

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B-1 : NEW DELHI**

BEFORE SHRI R.S. SYAL, AM & SHRI KULDIP SINGH, JM

ITA/IT(SS)A, CO No.	Appellant	Respondent	AY/ Asst. Period	Assessee By
3117/Del/2014 CO No.83/Del/2015	DCIT, C.Cir.2 New Delhi. Madhukar Tulsi	Madhukar Tulsi, 313B, Terrace Heights, The Laburnum, Sector-28, Sushant Lok-1, Gurgaon. PAN: AAUPT5804H DCIT, CC-2, New Delhi.	2008-09	None
2992/Del/2014	DCIT, Central Circle-2, New Delhi.	Ravi Keswani, L-II/72, Lajpat Nagar-II, New Delhi. PAN: AALPK4762G	2009-10	None
3316/Del/2014 CO No.30/Del/2015	DCIT, Central Circle- 21, New Delhi. Sanjeev Khurana (HUF)	Sanjeev Khurana (HUF), Prop., Khurana Textiles Co., A-1/230, Hastal Road, Uttam nagar, New Delhi. PAN: AAJHS1934A DCIT	2008-09	None
2645/Del/2014	DCIT, Cir.11(1), New Delhi.	Indiabulls Finance Company Pvt. Ltd., F-60, Malhotra Building, 2 nd Floor, Connaught Place, New Delhi. PAN: AABCI3455R	2010-11	None
2643/Del/2014	DCIT, Circle 11(1), New Delhi.	Indo Alusys Industries Ltd., 606, Tolstoy House, 15, Tolstoy Marg, New Delhi. PAN: AAACM5489L	2006-07	None

2941/Del/2014	ITO, Ward 12(2), New Delhi.	GPM Developers Pvt. Ltd., F-20, Bankey Lal Market, Badar Pur, New Delhi. AACCG3872F	2007-08	None
3313/Del/2014	DCIT, CC-21, New Delhi.	Sanjeev Khurana (HUF), Prop., Khurana Textiles Co., A-1/230, Hastal Road, Uttam Nagar, New Delhi. PAN : AAJHS1934A	2005-06	None
CO No. 27/Del/2015	Sanjeev Khurana (HUF), New Delhi	DCIT, CC-16, New Delhi.		
2725/Del/2014	DCIT, CC-18, New Delhi.	DD Construction Pvt. Ltd., A-43, Allahabad Apartments, Mayur Vihar, New Delhi. PAN : AAACD4349Q	2009-10	None
2929/Del/2014	ITO, Ward 24(3), New Delhi.	Vikas Lohia, F-351, Bandh Road, Near Phase-VI, New Delhi. PAN: ACJPL3468N	2008-09	None
3359/Del/2014	DCIT, Cir.3(1), New Delhi.	Cerg Advisory Pvt. Ltd., E-121, 2 nd Floor, Masjid Moth, Greater Kailash, New Delhi. PAN: AACCC3327K	2010-11	None
3325/Del/2014	ITO, Ward 25(1), New Delhi.	Arvind Khosla, 436, Sainik Vihar, Pitampura, Delhi. PAN: AAJPK5469Q	2009-10	None
3350/Del/2014	DCIT, CC-3, New Delhi.	MKR Construction Pvt. Ltd., 2042, Katra Tobacco, Khari Baoli, Delhi. PAN: AADCM6195J	2007-08	None

3396/Del/2014	DCIT, Cir.4(1), New Delhi.	Lifelong India Ltd., D-1, Soami Nagar (South), Delhi. PAN: AAACL9439K	2010-11	None
3395/Del/2014	DDIT (E), Trust Circle- IV, New Delhi.	Trinity Wisdom Education Welfare Society, 31, Paschim Marg, Vasant Vihar, New Delhi. PAN: AABAT0180A	2010-11	Shri Amit Arora, CA
3360/Del/2014	ITO, Ward 1(3), New Delhi.	AKS Properties Pvt. Ltd., 2773, Hansapuri, Tri Nagar, New Delhi. PAN: AAFC4494J	2005-06	None
3640/Del/2014	ACIT, CC-19, New Delhi.	New India City Developers Ltd., B-44, IInd Floor, Jangpura, New Delhi. PAN: AAACK0016B	2005-06 & 2006-07	None
3544/Del/2014	ITO, Ward-2, Rohtak	Ashok Kumar Goyal, M/s Ashok Trading Co., Jhajjar Road, Rohtak. PAN: AAUPG7233M	2009-10	None
1940/Del/2014	ITO (TDS), Moradabad.	DFM DRM Office, Northern Railways, Civil Lines, Moradabad. LKNSO7477B	2009-10	None
3226/Del/2014	ACIT, CC-17, New Delhi.	Prashant Tyagi, 27, 2 nd Floor, Ishwar Nagar, New Delhi. PAN: ACCPT7824R	2005-06	None
3398/Del/2014	DCIT, Cir.4(1), New Delhi.	J.S. Furnishing (P) Ltd., D-2/1, Okhla Industrial Area, New Delhi. PAN: AAACJ1594K	2007-08	None
3461/Del/2014	DCIT, Cir.25(1), New Delhi.	Shivnath Rai Harnarain (India) Co., S-8, Bhagwan Dass Nagar, New Delhi. PAN: AACFS6792H	1997-98	None

2692/Del/2014	DCIT, Cir.12(1), New Delhi.	Hindustan Vidyut products Ltd., 7 th Floor, Kanchenjunga, 18, Barakhamba Road, New Delhi. PAN: AA ACT2345J	2010-11	None
3391/Del/2014	ITO, Ward 26(3), New Delhi.	Sushma Gupta, R/o C-2/52, First Floor, Janak Puri, New Delhi. PAN: AFJPG7609F	2010-11	None
3400/Del/2014	DCIT, Cir.4(1), New Delhi.	Lloyd Manufacturing Pvt. Ltd., B-10/1, Okhla Industrial Estate, Phase-II, New Delhi. PAN: AACFL8033F	2010-11	None
1926/Del/2014	ITO (TDS), Moradabad.	Regional Manager, Uttar Pradesh State Road Transport Corporation, Lajpat Nagar, Moradabad. PAN: LKNRO5203C	2011-12	None
3392/Del/2014	ITO, Ward 26(2), New Delhi.	Harjeet Singh,B-104, IInd Floor, Fateh Nagar, Jail Road, New Delhi. PAN: AMSPS3763N	2008-09	None
1935/Del/2014	ITO (TDS), Moradabad.	Gokul Das Hindu girls College, Tavela Street, Moradabad. LKNGO5340G	2008-09	None
1927/Del/2014	ITO, TDS, Moradabad.	Executive Engineer, UP Jal Nigam Construction Div., Tehsil & Post Bhinga, Shrawati, Uttar Pradesh. PAN: LKNC05354G	2008-09	None
1928/Del/2014	ITO (TDS), Moradabad.	Executive Engineer Division, South Sarda Canal, Raebareilly. PAN: LKNEO5237B	2008-09	None

1938 & 1939/Del/2014	ITO(TDS), Moradabad.	DFM DRM Office, Northern Railway, Civil Lines, Moradabad. LKNSO7477B	2008-09 & 2009-10	None
1937/Del/2014	ITO (TDS), Moradabad.	Rural Engineering Service, Vikas Bhawan, MDA Colony, Kanth Road, Moradabad. LKNRO5946D	2008-09	None
1925/Del/2014	ITO (TDS), Moradabad.	Marque Impex, Opp. Lal Masjid, Moradabad. PAN: LKNMO5177E	2011-12	None

Department By : Shri P. Dam Kanunjana, Sr. DR

Date of Hearing : 17.12.2015

Date of Pronouncement : 17.12.2015

ORDER

PER R.S. SYAL, AM:

These appeals by the Revenue and a few Cross objections by some of the assesseees arise out of the orders passed by the CsIT(A) in relation to the captioned assessment years.

2. One of the assessee-respondents was represented by the respective Id. AR, while others remained unrepresented. During the course of hearing, the Id. D.R., although supported the respective orders of the Assessing Officers, but could not

controvert the fact that tax effect involved in each of these appeals is less than Rs.10,00,000/-.

3. After considering the submissions of the Id. D.R. in all the appeals by the Revenue, one Id. AR, and the material on record, it is noticed that Section 268A has been inserted by the Finance Act, 2008 with retrospective effect from 01.04.1999, reading 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.]”

4. Pursuant to the mandate of section 268A, the CBDT has issued Circular No. 21 of 2015 dated 10.12.2015, revising the monetary limit to Rs.10,00,000/- for not filing appeals before the Tribunal. The said circular read as under:

“Subject : Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court – measures for reducing litigation – Reg.

Reference is invited to Board’s instruction No 5/2014 dated 10.07.2014 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

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

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

S. No	Appeals in Income-tax matter	Monetary Limit (in Rs)
1	Before Appellate Tribunal	10,00,000/-
2	Before High Court	20,00,000/-
3	Before Supreme Court	25,00,000/-

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”). 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, appeal 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. 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 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 instruction”. 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.

7. 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 filing 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. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CIT must be maintained in a systemic manner for easy retrieval.

8. *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 tax effect:*

- (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, or*
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.*

9. *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 & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section*

12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

11. This issues under Section 268A (1) of the Income-tax Act 1961.”

5. From para 10 of the above Circular it is palpable that these instructions are applicable to the pending appeals also and there is a clear cut instruction to the Department to withdraw or not press such appeals filed before the ITAT wherein tax effect is less than Rs.10,00,000/-. These instructions are operative retrospectively to the pending appeals also.

6. It goes without saying that the Board's instructions or directions issued to the income-tax authorities are binding on them. Going by the prescription of the aforementioned Circular, we are of the view that the Revenue should have either not filed the instant appeals before the Tribunal or withdrawn the same as the tax effect in each of such appeals is less than the prescribed limit for not filing the appeals.

7. Keeping in view the above Circular and the provisions of Section 268A of Income-tax Act, 1961, and without going into merits of the cases, we dismiss the instant appeals filed by the Revenue as tax effect in each of these appeals is less than Rs.10.00 lac. The Cross objections filed by the assessee, which are in support of the respective impugned orders, are also dismissed as infructuous.

8. In the result, all appeals of the Revenue and Cross objections of the assesseees stand dismissed.

Order Pronounced in the Court on 17/12/2015.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 17th December, 2015.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.