

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Smt. Diva Singh, JM AND Sh. N. K. Saini, AM

ITA No. 2981/Del./2010 : Asstt. Year : 2002-03

ITO Station Road Najibabad	Vs	Santosh Kumar (HUF) Station Road Nagina Bijnor
(Appellant)		(Respondent)

**C.O. No. 242/Del./ 2010
In ITA No. 2981/Del./2010**

Santosh Kumar (HUF) Station Road Nagina Bijnor	Vs.	ITO Station Road Najibabad
Appellant		Respondent

**Appellant by : Sh. B. R. R. Kumar, Sr. DR
Respondent by : Sh. Shankulp Sharma, Adv.**

Date of Hearing : 16.06.2015	Date of Pronouncement : 16.06.2015
-------------------------------------	---

ORDER

Per Bench :

This appeal by the Department and the cross objection by the assessee are directed against the order dated 21/01/2010 of the Ld. CIT(A) Bareilly.

2. Only effective ground raised in the appeal of the Deptt. in I.T.A. No. 2981/Del/2010 reads as under :-

“Under the circumstances of the case whether Commissioner of Income Tax (Appeal), Bareilly was justified in deleting the addition made by the AO at Rs. 12 lakh u/s 69A of the IT Act-1961.”

3. During the course of hearing, the Learned counsel for the assessee at the very outset stated that the tax effect in this appeal is less than Rs.4,00,000/-, therefore, the department ought not to have filed this appeal in view of the circular issued by the CBDT and the provisions contained in Section 268A of the Income Tax Act, 1961 (hereinafter to be referred as the Act).

4. On the other hand, the ld. D.R., although supported the order of the Assessing Officer, but could not controvert this fact that tax effect in this appeal is less than Rs.4,00,000/-.

5. After considering the submissions of the ld. D.R. and the material on record, it is noticed that Section 268A has been inserted by the Finance Act, 2008 with retrospective effect from 01/04/99. The provisions contained in section 268A read as under:

“268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax

authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—

(a) the same assessee for any other assessment year; or

(b) any other assessee for the same or any other assessment year.

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.]”

6. It is not in dispute that the Board’s instruction or directions issued to the income-tax authorities are binding on those authorities, therefore, the department ought not to have filed the appeal in view of the above said provisions mentioned in section 268A of the Act since the tax effect in the instant case is less than the amount prescribed for not filing the appeal.

7. It is noticed that the CBDT has issued Instruction No.5 of 2014 dated 10.07.2014, by which the CBDT has revised the monetary limit to Rs. 4,00,000/- for filing the appeal before the Tribunal.

8. Keeping in view the CBDT Instruction No.5 of 2014 dated 10.07.2014 and also the provisions of Section 268A of Income Tax Act, 1961, we are of the view that the Revenue should not have filed the instant appeal before the Tribunal. While taking such a view, we are fortified by the following decisions of Hon'ble Punjab & Haryana High Court:-

1. *CIT v Oscar Laboratories P. Ltd (2010) 324 ITR 115 (P&H)*
2. *CIT v Abinash Gupta (2010) 327 ITR 619 (P&H)*
3. *CIT v Varindera Construction Co. (2011) 331 ITR 449 (P&H)(FB)*

9. Similarly the Hon'ble Delhi High Court in the case of *CIT v. Delhi Race Club Ltd. in ITA No.128/2008, order dated 03.03.2011* by following the earlier order dated 02.08.2010 in ITA No.179/1991 in the case of *CIT Delhi-III v. M/s. P.S. Jain & Co.* held that such circular would also be applicable to pending cases.

10. From the ratio laid down by the Hon'ble Delhi High Court, it is clear that the instructions issued in the Circulars by CBDT are applicable for pending cases also. Therefore, by keeping in view the ratio laid down in the aforesaid referred to cases, we are of the considered view that Instruction No.5/14 dated 10.07.2014 issued by the CBDT are applicable for the pending cases also and in the said instructions, monetary tax limit for not filing the appeal before the ITAT is Rs. 4.00 lakhs.

11. In view of the above, without going into merits of the case, we dismiss the appeal filed by the Revenue.

12. Now, we will deal with the cross objection of the assessee in C.O.No. 242/Del/2010.

13. As regards to the cross objection filed by the assessee, the Id. Counsel for the assessee submitted that he has the instruction not to press the same and gave in writing as under :-

“Not pressed C.O.”
Sd/-
(Shankulp Sharma)

Accordingly the C.O. is dismissed as not pressed.

14. In the result, appeal of the department and Cross Objection of the assessee are dismissed.

(Order Pronounced in the Court on 16/06/2015).

Sd/-
(Diva Singh)
JUDICIAL MEMBER

Dated: 16/ 06/2015

B.Rukhaiyar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	16.06.2015		
2.	Draft placed before author	16.06.2015		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			