

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.4889/M/2012
Assessment Year: 2009-10**

Asst. Commissioner of Income Tax, Circle -1, Thane, MIDC, Vardaan Bldg., Lower Ground Floor, Thane (W)	Vs.	Shri Amit Jagannath Raut, A-103, Audumber Hsg. Soc., Pokhran Road, No.1, Shivaji Nagar, Thane PAN: AJTPR 6309P
(Appellant)		(Respondent)

**CO No.196/M/2013
(Arising out of ITA No.4889/M/2012)
Assessment Year: 2009-10**

Shri Amit Jagannath Raut, A-103, Audumber Hsg. Soc., Pokhran Rd. No.1, Shivaji Nagar, Thane PAN: AJTPR 6309P	Vs.	Asst. Commissioner of Income Tax, Circle -1, Thane, MIDC, Vardaan Bldg., Lower Ground Floor, Thane (W)
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satish B. Boob, A.R.
Revenue by : Shri Rajesh Kumar Yadav, D.R.

Date of Hearing : 01.08.2017
Date of Pronouncement : 20.09.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeal by the Revenue and the cross objection by the assessee have been preferred against the order dated 30.04.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. At the outset, the Ld. A.R. has submitted that tax effect involved in this appeal is less than Rs. 10 lacs and the CBDT Circular No. 21/2015 is applicable to this appeal, hence, this appeal be dismissed as not pressed in terms of CBDT circular no 21/2015 dated 10/12/2015.

3. The CBDT vide Circular dated 10/12/2015 (supra) has revised the monetary limits for filing of appeals by the Department before the Tribunal and further vide Para 10 of the said circular it has been clarified that said circular is applicable retrospectively to the pending appeals also. The relevant portion of the circular dated 10/12/2015 (supra) is reproduced below:-

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

<i>Sl. No.</i>	<i>Appeals in Income-tax matters</i>	<i>Monetary Limits (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>

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.....

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.

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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 withdrawal 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."

(underlined for emphasis by us)

4. The tax effect in dispute in the captioned appeal is stated to be below the monetary limit of Rs.10.00 lacs as specified in the CBDT

Circular dated 10/12/2015 (supra). The Ld. DR has not brought out any material to suggest that the captioned appeal is protected by any of the circumstances prescribed in Para-8 of the Circular dated 10/12/2015 (supra). He therefore has stated that in view of the above circular of the CBDT, the captioned appeal be treated as withdrawn/not pressed. Hence, without going into the merit of the issues raised in the present appeal, this appeal is treated as dismissed as withdrawn/not pressed as its filing being in contravention of the CBDT Circular dated 10/12/2015(supra) read with section 268A of the Income Tax Act.

5. In the result, Departmental appeal is dismissed.

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6. Since the Departmental appeal is dismissed, the assessee has not pressed for the cross objection. Hence, the cross objection of the assessee is dismissed.

7. In the result, assessee's cross objection as well as Departmental appeal is dismissed.

Order pronounced in the open court on 20.09.2017.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 20.09.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.