

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 643 of 2019****With****R/TAX APPEAL NO. 644 of 2019****With****R/TAX APPEAL NO. 645 of 2019****With****R/TAX APPEAL NO. 646 of 2019**

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PRINCIPAL COMMISSIONER INCOME TAX, VALSAD**Versus****VINODBHAI RANCHHODBHAI PAREKH**

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Appearance:**MRS KALPANAK RAVAL(1046) for the Appellant(s) No. 1****MS VAIBHAVI K PARIKH(3238) for the Opponent(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA**and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 10/02/2020****COMMON ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. These tax appeals are filed at the instance of the Revenue under Section-260A of the Income Tax Act, 1961 [for short '*The Act, 1961*'] and the same are directed against the orders of the Tribunal passed in each of the tax appeals, whereby, the Tribunal quashed and set aside the order passed by the Commissioner, Income Tax under Section-263 of the Act, 1961.

2. At the outset, the learned Senior Counsel Mr. Tushar Hemani, raised preliminary objections with regard to the maintainability of these appeals as according to him, in each of the appeal, filed by the Revenue

tax effect is less than the limit prescribed in the Circular issued by the Central Board of Direct Taxes being Circular No.17 of 2019 dated 08th August, 2019.

3. On the other-hand, the learned Senior Standing Counsel Ms. Kalpana Raval submitted that the above referred circular would not be applicable in the appeals arising from the order under Section-263 of the Act, 1961.

4. It was pointed out that the Circular No.3 of 2018 dated 11th November, 2018 was issued by the Central Board of Direct Taxes specifying the monetary limits for filing of the tax appeals in income matters by the Department before the Appellate Authority, High Courts and SLP/Appeals before the Supreme Court, pursuant to the policy decision taken by the Department as a measure for reducing litigation.

5. The attention of the Court was drawn to the Paragraph-4 of the Circular No.3 of 2018, which reads thus:-

“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 [herein after 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 order, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.”

6. It was, thereafter, pointed out that the aforesaid Circular No.3 of 2018 was modified by Circular No.5 of 2019 dated 5th February, 2019.

The Circular No.5 of 2019 reads as under:-

Circular No.5/2019

F. No. 279/Misc/M-84/2018-ITJ

Government of India

Ministry of Finance

Department of Revenue

Central Board Direct Taxes

Judicial Section

New Delhi, 5th February 2019

Subject:- Monetary limits for filing/withdrawal of Wealth Tax appeals by the Department before ITAT, HCs and SLPs/appeals before SC through extending the scope of Circular 3 of 2018 -Measures for reducing litigation.

Reference is invited to Board's Circular No. 3 of 2018 dated 11.07.2018 (hereinafter, referred to as "the Circular") vide which monetary limits for filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified. Para 11 of the Circular states that the monetary limits specified in para 3 shall not apply to writ matters and Direct tax matters other than Income tax and filing of appeals in such cases shall continue to be governed by relevant provisions of statute and rules.

2. There is no charge under Wealth Tax Act, 1957 w.e.f 1st April, 2016. Therefore, as a step towards litigation management, it has been decided by the Board that monetary limits for filing of appeals in Income tax cases as prescribed in Para 3 of the Circular shall also apply to Wealth Tax appeals through extension of the Circular to Wealth tax matters in a mutatis mutandis manner and with modifications as prescribed hereunder.

3. For the purpose of Wealth Tax appeals:

A. Para 4 of the Circular shall be read as follows :

"For this purpose, 'tax effect' means the difference between the tax on Net Wealth assessed and the tax that would have been chargeable had such Net Wealth been reduced by the amount of wealth in respect of the issues against which appeals is intended to be filed. 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 case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to

be appealed against."

B. Para 11 of the circular shall read as follows.

"The monetary limits specified in para 3 above shall not apply to writ matters. "

4. The said extension of the Circular to wealth tax appeals shall come into effect from the date of issue of this Circular.

5. The same may be brought to the notice of all concerned.

6. Hindi version will follow.

sd/-

*(Abhishek Gautam_
DCIT(OSD)-ITJ, CBDT*

Copy to:

- 1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.*
 - 2. All PCCsIT jDGsIT for bringing to the notice of all officers.*
 - 3. ADG (PR, PP& OL), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.*
 - 4. The Comptroller and Auditor General of India.*
 - 5. ADG (Vigilance), Mayur Bhawan, New Delhi.*
 - 6. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.*
 - 7. All Directorates of Income-tax, New Delhi and DGIT (NADT), Nagpur.*
 - 8. ITCC (3 copies).*
 - 9. The ADG (System)-4, for uploading on the Department's website.*
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- DCIT(OSD)-ITJ, CBDT*

7. According to the learned counsel, the aforesaid Circular No.5 of 2019 was issued to clarify that the matters under the Wealth Tax Act, 1957 is also covered by the Circular No.3 of 2018.

8. It appears that thereafter the Circular No.17 of 2019 dated 8th August, 2019 is issued by the Central Board of Direct Taxes. The said Circular reads as under:-

Circular No. 17/2019

F. No. 279/Misc. 142/2007-ITJ(Pt.)

Government of India

Ministry of Finance

*Department of Revenue
Central Board Direct Taxes
Judicial Section*

New Delhi. 8th August 2019

Subject: - Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.-

Reference is invited to the Circular No.3 of 2018 dated 11.07.2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August, 2018 vide which monetary limits for filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

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

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed, para 5 of the circular is substituted by the following para:

"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. Further, even in the case of 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, 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 case where a composite order/ judgement involves more than one assessee. each assessee shall be dealt with separately."

4. *The said modifications shall come into effect from the date of issue of this Circular.*
5. *The same may be brought to the notice of all concerned.*
6. *This issues under section 268A of the Income-tax Act, 1961.*
7. *Hindi version will follow.*

*(Neetika Bansal)
Director, (ITJ)
CBDT, New Delhi*

Copy to:

1. *Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.*
2. *All Pr. Chief Commissioners of Income Tax and all Directors General of Income Tax with a request to bring to the attention of all officers.*
3. *ADG(PR,P&P), Mayur Bhawan. New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.*
4. *The Comptroller and Auditor General of India.*
5. *ADG (Vigilance), Mayur Bhawan. New Delhi.*
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9. Thus, the Circular No.3 of 2018 is amended by the Circular No.5 of 2018 and Circular No.17 of 2019. After the amendment, the Circular No.3 of 2018 is modified with regard to the monetary limits prescribed under the Circular No.17 of 2019. Moreover, the Circular No.17 of 2019 has substituted the Paragraph-5 of the Circular No.3 of 2018.

10. Thus, on conjoint reading of all the three circulars, it appears that Paragraph-11 of the Circular No.3 of 2018 which is substituted by Circular No.5 of 2019 reads as under:-

"The monetary limits specified in Paragraph-3 above shall not apply to writ matters. "

11. In view of the aforesaid Circulars issued by the Central Board of Direct Taxes from time-to-time, the underlying policy of the Department is to reduce the litigation. So far as the matters arising out of the order under Section-263 of the Act is concerned, the same pertain to invocation of the revisional powers of the Commissioner of Income-tax for revising the assessment orders, which are erroneous or prejudicial to the interest of the Revenue. Therefore, when any order is passed under Section-263 of the Act, the same would also be the order under the Income Tax Act, 1961. The Circular referred to above do not distinguish the order passed under Section-263 or any other Section of the Act,1961, but it refers the monetary limits prescribed in the circulars itself and if any appeal is filed, which is not a writ-matter, then the monetary limits prescribed under the circular would apply and the Department is bound by such monetary limits and accordingly, the Department cannot pursue the matter, if the monetary limit prescribed in the circular is adhered-to.

11. In this context, the learned counsel Mr. Tushar Hemani has drawn attention of this Court to the order passed by the Division Bench in the ***Tax Appeal No.419 of 2009 and allied matters*** in the case of ***Commissioner of Income Tax Vs. Pravinchandra S. Shah dated 13th July, 2011***. This Court while disposing of the appeals on the ground of monetary limits prescribed and penalty under Section-271(1)(c) in

similar situation held as under:-

“Under the circumstances, we have ascertained whether the appeals under consideration would meet with the requirements of circular dated 15th May 2008 and in particular having regard to the provisions contained in para 5 thereof. We may notice that the issue involved in the appeals pertains to levy of penalty under section 271(1)(c) of the Act. The law prescribes penalty ranging between 100 to 300 per cent of the amount of tax evasion detected. In this group of appeals, even after taking maximum possible penalty imposable and taking combined total possible penalties for all appeals involving the same assessee and decided by the Tribunal by a common judgment, the same does not exceed the limit prescribed by the Board in its circular. To ascertain the tax effect, we have gone by the calculations provided by the Revenue through its learned counsel which are taken on record.

These appeals are, therefore, dismissed as involving low tax effect. It is clarified that the legal issues raised are not touched.”

12. In view of the aforesaid, even if, we take consolidated tax effect in all these appeals, it would not exceed the monetary limits prescribed in the Circular No.17 of 2019, dated 8th August, 2019. Therefore, these appeals are dismissed due to low tax effect.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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