

**आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

आयकर अपील सं./ ITA No. 6395/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

The Dy. Commissioner of Income-Tax 1(3)(2) Room No. 540, 5 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai-400 020	Vs.	Toshvin Analytical Pvt. Ltd. 103, 1 <sup>st</sup> Floor, SJ House, NM Joshi Marg, Lower Parel, Mumbai-400 011
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AABCT4482D</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Raturaj Gurjar, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	24-09-2018
घोषणा की तारीख / <b>Date of pronouncement :</b>	24-09-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal of Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-2, Mumbai [in short CIT(A)], in appeal No. CIT(A)-2/IT-284/2014-15 order dated 27.07.2016. The Assessment was framed by the Addl. Commissioner of Income Tax, Circle-1(2) for AY 2012-13 vide order dated 02.02.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. At the outset, it is noticed that this appeal is time barred by 33 days as the order of CIT(A) was communicated to the department on 27-07-2016 but appeal was filed before Tribunal on 28.10.2016. Hence, there is a delay of 33 days. When it was pointed out to the learned Counsel for the assessee, he fairly conceded that the delay can be condoned. Accordingly, we condone the delay and admit the appeal.

3. This appeal contains the quantum addition i.e. disallowance of expenses relatable to exempt income under section 14A of the Act read with rule 8D of the IT Rules, 1962 wherein the disallowance was at ₹ 23,91,730/-. When this was confronted to the learned Sr. Departmental Representative he admitted that the tax effect in this appeal is less than ₹ 20 lacs and covered by the CBDT Circular No. 03 of 2018 dated 11.07.2018.

4. We have gone through the circular and noticed that this circular will apply to pending appeals also & we are referring to Para 13 of the circular for this proposition, which reads as under: -

*“13. This Circular will apply to SLPs/appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/cross objections/ references. **Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.**”*

5. In view of the above, we are of the view that the Revenue's appeals is fully covered by CBDT circular No. 3 of 2018 and there is no exception brought out by the Revenue that these appeals falls under any of the exception as provided in Para 10 which reads 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 the addition relates to undisclosed foreign assets/ bank accounts.”*

6. When this was confronted to the learned Sr. Departmental Representative Shri DG Pansari, he could not point out that this appeal falls under any of the exception as provided in Circular No. 3 of 2018 but he only requested that a liberty be given to Revenue for recalling of the order in case the AO found that these cases falls under any of the exceptions as provided in this circular. Admittedly, the tax effect in this appeal of Revenue is much below the prescribed limit of filing appeal before the Tribunal i.e. ₹ 20 lacs as per CBDT circular No. 3 of 2018. In view of the above, this appeal of Revenue is dismissed as withdrawn in view of Circular No 3 of 2018. However, the Revenue is



ITA No. 6395/Mum/2016

at liberty to get the order recalled in case any of the above appeal falls under the exceptions as provided in above CBDT circular.

**7. In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 24-09-2018.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 24-09-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai