

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1818/Mum/2020  
(निर्धारणवर्ष / Assessment Year: 2012-13)

<b>DCIT Circle -6(3)(1),</b> R. No. 506, 5 <sup>th</sup> floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	<b>M/s Innergize Solution Pvt. Ltd.</b> 33, Vaibhav, Cadell Road, Mahim, Mumbai-400 016
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCI5086L		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Nihar Samal, Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri P. P. Bhandari, Ld. AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	07.07.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	07.07.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeal has been filed by the revenue against the impugned order dated 28.08.2020, passed by Ld. CIT(A)-12, Mumbai for the quantum of assessment passed u/s 143(3) r.w.s.

147 for AY 2012-13. The grounds of appeal raised by the revenue are as under:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 43,75,000/- u/s 35(1)(ii) of the Act."*
2. *"On the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred in deleting the disallowance of Rs. 43,75,000/- u/s 35(1)(ii) of the Act without appreciating the fact that the Institute School of Human Genetics and Population Health (SHG&PH) were engaged in providing bogus accommodation entries of donation"*
3. *"On the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred in deleting the disallowance of Rs. 43,75,000/- u/s 35(1)(ii) of the Act ignoring that the information on account of bogus accommodation entries of donation received from the external agency that the assessee had received accommodation entry of donation from such party."*
4. *Though the tax effect in this case is Rs. 13,51,875/- however this appeal has been filed because it is covered by exception mentioned in para 10(e) of the CBDT Circular No. 3/2018 dt. 11-7-2018 as subsequently clarified by Board letter dtd. 20/08/2018 vide no. 279/misc/142/2007-ITJ(Pt.)*

5. *The Appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.*

2. At the outset, admittedly the tax effect on the dispute is only Rs. 13,51,875/- which is much below the monetary limit of 50 lakhs as per Circular No.17 of 2019 dated 08.08.2019 [F.No.279/Misc.142/2007-TTJ(Pt.) issued by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India.

3. The only contention of the revenue is that it falls within the exception Clause 10(e) of the CBDT Circular No. 3/2018 as clarified dated 11-07-2018. The relevant clause reads as under:-

*“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that 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.*

*(Q) Where addition is based on information received from external sources in the nature of I 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."*

4. Here in this case, AO has sought to reopen the case on the basis of survey action u/s 133A of the Income Tax Act conducted by Kolkata Directorate. It is not 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).

5. Thus, it does not fall within the Exception 10(e), therefore CBDT circular (supra) is squarely applicable and accordingly, appeal of the revenue is dismissed in *limini* on account of low tax effect.

6. In the result, the appeal filed by the revenue stands **dismissed** in *limini*.

*Orders pronounced in the open court on 7<sup>th</sup> July, 2022.*

*Sd/-*  
(S. Rifaur Rahman)  
Accountant Member

*Sd/-*  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 07/07/2022  
*Sr.PS. Dhananjay*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**.उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**