

**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)
1190/Kol/2016 A.Y.2011-12	ITO, Ward-22(2), Kolkata, Rep. By Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Bijay Pharma <b>AADFB 2428 G</b> , Rep. by Shri Anil Kochar, Advocate 45, Rabindra Sarani, Burrabazar, Kolkata-700073.
1599/Kol/2016 A.Y.2008-09	DCIT, Circle-11(1), Kolkata, Rep. by. Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Lake View Properties Ltd. <b>AAACL 5334 P</b> , Rep. by Shri Subash Agarwal, Advocate Onkar Bhawan, 1A, Janki Shah Road, Hastings, Kolkata-700019.
1436/Kol/2016 A.Y.2007-08	ITO, Ward-34(3), Kolkata, Rep. By Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Classic International <b>AACFC 1787 G</b> , Rep. by None. 23A, N.S. Road, Room No. 42, 10 <sup>th</sup> Floor, Kolkata-1.
1033/Kol/2015 A.Y.2012-13	DCIT, Circle-3(1), Siliguri Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Narendra Tea Co. (P) Ltd. <b>AABCN 0123 D</b> , Rep. by Shri Subash Agarwal, Advocate 2A, Ganesh Ch. Avenue, 5 <sup>th</sup> Floor, Quarter No. 7, Kolkata-700013.
1263/Kol/2016 A.Y.2007-08	ITO, Ward-25(1), Kolkata Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Sri Meghnath Poddar <b>AHVPP 0488 R</b> , Rep. by None, 5/41/A, Chittaranjan Colony, Kolkata-700032.
IT(SS)A. No. 67/Kol/2015 Block Period 1988-89 to 1997-98 & 01.04.1998 to 29.10.1998	ITO, Ward-31(1), Kolkata Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		Surendra Kumar Sharma <b>AKJPS 3480 K</b> , Rep. by. None 11/12, Bangalaxmi Abasan, Check Post- Deshodrone, Rajarhat, Gopalpur, North 24, Parganas.
690/Kol/2015 A.Y.2011-12	ITO(E), Ward-1(3), Kolkata Rep. By. Shri Saurabh Kumar, Addl. CIT Sr. DR		St. Joan's Educational Trust <b>AABTS 5823 N</b> , Rep. By. Shri Amit Agarwal, Advocate CD-164, Sector-I, Salt Lake City, Kolkata-700064.
1610/Kol/2014 A.Y. 2008-09	ACIT, Circle-42, Kolkata, Rep. by Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Roy Sons <b>AAEFR 2637 L</b> , Rep. By. None 41/1A, Cossipore Road, Cossipore, Kolkata-36.
1710&1711/Kol/2016 A.Y. 2008-09 & 2009-10	DCIT, Circle-4(2), Kolkata, Rep. By. Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s Millennium Stock Broking (P) Ltd. <b>AACCM 2853 Q</b> , Rep. by Shri Aakash Khetan, AR 1, R. N. Mukherjee Road, 1 <sup>st</sup> Floor, Room No. 9, Kolkata-700001.
964/Kol/2016 A.Y. 2010-11	ITO, Ward-7(2), Kolkata Rep. by. Shri Saurabh Kumar, Addl. CIT Sr. DR		M/s PKS Commercial (P) Ltd. <b>AACCP 6325 J</b> , Rep. by. Shri B.B. Payra 7, Camac Street, Azimgunj House, 4 <sup>th</sup> Floor, Kolkata-700017.

Date of hearing : 31.07.2018

Date of pronouncement: 31.07.2018

**ORDER****Per M. Balaganesh, AM:**

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 143(3) / 144 / 154 / 158BC(c) /251/254 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>
<i>2.</i>	<i>Before High Court</i>	<i>50,00,000/-</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>1,00,00,000/-</i>

*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. The Id. DR fairly conceded that the tax effect in all these appeals filed 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 31.07.2018**

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

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 31.07.2018

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