessment Year: 2009-10**

Assistant Commissioner of Income Tax Circle-46(1), New Delhi Room NO. 305, Civic Centre, D-Block, 3 rd floor, New Delhi (APPELLANT)	vs.	Sh. Vivek Setia, D-32, Anand Niketan, New Delhi (PAN:AAAPS1430Q) (RESPONDENT)
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Department by : Sh. S.K. Jain, Sr. DR
Assessee by : Sh. Deepak Virmani, CA

**Date of Hearing : 11-02-2016
Date of Order : 07-03-2016**

ORDER

PER H.S. SIDHU, J.M.

The Department has filed this Appeal against the impugned Order dated 16.04.2013 of Ld. CIT(A)-XXV, New Delhi pertaining to assessment year 2009-10 on the following grounds:-

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in :

1. Allowing the STCL of Rs. 10,70,126/- as against STCG of Rs. 30,88,357/- whereas the fact that the assessee had neither claimed STCL of Rs. 10,71,126/- in his original return nor he had filed the revised return, the assessee had just filed the revised computation at the time of assessment proceedings;

2. Allowing the STCL of Rs. 10,71,126/- as the AO has rightly disallowed the STCL in the absence of revised return in view of judicial judgment of Hon'ble Supreme Court in the case of Goetz (India) vs. CIT (2006).

The appellant craves the right to alter, amend, add or substitute the grounds of appeal.”

2. On going through the grounds of appeal, we find that the tax effect in the Revenue's Appeal is less than Rs.10,00,000/-, therefore, the Department's Appeal is not maintainable, in view of the Circular No. 21/2015 dated 10th December, 2015 issued vide F.No. 279/Misc. 142/2007-ITJ (Pt.) by the CBDT. For the sake of convenience, the relevant para nos. 3 & 10 of the aforesaid CBDT's Circular are reproduced as under:-

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

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

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.

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.”

3. It is not in dispute that the Board’s instruction or directions issued to the income-tax authorities are binding on those authorities, therefore, the Department should have withdrawn/ not pressed the present Appeal, in view of the aforesaid instructions since the tax effect in the instant Appeal is less than the amount of Rs. 10 lacs, prescribed in the above said CBDT’s Instructions.

4. Keeping in view the CBDT Instruction No. 21/2015 dated 10th December, 2015, we are of the view that the Revenue should have withdrawn/ not pressed the instant appeal before the Tribunal. We are also of the view that the said Instructions are applicable for the pending appeals and appeals to be filed henceforth in Tribunal. Accordingly, the Revenue’s Appeal is dismissed.

5. In the result, Appeal filed by the Revenue Stands dismissed.

Order pronounced in the Open Court on 07/03/2016.

Sd/-

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 07/03/2016

SR BHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

ASSITANT REGISTRAR