

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "G", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.2295/Del/2016  
Assessment Year: 2010-11

Income Tax Officer, Ward-1(1), Moradabad	<b>Vs.</b>	Shri Om Prakash Agarwal, 226, Lajpat Nagar, Moradabad
<b>PAN :AGDPA6494P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri N.K. Bansal, Sr.DR
Respondent by	Shri Shubham Sobti, Adv.

Date of hearing	23.01.2019
Date of pronouncement	23.01.2019

**ORDER**

**PER O.P. KANT, A.M.:**

The present appeal has been filed by the Revenue against the order dated 09.02.2016 passed by CIT(A), Moradabad, pertaining to the assessment year 2010-11. It has been identified by the Registry that the tax effect involved in the present appeal is less than Rs.20,00,000/-.

**2.** During the course of hearing, the Ld. Sr. DR submitted that no doubt tax effect involved in the appeal is less than Rs.20 lakhs, thus, bound by the departmental instruction, the appeal has to be withdrawn. However, attention was invited to para 10 of the Circular No. 3/2018, dated 11<sup>th</sup> July, 2018, which has been modified by Circular dated 20<sup>th</sup> August, 2018 and in terms of the

said modification the Departmental Representatives made a prayer that permission to pray for recall of the order may be granted in case any of the conditions in the reports made available by the A.O. subsequently, show that the issues were required to be contested. The modified para is extracted hereunder:

*“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.** Going by the prescription of Circular No. 3/2018, dated 11<sup>th</sup> July, 2018, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in the appeal is admittedly

less than the prescribed limit, i.e., Rs. 20,00,000/- for not filing the appeals. Accordingly, we dismiss the appeal filed by the Revenue without going into merits of the case. However, it is made clear that the Department is at liberty to file Miscellaneous Application, if the tax effect is found to be more than the prescribed limit of Rs.20,00,000/- or any of the conditions etc., as available in the amendment carried out in para 10 of Circular No. 3/2018, dated 20.08.2018, is made out.

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

***Order is pronounced in the open court on 23<sup>rd</sup> January, 2019.***

Sd/-  
**[BHAVNESH SAINI]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 23<sup>rd</sup> January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi