

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, MUMBAI**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI RAMLAL NEGI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 7425/MUM/2011
निर्धारण वर्ष/Asstt. Year: 2008-2009

ITO, (E)-I(1), Mumbai.	Vs.	Bombay Diocesan Trust Association Pvt. Ltd., 19, Hazarimal Somani Marg, Fort, Mumbai-400001. PAN : AAATB5973D
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(Applicant)	(Respondent)
Revenue by :	Ms Kavita P. Kaushik, D.R
Assessee by :	Shri B.N. Rao, A.R

मुनवाई की तारीख/Date of Hearing : 04/11/2019
घोषणा की तारीख /Date of Pronouncement: 06/11/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-I, Mumbai dated 26/08/2011 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3)(ii) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 27/12/2010 relevant to the Assessment Year 2008-2009.

The Revenue has raised the following grounds of appeals:

1. *Whether on facts and circumstances of the case in law, Ld.CIT(A) was right in allowing the exemption u/s.11 of the I.T Act even though Ld.CIT(A) in his order remained silent on the act of the assessing officer of denying of denying the exemption u/s.11 to the assessee on its act of violation of provision of sec13(1)(c)(ii) r.w.s 13(3) of the Act, on account of the reimbursement of rent by the assessee trust to Mr.P.B. Amolk, Trustee and honorary secretary of trust was in violation of sec 13 of the I.T. Act.*
2. *Whether on the facts and circumstances of the case, the Ld.CIT(A) erred in not considering the sum of Rs.8,22,210/- & Rs.28,50,000/- as cessation of liability u/s.41(1) of the I.T Act, even if the assessee has not furnished confirmation and documentary evidences in support of these liabilities (over a period of more than 10 years) during the course of Asstt. Proceedings.*
3. *The appellant prays that the order of the Commissioner of Income Tax Appeals)-1, Mumbai be set aside and that of the Assessing Officer be restored.*
4. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. After going through the grounds of appeal and the impugned orders of the Revenue authorities below, a query was raised by the Bench as to applicability and maintainability of the appeal filed by the Revenue in view of recent CBDT Circular No. 17/2019 dated 08/08/2019 restricting the filing of the appeal by the Revenue where the tax effect is below Rs. 50 lakhs. In reply to it the ld. DR did not dispute the same and left the issue at the discretion of the Tribunal with the pray to decided the same by law.

3. We find that the appeal of the Revenue was heard on 04/11/2019. On 8/08/2019 the CBDT has issued Instructions bearing No. 17 of 2019 under file No. 279/ Misc. 142/2007-ITJ(PT) r.w. circular No. 3/2018 dated 11/07/2018 prohibiting its subordinate authorities from the filing of the appeal to the Tribunal against the order of the ld. CIT(A) where the tax effect by virtue of the relief given by the ld. CIT(A) is less than Rs. 50 lakhs. The instructions are applicable with retrospective effect, meaning thereby, these

instructions are applicable on pending appeals also as held by this Tribunal in the case of ITO Vs. Dinesh Madhaval Patel & others in ITA 1398/AHD/2004 for the AY 1998-99 vide order dated 14-08-2019. In the present case, “tax effect” on the total income assessed minus the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is filed, is less than Rs. 50 lakhs. Further, the case of the Revenue does not fall within the ambit of exceptions provided in the Circular. Thus, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserves to be dismissed. It is accordingly dismissed.

However, it is pertinent to note that in case on re-verification at the end of the AO it comes to the notice that the tax effect is more or Revenue’s case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for the recall of this order. Such an application should be filed within the period prescribed under the Act. In view of the above, the appeal of the Revenue is dismissed due to low tax effect.

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

Order pronounced in the Court on 06/11/2019 at Mumbai.

**Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated: 06/11/2019

Manish, PS