**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.14783 OF 2018
IN
INCOME TAX APPEAL NO.49 OF 2013**

Jintendra Shantilal s/o Govardhan Peety
..APPLICANT

VERSUS

The Commissioner of Income Tax,
Aurangabad ..RESPONDENT

Mr S. M. Godsay, Advocate for applicant;
Mr A. M. Sharma, Advocate for respondent

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL,JJ.**

DATE : 12th DECEMBER, 2018

ORAL ORDER :

Heard Mr. Godsay, learned Counsel appearing for the applicant and Mr. Alok Sharma, learned Counsel appearing for the respondent.

2. By way of present application, the applicant prays for directions to the appellant to withdraw the appeal in view of the Circular No. 3/2018 dated 11th July, 2018 issued by the Central Government.

3. Mr. Godsay, learned Counsel appearing for the applicant vehemently submitted that in view of Circular No. 3/2018 dated 11th July, 2018, in bunch of thirty seven appeals, the respondent-appellant withdrew nine appeals. It was then submitted by Mr. Godsay, learned Counsel that in view of policy under Circular dated 11th July, 2018, the appeal filed against the present applicant also ought to have been withdrawn, as such, he prays for allowing the application in terms of prayer clause (B).

4. We are unable to accept the submission of Mr. Godsay, learned Counsel for two reasons; firstly, the respondent has no right to seek a direction against the appellant to withdraw the appeal, as it is choice of the appellant, whether to prosecute the appeal or withdraw the appeal. It is the complete choice of the appellant. The second reason is, the applicant refers Circular dated 11th July, 2018. Now, this Circular is, directions issued by the superior officer to the

subordinates to take appropriate decision in cases of filing of appeal or in cases of pending appeals.

5. Mr. Alok Sharma, learned Counsel also pointed out to us that there is modification effected in the Circular by another Circular dated 28th February, 2018 and this Circular dated 28th February, 2018 makes it clear that the department would contest certain appeals and it is not a general decision of withdrawing each and every appeal filed by the revenue.

6. As we are not inclined to entertain the application on the above referred grounds, the application deserves to be dismissed and same is accordingly dismissed.

(MANGESH S. PATIL)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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