

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No. 3660/Del/2012
Assessment year: 2004-05**

ACIT, CC-03, New Delhi Room No. 355, 3rd floor, ARA Centre, Jhandewalan Extn., New Delhi – 55 (Appellant)	vs	M/s Mahagun India (P) Ltd., C-215, Vivek Vihar, New Delhi (PAN: AAACM6572A) (Respondent)
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**And
CO No. 299/Del/2012
(In ITA No. 3660/Del/2012)
Assessment year: 2004-05**

M/s Mahagun India (P) Ltd., New Delhi (Appellant)	vs.	ACIT, CC-03, New Delhi (Respondent)
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Appellant by:	Ms. Shefali Sawroop, CIT(DR)
Respondent by:	Dr. Rakesh Gutpa, Adv. & Sh. Somil Agarwal, Adv.

**Date of hearing: 29.08.2018
Date of pronouncement: 31.08.2018**

ORDER

PER ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

The appeal filed by the Revenue and Cross Objection by the Assessee are directed against the order passed by the Ld. CIT (Appeals)-II, New Delhi dated 30.4.2012 relating to A.Y. 2004-05.

2. Admittedly, the tax effect is below the monetary limit of Rs. 20 lakhs.

3. In terms of CBDT Circular No. 3/2018 dated 11th July, 2018 read with Section 268 A of the Income Tax Act, 1961, this appeal by the Revenue should have been withdrawn or should not have been pressed by the Revenue.

4. Ld. CIT(DR), however placed on record the copy of CBDT's Instructions dated 20.08.2018 bearing F.No. 279/Misc.142/2007-ITJ(Pt) and submitted that there has been an amendment to para 10 of the Circular No. 3 of 2018 dated 11.07.2018 wherein, the said Para 10 has been amended 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 in the case has been accepted by the Department, or*
- (d) Where addition relates to undisclosed foreign income / undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.*
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/DRI/SFIO / Directorate General of GST Intelligence (DGGI).*
- (f) Cases where prosecution has been filed by the Department and is pending in the Court.”*

4.1 Ld. CIT(DR) further submitted that in view of the aforesaid amendment the Department requires time in order to obtain a Report from its Field Officers as to whether the Department's Appeal is covered under any of the aforesaid exceptions.

5. Having heard the Ld. CIT(DR) and after going through the records before us, we are of the opinion that apparently the Department's Appeal is not covered by any of the aforesaid exceptions as enumerated in the aforesaid amendment to the Instructions and therefore, delaying the disposal of the appeal by waiting for the Report from the Field Officers will not be in true spirit of the Circular. Accordingly, we deem it fit to treat this Appeal as dismissed with the liberty to the Department to seek recall of this order by filing a Misc. Application, before us in case the Department's Appeal falls in any of the above exceptions. Accordingly, in view of the CBDT's Circular No. 3 of 2018 dated 11.7.2018, the appeal by the Revenue is dismissed *in limine*.

6. The Ld. AR has submitted that the Cross Objection is not being pressed. Hence, the same is dismissed as not pressed.

7. In the result, the appeal of the Revenue as well as Cross Objection of the Assessee stand dismissed.

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 31.08.2018
'SRBHATNAGAR'

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

By Order

ASSTT. REGISTRAR

