

**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**DELHI BENCH: 'SMC-1' NEW DELHI**  
**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER**  
**AND**  
**SHRI O.P. KANT, ACCOUNTANT MEMBER**  
**[Through Video Conferencing]**

ITA No.3221/Del/2018  
Assessment Year: 2009-10

ITO Ward- 1 (3) Noida	<b>Vs.</b>	Shri Dutta Ram, Prem Nagar, Dankaur, Dadri G. B. Nagar, Noida-201301
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Ved Prakash Mishra, Sr. DR
Respondent by	None

Date of hearing	18.02.2021
Date of pronouncement	18.02.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the revenue is directed against the order dated 25.09.2017 passed by learned Commissioner of Income Tax (Appeals)-I, Noida [in short Learned CIT(A)] for assessment year 2009-10.

**2.** At the outset the Learned Departmental Representative submitted that in the case addition involved is only Rs. 28 lacs and,

therefore, admittedly tax effect involved is less than Rs. 50 lacs, however, the issue involved is covered under the exceptions enumerated in the CBDT Circular No. 3 of 2018 dated 11.07.2018, which has been further amended on 20.08.2018, therefore, appeal is not covered by the CBDT Circular No.3 of 2018 wherein the monetary limit is further increased to Rs.50 lacs by Circular No. 17/19 dated 08.08.2019. None was present on behalf of assessee.

3. We have heard the submissions of the ld. DR and perused the relevant material available on record including the CBDT circulars under reference. We find that Central Board of Direct Taxes (CBDT) vide circular No.3/2018 dated 11.07.2018 directed that department shall not file appeal before the Tribunal in cases where the tax effect does not exceed the monetary limit of Rs. 20 lacs. It is also directed that this instruction shall apply retrospectively to pending appeals and appeals to be filed henceforth in the Tribunal. Pending appeals below the specified tax limit shall be withdrawn / not pressed by the department. The para 10 of the said circular provided that adverse judgments relating to the issues enumerated in said para should be contested on merit notwithstanding that the tax effect is less than the monetary limit specified in para- 3 thereof.

4. This para-10 of the said circular No.3 of 2018 dated 11.07.2018 has been further amended by the CBDT vide notification dated 20.08.2018. The amended paragraph reads 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 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,*

*(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”.*

5. Further the CBDT vide circular No.17/19 dated 08.08.2019 has amended the circular No.3/2018 (supra), wherein it has been directed that monetary limit for filing the departmental appeal in Income Tax cases shall be enhanced to Rs.50 lacs.

6. Before us the Ld. DR submitted that the present appeal is covered by the exception (a) of the issues listed in amendment dated 20.08.2018. The Ld. Counsel submitted that the Ld. CIT(A) in the impugned order has set aside the appeal to the Assessing Officer to reframe the Assessment Order which he was not authorized to do so.

7. In our opinion the present appeal does not fall in the exception enumerated para-10 of the notification dated 20.08.2018. In the present appeal there is allegations that CIT(A) has violated the provisions of the Act but, there is no challenge to Constitutional validity of any provision of the Act or rule before the Tribunal. Accordingly, we reject the contention of the Ld. DR and hold that the appeal is covered by the Circular No.3/2018 read with circular No.17/2019 and admittedly tax effect is being less than Rs.50 lacs. Therefore, this appeal filed by the department is not maintainable and accordingly liable to be dismissed.

8. In the result, the appeal filed by the revenue is dismissed.

***Order pronounced in the open court on 18.02.2021.***

***Sd/-***  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 18.02.2021

\*Neha\*

Copy forwarded to:

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

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation:	18.02.2021
2.	Date on which the draft of order is placed before the Dictating Member:	18.02.2021
3.	Date on which the draft of order is placed before the other Member:	18.02.2021
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	18.02.2021
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	18.02.2021
6.	Date on which the final order received after having been singed/pronounced by the Members:	18.02.2021
7.	Date on which the final order is uploaded on the website of ITAT:	18.02.2021
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	