

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.395/Ind/2017
Assessment Year: 2009-10**

Income Tax Officer- 5(2), Indore (Revenue)	बनाम/ Vs.	Shri Narendra Kumar Agrawal, 8, Jati Colony, Indore (Respondent)
P.A. No.AEEPA5654C		

Appellant by	Shri V.J. Voricha, Sr. DR
Respondent by	None
Date of Hearing:	24.07.2018
Date of Pronouncement:	26.07.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

This is an appeal filed by the Revenue against the order of CIT(A)-II, Indore dated 15/02/2017 pertaining to assessment year 2009-10.

2. During the course of hearing, the learned Counsel for the assessee has submitted that tax effect in this appeal is below the prescribed limit so the Department ought not to have filed this appeal in view of the instructions issued by C.B.D.T. and judgments of various High Courts and Supreme Court.

3. The Learned D. R. could not controvert the above fact.

4. We have heard the rival contentions and perused material on record and gone through the orders of the authorities below. It is noticed from the record that present appeal is not maintainable on account of low tax effect. Ld. DR has not demonstrated that the present case falls into any exceptions embodied into the circular No. 3 of 2018 dated 11.07.2018. We noted that in this case the tax involved is below the prescribed limit i.e. Rs. 20 lacs as contained in Central Board of Direct Taxes vide Circular No. 3 of 2018 dated 11.07.2018. In pursuance with the power entrusted u/s. 268A of the Income Tax Act that no appeal should be filed before the Tribunal in case tax effect does not exceed Rs.20 lac. The “tax effect” in this regard means the difference between the tax on the total income assessed and the tax that what have been chargeable had

such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. This circular further states that tax will not include any interest thereon the chargeability of interest itself is in dispute. We further note that under paragraph 13 which is reproduced as under, it has been mentioned in the circular that this instruction will apply even to the pending appeals.

“13. This circular will apply to SLPs/appeals/cross-objections/references to be filed henceforth with in Hon'ble Supreme Court/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross-objections/references. Pending appeal below the specified tax limits in para 3 above may be withdrawn/not pressed.”

4. In the impugned case, we note that the tax effect on the issue under dispute does not exceed Rs.20 lac. In view of this fact as per the instruction, the Revenue is not supposed to press the appeal. We, therefore, dismiss the appeal filed by the Revenue in limine without going into the merits of the case as in our opinion the circulars issued by CBDT are binding on the departmental officers in view of the provision of Section 268A(1) of the Act. The said view has been taken by Hon'ble Supreme Court in the case of Navneet Lal Zaveri Vs. AAC 56 ITR 198 (SC). Hon'ble

Supreme Court while dismissing the appeal of the Revenue in the case of Director of Income Tax vs. S.R.M.B. Dairy Farming (P) Ltd. in Civil Appeal No. 19650 of 2017 has followed the case of three Judges Bench judgment of Hon'ble Supreme Court in the case of CIT Central-III vs. Surya Herbal Ltd. and has held that the circular would apply even to pending matters. We accordingly dismiss the appeal filed by the Revenue as not maintainable.

5. In the result, the appeal of the Revenue is dismissed.

Order was pronounced in the open court on 26.07.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 26/07/2018

Patel, P.S/.नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore