

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1321/Bang/2013
Assessment year : 2004-05

The Income Tax Officer, Ward 9(1), Bangalore.	Vs.	Smt. Kamala S. Kandhari, No.155, Hollywood Town, Sadehalli Post, Devanahalli Taluk, Bangalore Rural District. <b>PAN: AFMPK 3785P</b>
APPELLANT		RESPONDENT

Appellant by	:	Dr. P.K. Srihari, Addl. CIT(DR)
Respondent by	:	Shri Ramasubramanian, CA

Date of hearing	:	29.04.2015
Date of Pronouncement	:	14.05.2015

**ORDER**

*Per N.V. Vasudevan, Judicial Member*

This appeal is by the revenue against the order dated 19.6.2013 of the CIT(Appeals), LTU, Bangalore relating to assessment year 2004-05.

2. The only issue that arises for consideration in this appeal is as to whether the CIT(Appeals) was justified in allowing the long term capital loss of Rs.13,20,878 on sale of imported car.

3. At the time of hearing of the appeal, it was brought to our notice that the tax effect in this appeal filed by the Revenue is less than Rs.4 lakhs. Our attention was also drawn to the fact that the monetary limit of Rs.4 lakhs for filing appeals by the revenue before the Tribunal was laid down in CBDT Instructing No.5/2014 dated 10.7.14. It was also brought to our notice that the present appeal has been filed by the revenue on 05.12.2013 much before the CBDT Instruction viz., No.5/2014. Our attention was drawn to the decision of the Hon'ble High Court of Karnataka in the case of *CIT v. Ranka and Ranka, 352 ITR 121 (Karn)* wherein the Hon'ble High Court held that CBDT Instruction No.5/2014 is retrospective in operation and the said Instruction will apply to appeals filed earlier, which are pending adjudication as on the date, when the Instruction has come into force. In the light of the above CBDT Instruction, Id. counsel for the assessee prayed that the appeal of the revenue has to be dismissed as not maintainable.

4. We have considered the submissions of Id. counsel for the assessee and are of the view that the same are acceptable. the Hon'ble Karnataka High Court in the case of *CIT Vs. Ranka and Ranka 352 ITR 121 (Karn)* has held that the instruction of CBDT revising monetary limits from

time to time for filing appeals by revenue will apply to all pending appeals and if pending disposal of appeal of revenue monetary appeals are revised than the revised monetary limit will have to be applied to see the maintainability of such appeals. The following were the relevant observations of the Hon'ble High Court:

“The Government has formulated the National Litigation Policy with a view to ensure conduct of responsible litigation by the Central Government and urges every State Government to evolve similar policies. Its aim is to transform Government into an efficient and responsible litigant. The purpose underlying this policy is also to reduce Government litigation in courts so that valuable Court time would be spent in resolving other pending cases, so as to achieve the Goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years. Instruction no. 3/2011 is issued subsequent to the aforesaid National Litigation Policy. A perusal of the aforesaid policy makes it clear that though the said instruction was issued as a measure for reducing litigation, it was issued in supersession of the earlier instruction enhancing the monetary limits and prescribing certain conditions. In the instant case, the Instruction no. 3/2011 is more beneficial than Instruction no. 2/2005. If instruction no. 3/2011 is also made applicable to the pending appeals before the High Court, it would grant relief to the assessee. Apart from granting relief to the assessee, if number of appeals pending before the High Court are disposed of on the basis of the said circular, the precious time which would be saved by the High Court could be better utilized for deciding disputes where tax effect is enormous. That apart, the duration, an appeal takes in the High Court would be reduced as desired by the National Litigation Policy. The object sought to be achieved by such circulars/instructions and also the law declared by the Apex Court, the National Litigation Policy 2011 as well as the various schemes introduced by the Department granting relief to persons who have not even filed returns and paid taxes, are kept in mind, to bring the circular/instruction in harmony with the National Litigation Policy, it would be appropriate to hold that the benefit of such circular/instruction also applies to the pending cases in

appeal in various Courts and Tribunals on the date of the circular/instruction. Therefore, the Instruction no. 3/2011 is also applicable to the pending appeals and as the tax effect in the instant case is less than Rs.10 lakhs, the appeal stands dismissed on the ground of monetary limit, without expressing any opinion on the merits of the claim.”

5. In our view the above observations of the Hon'ble High Court will squarely apply to the present case. Admittedly, the tax effect in this appeal by the Revenue is less than Rs.4 lacs and therefore as per CBDT Instruction No.5 of 2014 dated 10.7.2014, this appeal by the Revenue has to be dismissed as not maintainable.

6. The Id. DR, on the other hand, submitted that the issue raised by the revenue involves a question of law and therefore Instruction No.5/2014 should not be applied.

7. We have perused the CBDT Instruction and we find that clause 8 provides for three exceptions to the monetary limits, which are as follows:-

- “(a) Where the Constitutional validity of the provisions of an Act or Rule are 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.”

8. The plea of the Id. DR for excluding the present appeal from the aforesaid exclusion clause of the Instruction cannot be accepted, as the

present case does not fall within any of the categories mentioned in the exception.

9. In the result, appeal by the revenue is dismissed.

Pronounced in the open court on this 14<sup>th</sup> day of May, 2015.

Sd/-

( JASON P. BOAZ )  
Accountant Member

Sd/-

( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 14<sup>th</sup> May, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /  
Senior Private Secretary  
ITAT, Bangalore.