

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

**BEFORE
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.3668/Del/2015
Assessment Year: 2011-12**

ACIT(E), Circle (Exemption), Ghaziabad.	vs	Shree Bankey Bihari Educational Society, NH-24, Near Masuri Canal, Ghaziabad (UP) (PAN: AADTS4243G)
Appellant		Respondent

**Department by: Ms Ashima Neb, Sr. DR
Assessee by : Shri Pushkar Pandey, Adv.**

**Date of hearing : 11.03.2019
Date of pronouncement : 14.03.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal is preferred by the department against the order dated 30.03.2015 passed by the Ld. Commissioner of Income Tax (Appeals), Ghaziabad for assessment year 2011-12. 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appeal by the Revenue should have been withdrawn or should not have been pressed by the Revenue.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 14th March, 2019.

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 14th MARCH, 2019
'GS'

Copy forwarded to: -

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

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By Order

ASST. 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	
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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	