

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA.No.7058/Del/2014
Assessment Year 2008-09

ITO,	vs.	Shri Chandra Mani Nautiyal
Ward-1,		Pro. M/s. Durga Gayatri Resturant,
D-29 & 30,		Near Shanti Kunj, Bhoopatwala
Industrial Area,		Haridwar
Haridwar		(PAN-AGDPN5042J)

(Appellant)

(Respondent)

Assessee By : Shri Anshu Prakash, Sr. DR.
Revenue By : Shri Sudhanshu Sharma, CA

Date of Hearing : 25.09.2017

Date of Order : 25.09.2017

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

This appeal by the Revenue is against order of Commissioner of Income Tax (Appeals)-I, Dehradun dated 09.10.2014 . Assessment was framed by ITO Ward-1, Haridwar u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for assessment year 2008-09.

2. Shri Sudhanshu Sharma Ld. Authorized Representative appearing on behalf of assessee and Shri Anshu Prakash, Ld. Sr. Departmental Representative appearing on behalf of Revenue.

3. At the outset it was observed that of late, the CBDT has issued Circular No. 21/2015, dated 10th December, 2015, whereby the monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, Hon'ble High Courts and SLP before Hon'ble Supreme Court have been increased as measure for reducing Litigation. The revised monetary limits laid down in para-3 of this Circular and the manner of computing tax effect as laid down in para-4 of this Circular are as follows:

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

Sl.

<i>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.

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."

4. In para-10 of the said circular it has been further clarified that the revised monetary limits will apply retrospectively. The relevant para-10 of the Circular reads thus:

"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."

4.1 In the present case, the tax effect in this appeal by the Revenue is less than Rs.10 lacs. Though the appeal had been filed by the Revenue on 30.12.2014 and was within the monetary limit in the form of tax effect for filing appeal before Tribunal, but in view of **para-10** of the Circular of CBDT, even such appeal will be governed by the new monetary limits laid down in the CBDT Circular No.21/2015 referred to above.

In the present case the addition was made by the AO for Rs. 90,42,555.00 on account of long term capital gain which was taxed @ 20% on such amount. However the Id. CIT-A granted the relief of Rs. 48,10,500 by reducing the long term capital gain income to Rs. 42,32,044.00 vide order dated 9.10.2014. Thus the disputed amount of tax works at Rs. 9,62,100.00(48,10,500.00 * 20%) only which is less than the limit as specified in the CBDT Circular.

5. It is a settled law that the Circulars issued by CBDT are binding on the Revenue. This position was confirmed by the Apex Court in the case of Commissioner of Customs vs Indian Oil Corporation Ltd. reported in 267

ITR 272 wherein their Lordships examined the earlier decisions of the Apex Court with regard to binding nature of the Circular and laid down that when a circular is issued by the Board it remains in operation and the Revenue is bound by it. Therefore it cannot be allowed to plead that it is not valid or that it is contrary to the terms of the statute. The appeal under consideration has certainly been filed contrary to the Circular issued by the CBDT Circular No.21/2015.

6. In view of the above, We hold that the appeal filed by the Department, against the impugned order of the Ld. CIT(A), are contrary to the policy decision of the Department and as such the appeal filed by the Department is dismissed *in limine*.

7. In the result, appeal of Revenue is dismissed *in limine*.

Order pronounced in the open court 25/09/2017

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Dated :25.9.2017

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Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.