

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, PRESIDENT AND
SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No.3394/Del/2009
Assessment Year : 2002-03

Deputy Commissioner of
Income Tax,
Circle-39(1),
Room No.222, C.R. Building,
New Delhi.
(Appellant)

Vs. Shri Anil Mahajan,
10872, Jhandewalan Road,
New Delhi.
PAN : ABAPM0133D.
(Respondent)

Appellant by : Shri Ravi Jain, CIT-DR.
Respondent by : Shri M.P. Rastogi, Advocate and
Shri P.N. Shastry, CA.

Date of hearing : 06.06.2017
Date of pronouncement : 06.06.2017

ORDER

PER G.D. AGRAWAL, PRESIDENT :-

The appeal by the Revenue is directed against the order of learned CIT(A)-III, New Delhi dated 26th March, 2009.

2. It is observed that the tax effect involved in this appeal by the Revenue is below ₹10 lakhs. The CBDT in its Circular No.21/2015 dated 10th December, 2015 has revised the monetary limit for filing of the departmental appeals to the ITAT at ₹10 lakhs which is evident from paragraph 3 of the Circular, which reads as under:-

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

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

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."

3. In paragraph 10 of the Circular, such monetary limits have been made applicable retrospectively. For ready reference, we reproduce paragraph 10 below:-

"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 Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed.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."

4. Therefore, the above Circular would be squarely applicable to the appeal under consideration before us.

5. Learned Senior DR who appeared at the time of hearing before us stated that he needs some time to call for the report from the Assessing Officer as well as instructions from Administrative CIT for withdrawing this appeal because the appeal was filed with the approval of Administrative CIT. Learned DR further pointed out that in paragraph 7 of the said Circular, it has been clarified by the CBDT that withdrawal of this appeal by the Revenue on account of low tax effect should not be considered as a precedent in the subsequent years of

the acceptance of issues involved in this appeal and, therefore, if in the subsequent year similar issue arises before the ITAT where the appeal is above the tax limit as prescribed in this Circular, the same should be decided on merits.

6. Learned counsel for the assessee, on the other hand, stated that the Circular is squarely applicable to the facts of the assessee's case.

7. After considering the submissions of both the sides, we are of the opinion that there is no necessity for adjourning the appeal and calling the report from the Assessing Officer because, apparently, the tax effect involved in this appeal of the Revenue is below ₹10 lakhs. However, we add here that if on receipt of order the Assessing Officer finds that the tax effect is above ₹10 lakhs or, in any other manner, the Circular is not applicable, he will be at liberty to file the miscellaneous application. We also agree with the contention of the learned DR that this order would not be considered as an acceptance by the Revenue on the issue involved in this appeal and will not be an estoppel for the Revenue to take up the issue involved in this appeal before the ITAT on merits if the tax effect in those years is more than ₹10 lakhs. With this remark, we deem it proper to dismiss the appeal in the light of the Circular No.21/2015 of CBDT dated 10th December, 2015.

9. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 06.06.2017.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
PRESIDENT

VK.

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1. Appellant : Deputy Commissioner of Income Tax,
Circle-39(1), Room No.222, C.R. Building,
New Delhi.
2. Respondent : Shri Anil Mahajan,
10872, Jhandewalan Road, New Delhi.

3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar