

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1723/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2013-14)

ITO 20(3)(5) R.No. 205, 2 nd Floor, Piramal Chambers, Parel, Mumbai 400012	बनाम/ v.	Mr. Zubin Feroz Gheewala, R-1, Godrej Baug, Napean Sea Road, Mumbai-400026
स्थायी लेखा सं./ PAN : ATFPG6249R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by :		Shri A.M. Mittal,DR
Assessee by:		Shri. Burzin R. Daruwalla

सुनवाई की तारीख / **Date of Hearing** : **23.07.2018**घोषणा की तारीख / **Date of Pronouncement** : **23.07.2018****आदेश / ORDER****PER RAMIT KOCHAR, Accountant Member:**

This appeal filed by the Revenue is disposed of because the tax effect in the appeal is less than Rs. 20 lacs as per the CBDT Circular No. 3/2018, F. No. 279/Misc.142/2007-ITJ (Pt) dated 11th July, 2018 issued by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India.

2. The Ld. AR submitted that tax effect involved in this appeal is less than Rs. 20 lacs and the CBDT Circular No. 3/2018 is applicable to this appeal and this appeal filed by the Revenue is not maintainable in terms of CBDT circular no 3/2018 dated 11.07.2018 . The said CBDT circular dated 11.07.2018 is reproduced as hereunder:-

Circular No. 3/2018

F No 279/Misc. 142/2007-ITJ (Pt)
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes

New Delhi the 11th July, 2018

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 (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 115JB 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 115JC 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.

16. Hindi version will follow.

Sd/-
(Neetika Bansal)
Director (ITJ),
CBDT, New Delhi.

Copy to:

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. All Pr. Chief Commissioners of Income Tax and All Directors General of Income Tax with a request to bring to the attention of all officers.
3. ADG (PR, PP& OL)_t Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
4. The Comptroller and Auditor General of India.
5. ADG (Vigilance), Mayur Bhawan, New Delhi.
6. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
7. All Directorates of Income-tax, New Delhi and DGIT (NADT), Nagpur.
8. ITCC (3 copies).
9. The ADG (System)-4, for uploading on the Department's website.
10. Data Base Cell for uploading on irsofficersonline.gov.in.
11. njrs_support@nsdl.co.in for uploading on NJRS.
12. Hindi Cell for translation.
13. Guard file.

Director (ITJ)
CBDT, New Delhi”

The ld. AR submitted that as per the CBDT Circular No. 3/2018, F. No. 279/Misc.142/2007-ITJ (Pt) dated 11th July, 2018 issued by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, no appeal shall be filed by the Revenue in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3 of the circular

Para 3 of the Circular No. 3/2018

S No.	Appeals 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	10,00,000/-

In the said circular vide para 13, it is stipulated that this instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in Hon'ble High Courts/Tribunals. Thus, it is stipulated that pending appeals below the specified tax limits may be withdrawn/not pressed. The learned DR stated that liberty should be given to Revenue that if at any stage if it is found that due to reasons stipulated in the said circular, the

department intended to contest appeal it should be permitted to file Miscellaneous application for recall of the order of the tribunal disposing of this appeal due to low tax effect.

The ld. AR has brought on record evidence that tax effect in the instant appeal is below Rs. 20 lacs vide notice of demand issued by the AO which is reproduced hereunder:

Notice of Demand Under Section 156 of the Income-tax Act, 1961

OE II/105/Pag 21/2015-16

PAN :- ATFPG6249R
Status :- INDL

To,
MS. ZUBIN FEROZE GHEEWALA
R-1, GODREJ BAUG, R-1,
NAPEAN SEA RAOD, MUMBAI. 400026

1. This is to give you notice that that for the assessment year 2013-14 a sum of Rs, 19,78,380/- details of which are enclosed, has been determined to be payable BY you.
2. The amount should be paid to the Manager, authorized bank/State Bank of india, Reserve Bank of India at Mumbai within 30 days of the service of this notice. The previous approval of the Deputy Commissioner of Income-tax has been obtained for allowing a period of less than 30 days for the payment of the above sum. A challan is enclosed for the purpose of payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one and one-half per sent for every month or part of a month from the date of commencing after the end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount of tax within the period specified above, proceedings for the recovery thereof will be taken in accordance with section 222 to 229, 231 and 232 of the Income-tax Act 1961.
6. If you intend to appeal against the assessment/fine/penalty, you may present an appeal under Part A of chapter XX of the Income-tax Act 1961, 1961, to the Deputy Commissioner (Appeal) of Income-tax/ Commissioner of Income-tax (Appeal) - 32 within 30 days of the receipt of this notice, in Form No. 35, duly stamped and verified as Said down in that form.

7. The amount has become due as a result of the order of the Deputy Commissioner (Appeal) of Income-tax / Commissioner of Income-tax / Commissioner of Income-tax (Appeal) / Chief Commissioner of income-tax - XI under section 29 of the Income Tax Act, 1961. If you intend to appeal against the aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income-tax Appellate Tribunal within sixty days of the receipt of that order, in Form No. 36, duly stamped and verified as laid down in that order.

Place: Mumbai
Date: 17.02.2016

sd/-
(SIMMY PHILIP)
Income Tax Officer-20(3)(5),
Mumbai”

Income Tax Computation Form

PAN ATFFG6249R
Asmt Year2013-14
SHRI ZUBIN FIROZE GHEEWALA
Address 2102 A WING 21 FLOOR .
HILLA TOWERS DR SS RAG ROAD
LALBAUG MUMBAI MAHARASHTRA 400012

Status Individual
Residential Status Resident
D&CR No 002 000
Order U/s 143(3)
Read/With Sec
Date of Order 17/02/2016

	Amount (Rs.)
1. Income from Salary	
2. Income from House Property	
3a.Income from non-speculative business 0	
3b.Income from speculative business	
3c.Profit and gains from specified business	
4a.Short term capital gains(u/s 111A)	
4b.Short term capital gains (Others)	
4c.Long term capital gains (With Indexation)	
4d.Long term capital gains (Without Indexation)	1,32,62,557
4e.Total long term capital gains	1,32,62,557
5a Income from other source other than from owning Race	1,70,448
5b.Winning from lotteries/ crossword puzzles etc.	
5c.Income from owning race horses	
5d.Total income from other sources	1,70,448
6. Total of five heads of income	1,34,33,005
Detail income after current year losses	
!7a.Current year loss adjusted against Salary Income	
!7b.Current year loss adjusted against House Property Income	
!7c.Current year loss adjusted against business Income	
!7d.Current year loss adjusted against Short Term Capital Gain	
!7e.Current year loss adjusted against Long Term Capital Gain	
!7f.Current year loss adjusted against Other Sources Income	30,000
!7g.Total Current Year Loss Adjustment	30,000
!8 Total Income remaining after Current year loss adjustment	1,34,03,005!
Detail income after Brought Forward losses	
!9a.Brought forward Loss Adjusted Against House property	
!9b.Brought forward Loss Adjusted Against Business Income	
!9c.Brought forward Loss Adjusted Against Short Term Capital Gain	
!9d.Brought forward Loss Adjusted Against Long Term Capital Gain	
! 9e Brought forward Loss Adjusted Against Other Sources	
!9f.Total Brought Forwarded Loss Adjustment	
10.Gross Total Income	1,34,03,005
11.Miscellaneous Incomes	
12.Deductions under Chapter VIA	1,10,000
13.Assessed Income	1,32,93,010
14-Agricultural Income	

15. Aggregate Income	1,32,93,010
16. Deemed Income U/s 115JB (MAT INCOME)	
17. Deemed income u/s 115JC (AMT Income)	

TAX CALCULATION

1. Gross Tax	13,09,301
2. Rebate	
3 . Surcharge	
4. Education Cess	39,279
5. Tax credit u/s 115JAA/115JD	
6. Relief u/s 89(1) / u/s 90 / u/s 91	
7. Net Tax	13,48,580
8. Interest u/s 234A	1,07,888
8a. Delay Period	8
9. Interest u/s 234B	4,72,010
10. Interest u/s 234C	49,897
11. Gross Demand	19,78,375

TAXES PAYMENT DETAILS

1. TDS/TCS	0
2. Advance Tax	0
3. Self Assessment Tax	0
4. Regular Assessment Tax	0
5. Amount already	0
6. Total Tax paid	0

DIVIDEND DISTRIBUTION TAX DETAILS

1. Additional Income Tax And Interest Payable on Distributed Profits	0
2. Additional Income Tax And Interest Paid	0

FINAL DETAILS

1. Total tax and Interest Payable	1978375
2. Interest u/s 244A	0
3. Interest made u/s 244A recovered	
4. Delay period attributable to Assessee	
5. Interest u/s 234D 6. Interest u/s 220	

DEMAND/REFUND

I. Net amount payable/refundable	19,78,380
In Words Rupees:	

NINETEEN LAKH SEVENTY EIGHT THOUSAND THREE HUNDRED AND EIGHTY ONLY.

Signature of the UDC/TA
Name of the UDC/TA

Signature of the officer
AO code MUMW17605

The tax effect in this appeal filed by Revenue is undisputedly below Rs. 20 lacs and thus keeping in view CBDT circular no. 3/2018 dated 11-07-2018, we are inclined to dismiss this appeal filed by Revenue due to low tax effect involved in this appeal which is below Rs. 20 lacs i.e. Rs. 13,48,580/- .While disposing of this appeal filed by Revenue due to low tax effect vide CBDT Circular no. 3/2018 dated 11.07.2018 , we clarify that we have not commented on the merits of the issue in this appeal. However, at the same time we are granting liberty to Revenue that if at any stage Revenue wants to agitate the matter/issue in this appeal in accordance with the clauses as are contained in the afore-stated circular number 3/2018 dated 11.07.2018,

the Revenue is hereby granted liberty to file miscellaneous application praying for recall of this order. We order accordingly.

4. In the result, the appeal filed by the Revenue is dismissed owing to low tax effect as indicated above.

Order pronounced in the open court on 23.07.2018.

आदेश की घोषणा खुले न्यायालय में दिनांक: 23 -07-2018 को की गई ।

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 23 .07.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI