

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 5195/Del/2014
Assessment Year: 2011-12**

ACIT, CIRCLE, NAJIBABAD
NAJIBABAD,

(APPELLANT)

VS. SH. DHARUV RAJ SINGH,
MOH. KILA,
SAHANPUR,
BIJNOR
(PAN: AUTPS6213N)
(RESPONDENT)

Department by
Assessee by

: Sh. Vijay Kr. Jiwani, Sr. DR
: Sh. Piyush Kaushik, Adv.

ORDER

PER H.S. SIDHU, JM

The Department has filed this Appeal against the Order dated 02.6.2014 of Ld. CIT(A)-Bareilly pertaining to assessment year 2011-12. Earlier the Department has raised as many as 11 grounds which were lengthy and argumentative in nature. Later the Department has filed the following revised grounds which read as under:-

"1. On the facts and in the circumstances of the case & in law, the order of the CIT(A) is wrong perverse, illegal and against the provisions of law which is liable to be set aside.

2. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in allowing relief of Rs.3,43,000 out of addition made on account of unexplained cash

deposits in SCB bank account. The Ld. CIT(A) has ignored the fact that assessee changed his stand frequently during assessment proceedings.

3. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in allowing relief of Rs.5,20,000/- out of addition made on account of unexplained cash deposits in SCB bank account ignoring the fact that initially the assessee has denied in writing that no gifts received during the year, whereas later on changed his stand to taking Rs.4 Lac & Rs.1.20 Lac as cash gifts from wife and mother respectively.

4. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in allowing relief of Rs.50,000/- out of addition made on account of unexplained cash deposits in SBI bank account ignoring the fact that this SBI account in which the cash of Rs.50,000/- deposited, was not disclosed by the assessee to the department.

5. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in reducing the salary income by Rs.63,794/- ignoring the fact that the addition to the Salary income has been made taking into account income depicted by the employer in 26AS.

6. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in deleting the addition made of Rs. 10,47,149/- as made in r/o salary earned in Singapore in

the last quarter of F.Y. 2010-11 ignoring that the assessee has not disclosed the said salary income to the department in his ITR or even during assessment proceedings and also the assessee was resident in India during the relevant financial year.

7. On the facts and in the circumstances of the case, the Ld. CIT Appeals has erred in deleting the addition made of Rs.24.61,000/- on account of Short Term Capital Gain in r/o transfer of booking rights in Emerald floors, Gurgaon without appreciating the fact that the assessee has not disclosed it and it was came out by the efforts made by the assessing officer.

8. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in allowing relief to the extent of Rs. 1,65,8757/- out of disallowance of Rs.2,17,337/- in r/o alleged reimbursements ignoring the facts that the assessee has initially denied receipt of any amount towards reimbursements.

9. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in deleting the entire addition of Rs.8,40,000/- made as deemed rent u/s 23(1) of the I.T. Act, 1961 for his three immovable properties.

10. On the facts and in the circumstance of the case, the Ld.CIT(Appeals) has erred in deleting the addition of Rs.2.00 Lakhs made u/s 69C ignoring the facts that the addition was made very reasonably as for the

sprawling erstwhile estate properties having are of about 13000 Sq. ft.

11. The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of hearing."

2. The aforesaid appeal came up for hearing before the Bench today i.e. 12.07.2018. At the time of hearing, Ld. Counsel of the assessee submitted that the tax effect in the present appeal is less than Rs. 20 lacs and in view of the latest CBDT's Circular No. Circular No. 3/2008 dated 11th July, 2018, the present appeal may be dismissed. In support of his contention, he has filed a Chart showing tax effect involved in the present appeal is Rs. 17,58,462.76. The copy of the said Chart has also been given to the Ld. DR, who could not controvert the contention raised by the Assessee's counsel.

3. We have heard both the parties and perused the records available with us and the amount of additions involved in the present appeal. Keeping in view of the Circular No. 3/2008 dated 11th July, 2018 issued vide F.No. 279/Misc. 142/2007-ITJ (Pt.) by the CBDT, we are of the view that the request of the Ld. Counsel of the assessee is acceptable and the Appeal filed by the Department deserve to be dismissed. For the sake of convenience, the contents of the said CBDT's Circular are reproduced as under:-

"Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Reference is invited to Board's Circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In supersession of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

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

S. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (in Rs)
1	Before Appellate Tribunal	20,00,000/-
2	Before High Court	50,00,000/-
3	Before Supreme Court	1,00,00,000/-

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'). Further, 'tax effect' shall be tax including applicable surcharge and cess. 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, appeals 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.

6. Further, where income is computed under the provisions of section 115J13 or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula-

$$(A - B) + (C - D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115dC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. 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 Pr. Commissioner of Income-tax/ 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 Circular". 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.

8. 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 and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which read as under :

"(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case."

9. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.

10. 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 is 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.

*11. 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, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/ 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken **on merits** of a particular case.*

12. It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and SLPs/ appeals below these limits may not be considered henceforth.

13. This Circular will apply to SLPs/ appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.

14. The above may be brought to the notice of all concerned.

15. This issues under Section 268A of the Income-tax Act 1961....."

4. After perusing the aforesaid CBDT's instructions, we are of the view that tax effect involved in the present appeal is less than

Rs. 20 lacs as stated by the Ld. Counsel of the assessee. Therefore, the present appeal filed by the Revenue is dismissed.

5. In the result, Appeal filed by the Revenue Stands dismissed.

Order pronounced on 12/07/2018.

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 12/07/2018

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSISTANT REGISTRAR
