

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

Before: **Shri Waseem Ahmed, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1196/Kol/2015

Assessment Year: 2011-12

**Deputy Commissioner of
Income-tax, Cir-4(2)
Kolkata.**

Appellant

Vs

**M/s. The Methoni Tea
Company Ltd.**

PAN: AABCT3901H

Respondent

For the Appellant : Shri Arindam Bhattacharjee, Addl.CIT, Id.Sr.DR
For the Respondent : Shri P.J. Bhide, FCA, Advocate, Id.AR

Date of hearing : 02-11-2017

Date of pronouncement : 02-11-2017

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by Revenue is arising out of order dated 19-06-2015 of CIT(A), 2, Kolkata for the assessment year 2011-12.

2. It is seen from the records that the total tax effect challenged by the Revenue before us is admittedly below the tax effect limit prescribed by CBDT vide Circular No. 21 / 2015 dated 10.12.2015 for preferring appeal(s) before Tribunal by the revenue. It will be pertinent to reproduce the relevant portion of the said Circular No. 21 / 2015 dated 10.12.2015 :-

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

<u>S.No.</u>	<u>Appeals in Income Tax matters</u>	<u>Monetary Limit (in Rs)</u>
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.

8. Adverse judgements 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.*

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.

2.1 We find that intention behind the Circular No.21/2015 dated 10-12-2015 needs to be understood in the following perspective:-

2.2 On perusal of the Circular No. 21 / 2015 dated 10.12.2015 and the materials available on record, we could not see whether the impugned case falls under any of the exceptions contemplated in the said Circular. We also find that the Circular makes it very clear that the revised monetary limits shall apply retrospectively to pending appeals also. We find that the Circular is binding on the tax authorities. This position has been confirmed by the **Hon'ble Apex Court in the case of Commissioner of Customs vs Indian Oil Corporation Ltd reported in 267 ITR 272 (SC)** wherein their Lordships examined the earlier decisions of the Apex Court with

regard to binding nature of the Circulars and laid down that when a Circular issued by the Board remains in operation then the revenue is bound by it and cannot be allowed to plead that it is not valid or that it is contrary to the terms of the statute. Hence we hold that the appeal(s) of the revenue deserve to be dismissed in terms of low tax effect vide Circular No.21 / 2015 dated 10.12.2015. Accordingly, this being a low tax effect case, we dismiss the appeal of the revenue in limine, as unadmitted, without going into the merits of the case. The appeal of the revenue is dismissed.

3. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 02-11-2017

Sd/-
Waseem Ahmed
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 02-11-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – The DCIT, Cir-4(2), Kolkata
Aaykar Bhawan, 4th floor R. No. 11B, P-7 Chowringhee Sq., Kolkata-69.
2. Respondent – M/s. The Methoni Tea Company Limited
75C, Ruby Centre, 1st Floor, Park Street, Kolkata-16.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr.PS/H.O.O
ITAT, Kolkata