

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI
BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
ITA No.-3522/Del/2018
(Assessment Year: 2009-10)

ITO, Ward-3(5), A-2/D, Aayakar Bhawan, Sector-24, Noida	vs	Smt. Usha Tyagi W/o. Gejha, Sec-93, Noida PAN : AGCPT3345D
Assessee by		Shri Chaman Singh, CA
Revenue by		Shri S.L.Anuragi, Sr. DR

Date of Hearing	27.12.2018
Date of Pronouncement	27.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER

This appeal is filed by the department against order dated 25.09.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi for assessment year 2009-10.

2. At the outset, It is brought to our notice that the quantum involved in this case being less than Rs. 20 lacs, squarely falls within the ambit of Circular No. 3/2018 dated 11.07.2018 issued by the Central Board of Direct Taxes prescribing the tax effect for preferring appeals before Tribunal by the revenue.

3. After perusing the materials available on record, I find that the amount disputed before me is below the tax effect limit prescribed by CBDT vide Circular No. 3/2018 dated 11.07.2018 for preferring appeals before tribunal by the revenue. On perusal of the Circular No. 3/2018 dated 11.07.2018 and the materials available on record, Ld. Sr. DR could not point out as to how and

why such a Circular is not applicable to the facts of the case. I also find that the Circular makes it very clear that the revised monetary limits shall apply retrospectively to pending appeals also. I find that the Circular is binding on the tax authorities. Hence, I hold that the appeal of the revenue deserves to be dismissed in terms of low tax effect vide Circular No. 3/2018 dated 11.07.2018.

3.1 However, I 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. ”

3.2 After going through the records before me, I am of the opinion that the 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 appeals by waiting for the Report from the Field Officers will not be in true spirit of the Circular. Accordingly, I deem it fit to treat the appeal as dismissed with the liberty to the Department to seek a recall by filing a Misc. Application before us in cases the Department's Appeal fall in any of the above exceptions. Accordingly, in view of the CBDT's Circular No. 3 of 2018 dated 11.7.2018, the captioned appeals by the Revenue are dismissed *in limine*.

4. In the final result, the appeal of the Revenue stand dismissed.

Order pronounced in the Court on 27th December, 2018 at New Delhi.

Sd/-

**(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 27.12.2018

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.12.2018
Date on which the typed draft is placed before the dictating Member	27.12.2018
Date on which the typed draft is placed before the Other Member	27.12.2018
Date on which the approved draft comes to the Sr. PS/PS	27.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	27.12.2018
Date on which the fair order comes back to the Sr. PS/PS	27.12.2018
Date on which the final order is uploaded on the website of ITAT	27.12.2018
Date on which the file goes to the Bench Clerk	27.12.2018
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	