

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.29/LKW/2018
A.Y. 2009-10

DCIT, Circle, Gonda	Vs.	Shri Rajendra Prasad Chaudhary, Prop. M/s Pratap Construction Co., Patel Smarak Sansthan, Gandhi Nagar, Basti U.P. 272001 PAN ABVPC7139G
(Appellant)		(Respondent)

Appellant by	Shri C.K. Singh, DR
Respondent by	Shri H. Rahman, Advocate
Date of hearing	07/02/2019
Date of pronouncement	08/02/2019

ORDER

PER: A.D. JAIN, VICE PRESIDENT:

This appeal has been filed by the Revenue against the order of the Id. CIT(A)-I, Lucknow, dated 23/10/2017 for Assessment Year 2009-10.

2. We note that in this appeal filed by the Revenue, the tax effect on the income in dispute is less than Rs.20 lakhs.

3. The Central Board of Direct Taxes, vide Circular No. 3/2018 dated 11th July, 2018 file no.279 of Misc.142/2007-ITJ (PT), has issued the direction in supersession of the Instruction No.21/2015 dated 10th December, 2015 in consonance with the power entrusted under section 268A of the Income Tax Act, 1961 that no appeal should be filed before the Tribunal in case the tax effect does not exceed Rs.20 lakhs. The "tax effect" in this regard means the difference between the tax on the total income assessed and the tax that would have been chargeable, had such

total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. This Circular further states that tax will not include any interest thereon, unless the chargeability of interest itself is in dispute. In paragraph 13, which is reproduced as under, it has been mentioned in the Circular, that this instruction will apply even to pending appeals:

"13. This instruction 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 Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed. "

4. The tax effect in this appeal does not exceed Rs.20 lakhs. In view of this fact, as per the CBDT Circular No. 3/2018 dated 11th July, 2018 file no.279 of Misc.142/2007-ITJ(PT), the Revenue is not supposed to press this appeal. We, therefore, dismiss the appeal filed by the Revenue in limine, without going into the merits of the case, as in our opinion, the Circular issued by the CBDT is binding on the Departmental Authorities in view of the provisions of Section 268A(1) of the Income Tax Act, 1961. The said view has been taken by the Hon'ble Supreme Court in the case of Navnit Lal Jhaveri vs. K. K. Sen, 56 ITR 198 (SC). We, accordingly, dismiss the appeal filed by the Revenue.

5. In the result, the appeal filed by the Revenue stands dismissed.

(Order pronounced in the open court on 08/02/2019)

Sd/-
(T.S. Kapoor)
Accountant Member

Sd/-
(A.D. Jain)
Vice President

Aks -
Dtd. 08 /02/2019

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| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) CIT(A)</i> |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i> |

By order

Assistant Registrar