

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

Before: **Shri J. Sudhakar Reddy, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 178/Ran/2016
A.Y 2009-10

Income Tax Officer
Ward 1(3), Jamshedpur

Appellant

Vs.

Shri Badri Narayan Dutta
PAN: ACMPD061 1N

Respondent

I.T.A No. 182/Ran/2016
A.Y 2009-10

Shri Badri Narayan Dutta
PAN: ACMPD061 1N

Appellant

Vs.

Income Tax Officer
Ward 1(3), Jamshedpur

Respondent

For the Appellant : S/Shri P.K. Mondal, JCIT, Id.DR
Sanjay Prasad, CIT-A, Id.DR
For the Respondent : Shri Rajiv Mittal, Advocate, Id.AR

Date of hearing : 22-02-2018
Date of pronouncement : 28-02-2018

ORDER

Per Bench:

Both the above appeals by Revenue and Assessee are arising out of separate order dated 28-03-2016 of CIT(A), Jamshedpur for the assessment year 2009-10.

2. First, we shall take up the appeal in ITA No. 178/Ran/2016 for the A.Y 2009-10 by the revenue.

ITA No. 178/Ran/2016 for the A.Y 2009-10

3. On perusal of record, it is noticed that the issue involved in this appeal of revenue is not maintainable in view of CBDT's prescribed Circular. The Id. AR submitted that the issue involved in this appeal is relating to below tax effect, which is not maintainable in the eye of law and as per CBDT's circular. On the other hand, the Id.DR did not controvert the same.

4. It is seen from the above 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.

5. In view of the above Circular, we find that the issue challenged by the Revenue in this appeal is below the tax effect, which is prescribed by the Board under Circular dt. 10-12-2015. Therefore, the appeal is dismissed being low tax effect.

6. In the result, the appeal of the revenue in ITA No. 178/Ran/2016 for the A.Y 2009-10 is dismissed as not maintainable.

7. Now, we shall take up the assessee's appeal in ITA No.182/Ran/2016 for the A.Y 2009-10.

ITA No.182/Ran/2016 for the A.Y 2009-10 by the assessee.

8. At the time of hearing before us the Id.AR submits that another opportunity may be given to assessee to represent its case properly before the CIT-A. He referred to page 8 of the paper book and argued that the assessee could not prosecute his case properly before the CIT-A as earlier AR withdrew its authorization from the first appellate proceedings. On change of jurisdiction, the CIT-A sent the notices to earlier AR of the assessee, who withdrew his authorisation and in view of this, there was no proper opportunity of the assessee to represent its case before the CIT-A. On the other hand, the Id. DR has objected to the same.

9. Heard rival submissions and perused the material on record. It is noticed from the certified copies of the order sheet of the CIT-A, placed at page 8 of the paper book that then AR by name Shri Nawal Meheta, FCA has withdrawn his authorization from the proceedings and on 10-03-2015, Shri A.R Mitra, FCA filed power of attorney on behalf of the assessee to prosecute his case. It is also noticed from record that after change of jurisdiction, the CIT-A sent notices to the earlier AR of the assessee, who withdrawn his power of attorney from the proceedings, which is available at page 12 of the paper book. We are of the view that there was no opportunity to the assessee before the CIT-A. Therefore, taking into consideration the submissions of the Id.AR, facts and circumstances of the case and in the interest of justice, we deem it fit and proper to remand the matter to the file of the CIT-A for fresh adjudication. The assessee shall be at liberty to file requisite evidences and explanation in support of its claim raised in the appeal before the CIT-A. Therefore, the grounds raised by the assessee in the appeal are allowed for statistical purpose.

10. The appeal of assessee in ITA No. 182/Ran/2016 or the A.Y 2009-10 is allowed for statistical purpose.

11. In the result, the appeal of the revenue in ITA No. 178/Ran/2016 for the A.Y 2009-10 is dismissed and the appeal of assessee in ITA No. 182/Ran/2016 or the A.Y 2009-10 is allowed for statistical purpose.

Sd/-
J. Sudhakar Reddy
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 28-02-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – The ITO, Ward 1(3), 47 C.H Area, Jamshedpur-831001.
2. Respondent –Shri Badri Narayan Dutta, Flat No. D/2, Chandra Kunj, 27 New Baradwari, Saskchi, Jamshedpur-831001.
3. The CIT(A), Ranchi
4. CIT , Ranchi
5. DR, ITAT Ranchi Benches, Ranchi.

/True Copy,

By order,

Sr.PS
ITAT, Ranchi