

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**

[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

Sl. No.	ITA No. & A.Y. (1)	Revenue/Rep. by (2)	Vs (3)	Assessee/PAN/Rep. by (As per power filed) (4)
1.	1402/Kol/2013 AY. 2005-06	ITO, Wd-8(2), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		M/s. Diligent Investment Pvt. Ltd., 32, Chowringhee Road, Kolkata-700 071 (PAN: AAACD3772A), Rep. by Shri Subash Agarwal, Advocate
2.	601/Kol/2017 AY. 2013-14	ACIT(IT), Cir-1(1), Kolkata, Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR		Shri Aninda Bhattacharji. 169/PL/23, Parui Housing Estate, Ho Chi Minh Sarani, Kolkata-700 061. <b>PAN:ADZPB9606R</b> , rep. by Shri Navin Jain, AR,
3.	629/Kol/2017 AY. 2010-11	DCIT, Cir-8(1), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		M/s. Multi Serve Rolls Ltd., 77/1A, Park Street, 2 <sup>nd</sup> floor, Room No. 7, Kolkata- 700 071. PAN: AABCM8075D, rep. by None
4.	2300/Kol/2017 AY. 2013-14	ACIT, Cen. Cir-2(3), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		M/s. Skipper Furnishing Pvt. Ltd., 46/31/1, Gariahat Road, Kolkata-700 029. PAN:AAICS4009A, rep. by Shri Amit Agarwal, AR
5.	2352/Kol/2017 AY.2014-15	ACIT (OSD), Ward-12(3), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		M/s. Khetawat Builders Pvt. Ltd., 19A, Sarat Bose Road, Kolkata-700 020. PAN:AABCK1242L), rep. by None
6.	2447/Kol/2017 AY. 2013-14	ITO, Wd-48(4),Kol. Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		Smt. Lalita Devi Verma, 233/2, Bellilious Road, Howrah-711101, PAN:AFUPV5433R, rep. by None
7.	1905/Kol/2017 AY. 2008-09	DCIT, Cir-5(1)Kol. Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		M/s. Somany Ceramics Ltd., 2, Red Cross Place, Kolkata-700 001. <b>PAN: AAECs0763K</b> , Rep. by Shri P. K. Sanghari, FCA
8.	429/Kol/2017 AY. 2013-14	DCIT, Cir-2(1),Kol. Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		Shri Sanjoy Chatterjee, <b>2A, Shitala Tala Lane, Rishra, Hooghly-712248, PAN: AEZPC2746Q</b> , Rep. by Shri Navin Jain, AR
9.	474/Kol/2017 AY. 2013-14	ACIT,Cen Cir-2(3), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR,		Shri Manoj Kumar Gupta, 36H, Tollygunge Circular Road, Kolkata-700 053, PAN:AGRPG1199B, Rep. by Shri Amit Agarwal, AR
10.	WTA 16/Kol/2017 AY. 1997-98	ACIT, Cir-11(2),Kol. Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR		M/s. Martin Burn Limited, 1, R. N. Mukherjee Road, Kolkata-700 001. PAN:AABCM9913A, Rep. by Shri Pranabesh Sarkar, Advocate
11.	1954/Kol/2016 AY. 2012-13	ITO, Ward-31(4), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR		Shri Rajat Kumar Majumder, 36/B, Paddapukur Road, Kolkata-700 020, PAN:AEFPM6217E), Rep. by Shri Sharad Mohata, FCA
12.	201/Kol/2017 AY. 2012-13	ACIT, Cir-2(2),Kolkata. Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR		M/s. Peerless Securities Ltd., 1, Chowringhee Square, 2 <sup>nd</sup> floor, Kolkata- 700059, PAN:AABCP5069Q), Rep. by

			Shri Sanjay Bhattacharjee, AR
13.	1631/Kol/2014 AY. 2007-08	ITO, Ward-28(2), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Sujit Kumar Bhagat, 53/31, Prince Anwar Shaw Road, Near Amarpali Santi Apartment, Kolkata-68, PAN:ADTPB8219J, Rep. by Ankit Jalan, AR
14- 18.	2030 to 2034/Kol/2016 AY. 2006-07,2008-09, 2010-11,2012-13, 2013- 14	DCIT, Cir-10(1), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Bridge & Roof Co. (India) Ltd., 2/1, Russel Street, 5 <sup>th</sup> floor, Kolkata-700 071, PAN: AABCB3166E), Rep. by None
19- 20	IT(SS)A 92&93/K/2015 AY. 2006-07 & 2007-08	DCIT, Cen. Cir-3(3), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Shyama Prasad Murarka, 1/C, Mandeville Garden, Kolkata-700 019, PAN:AFCPM6318S, Rep. by N o n e
21.	1383/Kol/2016 AY. 2013-14	DCIT, Cir-10(1), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Rosewood Projects Pvt. Ltd., 63/1, Charu Chandra Place (East), Kolkata-33, PAN: AABCR7243Q), Rep. by Shri Manoj Kataruka, Advocate
22.	1493/Kol/2016 AY. 2007-08	ACIT, Cir-10(2), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Pilot Consultants Ltd., 13, Mahendra Road, Kolkata-700 025, PAN:AABCP6293N, Rep. by Shri Subash Agarwal, Advocate
23.	792/Kol/2015 AY. 2007-08	ITO, Ward-40(2), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Sribhumi Publishing Co., 79, Mahatma Gandhi Road, Kolkata-700 009 PAN: AAMFS6690N, Rep. by Shri Mihir Bandyopadhyay, AR
24.	1257/Kol/2015 AY. 2011-12	ACIT, Cir-39, Midnapore Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Gold & Silver House, C/o S. N. Ghosh & Associates, Advocates, Seven Brothers Lodge, P.O. Buroshibtala, P.S. Chinsurah, Dist. Hooghly-712105. PAN:AACFG7928F, Rep. by Shri Somnath Ghosh, Advocate
25.	1731/Kol/2016 AY 2005-06	ACIT, Cir-34, Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Dilip Kr. Nahata, 196, Old China Bazar Street, Kol-1, PAN:ABPPN7782E, Rep. by None
26.	2338/Kol/2013 AY 2009-10	ITO, Ward-2(2), Asansol Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Sandeep Kumar Madhogaria, Piramal Sagarmal, Station Road, Barakar-713324, Dist. Burdwan, PAN:AJMPM4041L, Rep. by Shri Somnath Ghosh, Advocate
27- 28.	338/Kol/2014 & CO 51/Kol/2015 AY. 2009-10	ITO, Ward-12(2), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. N. N. Saha & Sons Agr Pvt. Ltd., Narayanpur Battala, Rajarhat, Gopalpur, Kolkata-700 136 PAN:AACCN7266N, Rep. by Shri Subash Agarwal, Advocate
29.	2450/Kol/2016 AY. 2010-11	DCIT, circle-2, Siliguri Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Radha Trading Co., Satish Mansion, Sevoke road, Siliguri-734001 PAN:AADFR2443M, Rep. by None
30.	572/Kol/2015 AY. 2009-10	DCIT, Cir-63, Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Satyanarayan Jalan, 1, Netaji Subhas Road, 1 <sup>st</sup> Floor, Kolkata-700 001, PAN: AAKPJ4048B, Rep. by Shri Arvind Agarwal, Advocate
31.	958/Kol/2016 AY. 2010-11	ITO, Ward-31(3), Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Ankit Agarwal, 227/2, AJC Bose Road, Kolkata-700020, PAN:AIBPA6657N, Rep. by Shri Miraj D. Shah, AR.

32.	362/Kol/2016 AY. 2010-11	ACIT, Circle-49, Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	Shri Nikhil Chandra Mitra, 34, Chawlpatty Road, Baguiati, Kolkata-59, PAN: AHXPM9169L, Rep. by shri Subhas Agarwal, Advocate
33.	2367/Kol/2016 AY 2010-11	DCIT, C.C -4(2),Kolkata Rep. by Sh. Saurabh Kumar, Addl.CIT, Sr. DR	M/s. Bhadreswar Rice Mill, Vill&P.O. Paraj, Burdwan, PAN: AAGFB2714A, Rep. by Shri Arvind Agarwal, Advocate

Date of hearing: 31.07.2018

Date of pronouncement: 31.07.2018

### **ORDER**

#### **Per Shri A. T. Varkey, JM:**

These appeals of the revenue and the only CO in ITA No.338/Kol/2014 arise out of the various orders of the Learned CIT(A) against the orders of assessment framed u/s 147 / 143(3) / 144 etc. of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. At the outset itself, the Ld. DR has brought to our attention to the fact that the revenue has preferred these aforesaid appeals which have tax effect of less than Rs. 20 lacs, therefore, the revenue does not intend to press the appeals in the light of the CBDT Circular No.3/2018 dated 11.07.2018 wherein CBDT has directed as under:

*"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>
1.	<i>Before Appellate Tribunal</i>	<i>20,00,000/-</i>
2.	<i>Before High Court</i>	<i>50,00,000/-</i>
3.	<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. 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*. Cross Objection of the assessee arises out of ITA No.338/Kol/2014 is supportive and hence, the same is dismissed.

7. In the result, the appeals by the Revenue as well as the CO of the assessee is dismissed.

Order pronounced in the open court.

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated : 31<sup>st</sup> July, 2018

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT
2. Respondent
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,  
Asstt. Registrar.