

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri A.T. Varkey, JM & Shri M. Balaganesh, AM]

ITA No. & A.Y. (1)	Revenue/Rep. by (2)	Vs (3)	Assessee/PAN/Rep. by (4)
40/Kol/2018 A.Y.2009-10	ITO, Ward-63(4), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Smt. Vinita Goel ADNPG 2608 Q , Rep by None. Flat No. 3A & 3B, 3 rd Floor, No.164, Block-P, New Alipore, Kolkata-700053.
1824/Kol/2017 A.Y.2013-14	ITO, Ward-34(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Barojalingah Tea Co. AACFB 7772 N , Rep. by None 12, India Exchange Place, Kolkata-700001.
389-394/Kol/2018 A.Ys. 2007-08 to 2012-13	ACIT, Circle-26(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Tapan Kumar Karmakar AIOPK 5385 Q , Rep. by None. 105, N.S. Road, Mitragunj Bazar, Jaynagar, 24 Parganas (South), Pin-743337.
195& 196/Kol/2018 A.Ys.2013-14 & 2014-15	JCIT(OSD), Circle-13(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR.		M/s Megh Promoters Pvt. Ltd. AAKCS 3346 J , Rep. by Shri Sunil Surana, AR. Tikamani Market, 1F, K.C. Roy Choudhury Road, P.O. Belur Math, Howrah-711202
438/Kol/2018 A.Y.2013-14	ACIT, Circle-25, Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Dwarka Das Sarda AKUPS 5256 Q , Rep. by Shri Sunil Surana, AR. Flat No. 6A, TUDOR, Merlin Residency, 26, Prince Anwar Shah Road, Kolkata-700033.
1364/Kol/2018 A.Y.2010-11	DCIT, Circle-11(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s J.J. Exporters Ltd. AAACJ 6722 H , Rep. by Shri S. Jhajharia, AR. 23C, Ashutosh Chowdhury Avenue, Kolkata-700019.
380/Kol/2018 A.Y.2010-11	ITO, Ward-63(4), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR.		Vinay Sareka AMPPS 3554 E , Rep. by Shri Subash Agarwal, Advocate. 29A, Shyam Sadan, Ramkrishna Samadhi Road, Kolkata-700054.
1212/Kol/2017 A.Y.2013-14	ITO, Ward-22(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s K.B. Medical Agency AAGFK 6550 P , Rep. by Shri Sunil Surana, AR. 55/F-9, B.R.B. Basu, 2 nd Floor, Room No. H-14, Mehta Building, Kolkata-01.
1609/Kol/2017 A.Y.2013-14	DCIT, CC-2(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Sushil Kumar Agarwal ACZPA 5444 M , Rep. by None. 14A, Rowland Road, Kolkata-700020.
1603/Kol/2017 A.Y.2013-14	DCIT, CC-2(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Sajjan Kumar Patwari (HUF) AAUPL 9647 E , Rep. by None 7 th Floor, Golabari , Howrah-711101.
426/Kol/2017 A.Y. 2013-14	DCIT(IT), Circle-2(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Samantak Chatterjee AFYPC 4658 P , Rep. by Shri Navin Jain, AR. 1/1/7, Nepal Bhattacharjee Street Kalighat, Kolkata-700026.
412/Kol/2017	ACIT, Circle-1(2), Kolkata,		Shri Milan Kumar Dey

A.Y.2013-14	Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		AIPD 4857 C , Rep. by Shri Navin Jain, AR. Madhav Nagar, Baudpur, Bhadrak, Odisha-756181.
427/Kol/2017 A.Y.2013-14	DCIT(IT), Circle-2(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Ujjwal Prakash ATSPP 1972 B , Rep. by Shri Navin Jain, AR. C/o V.K. Sinha, Shanti Kunj, Saraswati Nagar, Near Block Office, Steel City- 827013.
I.T.(SS)A. No. 124/Kol/2017 A.Y.2010-11	DCIT, CC-2(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Beni Prasad Lahoti AAUPL 9647 E , Rep. by Shri Rajeeva Kumar, Advocate. Shree Shyam Garden, 7 th Floor, 12, Hardutta Rai Chamaria Road, 13, Golabari, Howrah-711101.
624& 625/Kol/2018 A.Y.2013-14 & 2014-15	ITO, Ward-14(4), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Sunirman Residency Pvt. Ltd. AAPCS 1409 K , Rep. by None. 19/G, Barendra Para Dakshini, Jessore Road, Barasat, Kolkata-700124, West Bengal.
716/Kol/2018 A.Y.2000-01	ITO, Ward-31(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Veejay Impex AACFV 5247 L , Rep. by None. 9 th Floor, 69, Ganesh Chandra Avenue, Kolkata-700013.
710/Kol/2018 A.Y. 2013-14	ACIT, Circle-33, Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shyamal Kundu AFTPK 0421 P , Rep. by None. 100/72A, Jessore Road, Kolkata-700074.
782/Kol/2017 A.Y.2013-14	ACIT, Circle-4(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s James Warren Tea Ltd. AADCD 2743 H , Rep. by None. 12, Pretoria Street, Kolkata-700071.
655/Kol/2017 A.Y.2013-14	DCIT(IT), Circle-2(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Uponeeta Chakraborty AHLPC 9813 F , Rep. by Shri Navin Jain, AR. 39, Beckbagan Lower Range, Kolkata- 700019.
590/Kol/2018 A.Y. 2013-14	ACIT, Circle-28, Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Kajal Biswas AEUPB 8253 Q , Rep. by None. 5, Dr. A.K. Paul Road, Behala
807/Kol/2017 A.Y.2010-11	DCIT, Circle-49(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Shri Sambhu Ghosh ADSPG 1678 B , Rep. by None. Prop. Swastik Enterprise, 85, S.K. Deb Road, Kolkata-700048.
276/Kol/2018 A.Y.2014-15	ITO, Ward-40(3), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Elegant Enterprise AABFE 9422 H , Rep. by None. 29, Rabindra Sarani, Kolkata-700073.
245/Kol/2018 A.Y.2013-14	ACIT, Circle-10(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s South City Projects (Kolkata) Ltd. AAACD 8933 A , Rep. by None. 375, Prince Anwar Shah Road, Kolkata- 700068.
326/Kol/2018 A.Y.2010-11	ACIT, Circle-40, Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Girdharilal Arun Kumar Family Trust AAAAG 2582 N , Rep. by None. 1, Clyde Row, Kolkata-700022.
251/Kol/2018 A.Y.1996-97	DCIT, Circle-11(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s JCT Ltd. AAACJ 6733 E , Rep. by None. Thaper House, 25, Brabourn Road, Kolkata-700001.
255/Kol/2018 A.Y.2014-15	DCIT, Circle-12(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		BMA Wealth Creators Ltd. AACCB 5141 L , Rep. by None. 1 st Floor, Paul Mansion, 6, Bishop Lefroy Road, Kolkata-700020.

914/Kol/2017 A.Y.2003-04	ITO(IT), Ward-Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	M/s Bata India Ltd. AACB 1043 Q , Rep. by None 6A, S.N. Banerjee Road, Kolkata-700013.
2111/Kol/2017 A.Y.2014-15	ITO, Ward-3(3), Darjeeling, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	Shri Vijay Pari AFLPP 6535 K , Rep. by None. Vernon Lodge, Coochbehar Road, P.O + Dist. Darjeeling, Pin-734101.
2085/Kol/2017 A.Y.2011-12	ACIT, Circle-10(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	M/s Durgapur Chemicals Ltd. AABCD 1831 A , Rep. by None. 6, Little Russel Street, Kolkata-700071.
1160/Kol/2017, 1162 & 1163/Kol/2017 A.Y.2005-06, 2008-09 & 2009-10	DCIT, Circle-15(2), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	M/s Stewarts & Lloyds of India Ltd. AAECS 0445 G , Rep. by None. 41, Chowringhee Road, Kolkata-700071.
548/Kol/2017 A.Y.2012-13	ACIT, Circle-50(1), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	Jashojit Mukherjee AFAPM 7208 R , Rep. by None. AA-81, Sector-I, Salt Lake City, Kolkata-700064.
2061/Kol/2017 A.Y.2014-15	ACIT, CC-3(3), Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR	M/s New Horizons Ltd. AAACN 8505 C , Rep. by None. 31/2, Topsia Road, South, Kolkata-700046.

Date of hearing : 30.07.2018
Date of pronouncement: 30.07.2018

ORDER

Per Bench:

1. These appeals of the revenue arise out of the various orders of the Learned CIT(A) against the orders of assessment framed u/s 147 / 143(3) / 263/ 144 / 144C / 271(1)(c) / 153A of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’).

2. Recently the CBDT has issued Circular No. 3/2018 dated 11.07.2018, whereby the monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court have been increased as measure for reducing Litigation. The revised monetary limits laid down in para-3 of this Circular and the manner of computing tax effect as laid down in para-4 of this Circular are as follows:

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

Sl.

<i>No.</i>	<i>Appeals/SLP’s in Income-tax matters</i>	<i>Monetary Limit (in Rs)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>20,00,000/-</i>

2.	<i>Before High Court</i>	50,00,000/-
3.	<i>Before Supreme Court</i>	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."

3. In para-13 of the said circular it has further been clarified that the revised monetary limits will apply retrospectively. The relevant para-13 of the Circular reads thus:

"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.

4. In the present case, the tax effect in all these appeals by the revenue are less than Rs.20,00,000/-. Though these appeals had been filed by the revenue on various dates and were within the monetary limit in the form of tax effect for filing appeals before Tribunal, in view of para-13 of the Circular of CBDT, even such appeals will be governed by the new monetary limits laid down in the CBDT Circular No.3/2018 referred to above.

5. It is a settled law that the Circulars issued by CBDT are binding on the Revenue. This position was confirmed by the Apex Court in the case of Commissioner of Customs vs Indian Oil Corporation Ltd. reported in 267 ITR 272 wherein their Lordships examined the earlier decisions of the Apex Court with regard

to binding nature of the Circular 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.

5.1. In the event, the Revenue finds at a later point of time that the tax effect in the appeal is more than Rs.20 lakhs or despite low tax effect the appeal of the revenue is maintainable, the revenue is at liberty to move this Tribunal for recalling of this order.

6. In view of the above, we hold that the appeals filed by the Department, against the impugned orders of the Ld. CIT(A), are contrary to the policy decision of the Department and as such the appeals filed by the Department are dismissed *in limine*.

7. In the result, the appeals by the Revenue are dismissed.

Order pronounced in the Court on 30.07.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 30.07.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT-Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches