



IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.1555/Mum/2017

(Assessment Year :2010-11)

Asst. CIT 21(3) R.No.209, 2 nd Floor Piramal Chambers Lalbaug, Mumbai	Ms. Ruksana Hamied Sulaiman 501, Raheja Anchorage Samunder Point Dr. Annie Besant Road Worli, Mumbai – 400 018
PAN/GIR No.	AAEPS1137N
Appellant)	.. Respondent)

CO No.208/Mum/2018

(Arising out of ITA No.1555/Mum/2017)

(Assessment Year :2010-11)

Asst. CIT 21(3) R.No.209, 2 nd Floor Piramal Chambers Lalbaug, Mumbai	Ms. Ruksana Hamied Sulaiman 501, Raheja Anchorage Samunder Point Dr. Annie Besant Road Worli, Mumbai – 400 018
PAN/GIR No.	AAEPS1137N
Appellant)	.. Respondent)

Revenue by	Shri Chaitanya Anjaria
Assessee by	Shri M.P. Chhajed
Date of Hearing	01/08/2018
Date of Pronouncement	02/08/2018

आदेश / ORDER

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue and Cross Objection by the assessee against the order of CIT(A)-33, Mumbai dated 06/12/2016 for

A.Y.2010-11 in the matter of order passed u/s. 143(3) r.w.s. 147 of the IT Act, 1961.

2. At the outset learned AR pointed out that tax effect in the appeal decided by CIT(A) is below Rs.20 lakhs. In order to cut down on frivolous litigation and taxpayer's grievance, the CBDT, which formulates policies for the Income Tax Department, has issued recent instruction No.3/2018 dated 11/07/2018 revising the monetary threshold fixing the tax effect limit of Rs.20 lacs for the revenue to file appeal before the ITAT and since in this appeal, the tax effect is below Rs.20 lakhs, the appeal filed by the revenue is not maintainable and liable to be dismissed *in limine*.

3. The CBDT in its Circular No.3/2018 dated 11th July 2018 have revised the monetary limit to Rs.20 Lakhs to file the appeal before the Tribunal by the Revenue. On scrutiny of appeal filed by the revenue, it is found that the total tax demand is below the prescribed limit of Rs.20 lakhs. The CBDT also clarifies that this instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunal. The Income Tax Act was amended and Section 268A has been introduced on the Statute book with retrospective effect. Section 268A carves out an exception for filing of appeals and References under section 260A of the Act. The legislature has prescribed that the CBDT is empowered to issue circulars and instructions from time to time, with regard to filing of appeals depending on the tax effect involved. The relevant circular issued by CBDT reads as under:

“Reference is invited to Board’s Circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In supersession of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLHs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder;

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (Rs)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues'). Further, "tax effect" shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However in case of a composite

order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order / judgement involves more than one assessee, each assessee shall be dealt with separately.

6. Further, where income under the provisions of section 115JB or section 115JC for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula.

$$(A - B) + (C - D)$$

where,

A - the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JB was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues.

The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not tiling an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which read as under

**(•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."*

9. As the evidence of not Cling appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr. CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.

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 in para 3 above or there is no lax 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 ultravires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts.

11. The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken on merits of a particular case.

12. It is clarified that that monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of-Rs. 50 lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and S appeals below these limits may not be considered henceforth.

13. This Circular will apply in SLPs/appeals/cross objections/ references -; be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/ references. Pending appeals **below** the specified tax limits in para 3 above may be withdrawn/ not pressed

4. Considering the above CBDT circular, we found that this appeal of the revenue is not maintainable as the tax effect in this appeal is below Rs.20 Lakhs. Accordingly, appeal of the revenue is dismissed.

5. The cross objection so filed by the assessee is in support of the order passed by the CIT(A). As we have already dismissed the Revenue appeal on the ground of tax effect, the cross objection filed by assessee is also dismissed.

6. In the result, appeal of the Revenue as well as cross objection of assessee are dismissed.

Order pronounced in the open court on this 02/08/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 02/08/2018
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai