

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 941/Del/2016
AY: 2010-11**

**ACIT,
Circle Panipat,
Haryana.**

vs

**Paliwal Overseas (P) Ltd.,
Paliwal Nagar,
Panipat.
(PAN: AABCP1067E)
(Respondent)**

(Appellant)

Department by: Ms Ashima Neb, Sr. DR
Assessee by: None present

Date of hearing: 04.07.2018

Date of pronouncement: 03.10.2018

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal filed by the Revenue is directed against the order passed by the Id. CIT(A), Karnal dated 22.12.2015 for A.Y. 2010-11 on the following grounds of appeal:-

“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition made u/s 36 (i) (iii) of the I.T. Act as the assessee has failed to prove the business expediency for making advance to various parties.

2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 36,44,995/- made on account of disallowance of interest u/s 36(i)(iii) of the I.T. Act when the jurisdictional High Court in ITA NO. 310 of 2010 vide order dated 23.09.2015 has decided the said issue in the favour of revenue in the case of M/s Paliwal

Industries Pvt. Ltd. for the A.Yr. 2006-07 which is the sister concern of the assessee.”

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

2.1 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dated 11th July, 2018 read with Section 268 A of the Income Tax Act, 1961, this appeal by the Revenue should have been withdrawn or should not have been pressed by the Revenue.

2.2 We also note that vide CBDT's Instructions dated 20.08.2018 bearing F.No. 279/Misc.142/2007-ITJ(Pt), 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. ”

2.3 However, 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*.

3. In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on 3rd October, 2018.

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 3rd OCTOBER , 2018
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	1