

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND  
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

**ITA No.120(Asr)/2017**  
Assessment Year:2011-12

Income Tax Officer  
TDS, Aayakar Bhawan  
Rail Head Complex, Jammu

**(Appellant)**

Vs. The Deputy Registrar (Finance)  
(Person Responsible)  
Baba Ghulam Shah Badshah  
University, Rajouri.

[PAN:AMRB1 0719C]

**(Respondent)**

Appellant by: Sh. R.K.Gupta & Akshun Gupta (Ld. CAs.)

Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 29.10.2018

Date of pronouncement: 16.11.2018


**ORDER**

**PER N.K. CHOUDHRY**

The instant appeal has been filed by the Revenue Department, on feeling aggrieved against the order dated 10.11.2016 passed by the Ld. CIT(A)-Jammu, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

**2.** At the time of hearing, the Ld. AR of the assessee submitted that the tax effect involved in this appeal is less than Rs.20 lacs, hence, the present appeal filed by the Revenue Department is liable to be dismissed, being not maintainable, in view of the latest CBDT Instruction No.03 of 2018, dated 11.07.2018.

3. The revenue department has filled the application (reproduced herein below) for withdrawal of the instant appeal in view of Circular no. 3/2018 as referred above.

  
सत्यमेव जयते

Government of India, Ministry of Finance.  
**OFFICE OF THE JOINT. COMMISSIONER OF INCOME TAX ( I.T.A.T.)**  
ROOM NO. 252, AAYAKAR BHAWAN, MAQBOOL ROAD,  
AMRITSAR-143001 PHONE/ FAX NO- 0183-2502240.

F. No. JCIT/ITAT / ASR / 2018-19/ 2015 Dated:05/10/2018


To  
The Assistant Registrar,  
Income Tax Appellant Tribunal  
Amritsar Bench, Amritsar.

Sir,

Sub: -Withdrawal of appeals in consequent to Circular No. 3/2018 dated  
11.07.2018 -Reg-

Kindly find enclosed herewith the Withdrawal appeals received from  
the Income Tax Officer (TDS) Circle, Jammu for further necessary action.

Yours faithfully,

  
**(Manmohan Singh)**  
Office Superintendent o/o  
Addl. Commissioner of Income Tax,(ITAT)  
Amritsar

Encls:- As above

ITAT.jpeg



भारत सरकार

OFFICE OF THE INCOME TAX OFFICER (TDS)  
AAYAKAR BHAWAN, RAIL HEAD COMPLEX, JAMMU

F. NO. ITO (TDS)/JMU/ 2018-19/ 1125

DATE: - 01/10/2018

To

The Departmental Representative,  
Income Tax Appellate Tribunal, Amritsar Bench,  
Aayakar Bhawan, Amritsar.

Sir,

**Sub- Withdrawals of appeals in consequent to Circular No. 3/2018 dated 11/07/2018 issued by Board -regarding-**

Kindly refer to the above.

In connection with the above it is submitted that vide Circular No.3/2018 dated 11/07/2018 the CBDT, New Delhi has prescribed the monetary limit for filing appeals before the Hon'ble ITATs . Out of the appeals pertaining to TDS Jammu pending before the Hon'ble ITAT, Amritsar , the following appeal has been approved for withdrawal by the Commissioner of Income Tax (TDS)-1, Chandigarh and I have been directed to request you to appear on behalf of the department for withdrawal of this appeal.

The details of appeal to be withdrawn is as under :

S.No	Name & address	Asstt year	Appeal No	Tax effect
1	Baba Ghulam Shah Badshah University, Rajouri	2011-12	ITA No.120/2017/ASR	10,83,114/-

D-4 H

29-10-18

Yours faithfully,

*Anita Thusu*  
(Anita Thusu)  
Income Tax Officer  
TDS Circle, Jammu

Copy to

1. The Commissioner of Income Tax (TDS)-1, Chandigarh w.r.t his office letter F.No.CIT/TDS-1/Chd/2018-19/3276 dated 27/09/2018.
2. The Joint Commissioner of Income Tax (TDS), Range-Ludhiana for kind information.

*Anita Thusu*  
(Anita Thusu)  
Income Tax Officer  
TDS Circle, Jammu

Although the revenue department through Id. D.R. had filed the aforesaid application for withdrawal of the appeal, however during the course of hearing of appeal, the DR refuted the claim of the assessee by saying that the case of the assessee does not fall under the aforesaid CBDT Circular in view of para no.4 of the Circular, the 'tax effect' has been prescribed as 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as a 'disputed issues'). Further, 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

**3.** In reply to the objection of the Id. DR, the Ld. AR emphasized even for the sake of argument if the case of the assessee does not fall within the parameters of the Circular, still the case of the assessee is at strong footing on merit and the Revenue Department has no case to succeed because the Ld. CIT(A) has passed the well-reasoned order while considering and following the relevant provisions of law and mandates of the higher courts.

**4.** Having heard the rival parties and perused the record. The Ld. CIT(A) vide impugned order set aside the order passed by the Assessing Officer by holding that since the deductees have complied with the provisions of law, therefore the PR should not have been held to be assessee in default for the purpose of Sec.201 & 201(1A) of the Act. Further, while relying upon the case of ITO vs. Block Development Officer, Sunderbani, Dstt. Rajouri in ITA No.63(Asr)/2014 dated 11.03.2015 decided by the jurisdictional ITAT Bench at Amritsar, held that TDS cannot be deducted @ 20% where PANs are available. As in the instant case, the Ld. AO has himself quoted PAN Nos. in the Annexure 'A', 'B' & 'C' as enclosed with the order passed u/s 201 and 201(A) of the Act.

Further, the Ld. CIT(A) also respectfully followed the judgment passed by the Hon'ble Karnataka High Court in the case of A. Kowsalaya Bai & Ors. vs. Union of India in writ petition 12780-12782/2010 (T) reported in (2012) 22 Taxmann.com 157 (Kar.) and further held that provisions of Sec.206AA of the Act is applicable to the persons, whose income is above to the taxable limit. As the case of the assessee squarely covered by the decision of the Hon'ble High Court, therefore, the assessment cannot be upheld. The Ld. CIT(A) also emphasized in its order that as per Annexure 'A' enclosed with the assessment order shows that PANs have been quoted against each person mentioned in the Annexure except the persons mentioned at Serial No.24,46,55,56,57 & 58 , however the assessee's counsel in respect of serial No.55,56,57&58 of Annexure 'A', in order to show having been mentioned PANs, furnished the copies of bills and quarterly returns qua Sh. Vipin Kumar, where the assessee duly reflected permanent account Nos. of the persons mentioned at serial

No.55 to 58 while uploading the quarterly returns. Even the Id. CIT(A) was fully satisfied with the evidence produced by the assessee with regard to the quoting of the PAN Nos. and therefore, held that there is no short deduction on the part of the PR with regard to the Serial No.24 & 46 of Annexure 'A' as the assessee had given the PAN Nos. of Mohd. Ibrahim mentioned in Serial No.24 as AGFPK3889A and against the Serial No. 46 qua Sagarmal Weekly as MAUPB3445L and submitted that when quarterly returns have been filed with the permanent accounts nos. of the deductee with E-TDS statement, no demand has been raised by the NSDL, which entails that the Assessee is in possession of correct PANs. The aforesaid statements of the assessee was duly considered by the Ld. CIT(A) and therefore, only it was held that if had there been a case of incorrect PAN, then demand should have been automatically generated, and therefore, there is no short deduction of tax.

At the time of hearing, the Ld. DR emphasized on ground No.1 of the appellant that the Ld. CIT(A) has erred in law in deleting the demand raised by the AO by invoking the provisions of Sec.206AA as date of payment to the deductees is prior to the date of allotment of PAN Nos., however, during the course of hearing of appeal, the Ld. DR failed to demonstrate on what basis the particular issue has been raised as the department neither produced any documents in support of its contention nor able to demonstrate from the order passed by the authorities below and/or material available on record, in support of their contention. Even otherwise, the Revenue Department failed to substantiate/demonstrate any reason/material in support of its grounds and against the impugned order, therefore on the aforesaid consideration and observations, the order impugned does not require any interference by this Court, because the same does not suffer from

any perversity, illegality and/or impropriety, hence the appeal of the Revenue Department is also liable to be dismissed on merits as well, therefore no use to go into maintainability of the appeal in view of the circular of the CBDT as referred above .

**5.** In the result, the appeal filed by the Revenue Department is dismissed.

Order pronounced in the open Court on 16.11.2018.

Sd/-  
(SANJAY ARORA)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated: 16.11.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Deputy Registrar (Finance) (Person Responsible)  
Baba Ghulam Shah Badshah University, Rajouri
- (2) The Income Tax Officer TDS, Aayakar Bhawan Rail Head Complex,  
Jammu
- (3) The CIT(A), J&K, Jammu
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order