

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.1895/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2010-11)

Deputy Commissioner of Income-tax, Central Circle 3(3), RNo1923 Air India Building, 19 th Floor Nariman Point, Mumbai-400021	बनाम/ v.	GNM Realtors Private Limited 204, Raheja Centre, Free Press Journal Marg 214, Nariman Point Mumbai-400021
स्थायी लेखा सं./ PAN : AABCG4937E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by :		Shri A.M. Mittal,DR
Assessee by:		Shri. Shekhar Gupta

सुनवाई की तारीख /**Date of Hearing** : 24.07.2018घोषणा की तारीख /**Date of Pronouncement** : 24.07.2018**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 viz. Rs. 17,57,177/- 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), 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 Id. 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 agreed that tax effect in this Revenue's appeal is below Rs. 20 lacs and 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 wherein penalty of Rs.17,57,177/- was levied u/s 271(1)(c) of the 1961 Act vide penalty order dated 30-03-2015 passed by the AO u/s 271(1)(c) of the 1961 Act, which stood deleted by learned CIT(A) vide appellate orders dated 07.12.2016.

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. viz. Rs. 17,57,177/- . 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 24.07.2018.

आदेश की घोषणा खुले न्यायालय में दिनांक: 24 -07-2018 को की गई ।

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

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 24. 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

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI