

INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "F": NEW DELHI

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1218/Del/2014
(Assessment Year: 2006-07)

ITA No 1222/Del/2014
(Assessment year :- 2010-11)

ITA No 1223/Del/2014
(Assessment year 2011-12)

ACIT,
Central Circle-10,
New Delhi

(Appellant)

Vs.

Rakesh Gupta,
C-3/28, Sector-15,
Rohini, New Delhi
PAN:AJAPK4533H

(Respondent)

Co. No. 380/Del/2014
(Assessment Year: 2006-07)

Co. No 384/Del/2014
(Assessment year 2010-11)

Co . No. 385/Del/2014
(assessment year 2011-12)

Rakesh Gupta,
C-3/28, Sector-15,
Rohini, New Delhi
PAN:AJAPK4533H

(Appellant)

Vs.

ACIT,
Central Circle-10,
New Delhi

(Respondent)

Revenue by :	Ms. Nandita Kanchan, CIT DR
Assessee by:	None
Date of Hearing	05/04/2016
Date of pronouncement	22/04/2016

ORDER

PER BENCH

1. These are the cross appeals filed by the Department and the assessee are directed against the separate orders dated 11.12.2013 of Id CIT(A)-XXXII, New Delhi for the Assessment Year 2006-07, dated 11.12.2013 for AY 2010-11 and dated 11.12.2013 for AY 2011-12.
2. The brief facts of the case for all three years are that search operations were carried out at the business and residential premises of the assessee on 26-4-2010 and he was found to be an entry operator. The main addition was that he was found to be an entry operator. The Ld AO treated the difference between the amount of cheque issued as entry operator and the amount "net received" against the cheque income as its commission income. Therefore such commission income was determined on the difference between the issue of cheque and receipt of cash @ 5.67% on average basis and it was held that the assessee has received commission on providing accommodation entries @ 5.67% whereas in the statement recorded of the assessee he admitted to have received the commission of 0.25 % to 0.75%. Therefore, ld. AO made an addition @ 5.67% of the amount of accommodation entry on account of commission income after deducting commission expenses @ 0.5%. Against this on appeal, ld. CIT (A) upheld the addition to the extent of 2 % instead of @ 5.67%.
3. For AY 2006-07, assessment of the assessee was completed on 28.03.2010 at total income of Rs. 2759090/- against the returned income of Rs. 134380/-. Therefore, ld. AO made an addition of Rs. 2624706/- on account of commission income after deducting commission expenses @ 0.5%.

Against this on appeal , ld. CIT (A) upheld the addition to the extent of 2 % instead of @ 5.67%. Therefore confirming the addition of Rs. 925822/- thereby deleting the addition of Rs. 1698884/-.

4. For AY 2010-11 assessment of the assessee was completed on 28.03.2013 at total income of Rs 3575808/- against the returned income of Rs. 120764/- where in ld. AO made an addition of Rs 3575808/- and CIT (A) confirmed the addition of Rs 1261308/- and deleted the balance addition of Rs. 2314500/-.
5. For AY 2011-12 assessment of the assessee was completed on 28.03.2013 at total income of Rs 2534890/- against the returned income of Rs. 186716/- where in ld. AO made an addition of Rs 2002850/- and CIT (A) confirmed the addition of Rs 706472/- and deleted the balance addition of Rs. 1296378/-.
6. These addition deleted is contested by the revenue before us in this appeal.
7. Assessee has also filed cross objection in No 380/Del/2014 against the order of CIT (A) against the confirmation of addition of commission.
8. As all in these appeals the tax effect is less than Rs 10 lakhs. At the outset of the hearing itself, the ld. DR was asked that CBDT vide Circular No. 21/2015 dated 10th December 2015 has decided that the revenue would not prefer an appeal before the Tribunal if the tax effect is less than Rs. 10 lakhs. However, ld. DR submitted that as the issue involved in this appeal is for several years i.e. From A y 2006-07 to 2011-12 it is not covered by the circular. Therefore, she submitted that the appeal of the revenue cannot be dismissed as per the instruction of the CBDT.
9. We have heard the ld DR on the issue and perused the material. We find that the CBDT vide circular dated 10.12.2015 has revised the monetary limit for filing the appeal by the department before Income Tax Appellate Tribunal, Hon'ble High Courts and Hon'ble Supreme Court. The relevant para of the aforesaid circular is reproduced as under :-

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

	Appeals in Income-tax matters	Monetary
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		Limit(in Rs.)
	Before Appellate Tribunal	10,00,000
	Before High Court	20,00,000
	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/judgment 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 the CsIT 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 the Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
 - (c) Where the 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 and 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 Income-tax 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 the 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.”
 10. We find that the tax effect involves in the appeal of the Revenue is below Rs. 10 lakhs. The orders passed by the ld. CIT (A) are not composite for other years but separate orders have been passed. Therefore this appeal is also not covered by the exception provided in para no 8 of that appeal. There is no dispute that the Board's instructions or directions issued to the Income-tax authorities are binding on those authorities; therefore, the Department should have withdrawn/not pressed the present appeal in view of the previously mentioned instruction since the tax effect in the instant appeal is less than the amount of Rs. 10 lakhs.
 11. In view of the above, Circular No. 21 dated 10.12.2015 will apply to all pending appeals. Therefore the precedent, it is held that the appeal is not maintainable in the instant case as the tax effect is less than Rs. 10 lakhs. Accordingly, it is held that appeal filed by the revenue is not maintainable.
 12. In these appeals the assessee have also filed the cross objections. However, the right to file a cross objection arises only when the appeal filed by the

other party is admitted, and, in a situation in which the appeal itself is held to non-maintainable, the very foundation for the cross objection ceases to hold good in law. Since the appeals of the revenue are not maintainable on account of low tax effect, therefore, the cross objections of the assessee becomes infructuous and accordingly dismissed.

13. In the result, appeals filed by the department and cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 22/04/2016.

**-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER**

**-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated:22/04/2016

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi