

आयकर अपीलीय अधिकरण, न्यायपीठ – “C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. Nos. 2364 & 2365/Kol/2016**  
**Assessment Years: 2010-11**

Deputy Commissioner of Income-tax, Circle-10(1), Kolkata	Vs.	Akzo Nobel Coatings India (P) Ltd. (PAN: AAACC5072B)
Appellant		Respondent

Date of Hearing	27.08.2018
Date of Pronouncement	29.08.2018
For the Appellant	Shri Saurabh Kumar, Addl. CIT, Sr. DR
For the Respondent	Shri Manoneet Dalal, AR

**ORDER**

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

Both these appeals preferred by the revenue are against the order of the Ld. CIT(A)-4, Kolkata dated 05.12.2016 for AY 2010-11.

2. At the outset itself, the Ld. Counsel for the assessee has brought to our attention in respect of ITA No. 2364/Kol/2016 to the fact that the revenue has preferred this appeal which has tax effect of less than Rs. 20 lacs, therefore, the revenue's appeal is not maintainable 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 this appeal by the revenue is less than Rs.20,00,000/-. Though this appeal had been filed by the revenue on 16.12.2016 and was within the monetary limit in the form of tax effect for filing appeal before Tribunal, in view of para-13 of the Circular of CBDT, even such appeal 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 appeal filed by the Department, against the impugned order of the Ld. CIT(A), is contrary to the policy decision of the Department and as such the appeal filed by the Department is dismissed *in limine*.

7. ITA No.2365/Kol/2016 of the revenue is against the action of Ld. CIT(A) in deleting the penalty imposed by the AO u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

8. Briefly stated facts are that the AO levied penalty u/s. 271(1)(c) of the Act on the basis of the assessment order dated 11.03.2014 u/s. 143(3)/144C of the Act for the AY 2010-11 wherein, inter-alia, an amount of Rs.73,87,000/- was added back on account of provision for employees' benefits even though offered by the assessee suo moto at the time of assessment proceeding on the ground that since the same was not made in the return of income. In the penalty proceedings the assessee has not disputed the fact that the said debited amounts were disallowable under the Act, however since it had already offered an amount of Rs.55,00,000/- for the AY 2009-10 and due to inadvertence, the assessee claimed the impugned amount as deduction for which it was readily rectified by way of offering the same during the course of the assessment proceeding and pleaded not to levy penalty before the AO because it was a bonafide mistake. However, the AO did not agree and levied penalty. Aggrieved by the said order of AO, assessee preferred appeal before the Ld. CIT(A), who deleted the penalty imposed by the AO u/s. 271(1)(c) of the Act. Aggrieved, revenue is before us.

9. We have heard rival submissions and gone through the facts and circumstances of the case. We note that though in the Tax Audit Report the provision for employees' benefits was clearly reported, the assessee company while computing the income due to inadvertent error has not offered the same for taxation in the return of income. However, we note that the assessee realizing the mistake had suo moto offered the same for taxation during the first hearing fixed by the AO for assessment. When the fact of "provision for employee's benefit" was discernible from the Tax Audit Report, the question of concealment of income does not arise and further the conduct of the assessee company offering it for taxation at the

first instance itself, reveals that it was an inadvertent error on the part of assessee company and, therefore, does not warrant levying penalty. In a similar case the Hon'ble Supreme Court in Pricewaterhouse Coopers Private Limited Vs. CIT (2012) 348 ITR 306 (SC), held that where the assessee has made an inadvertent and a bonafide error and has not intended to conceal the particulars of income, penalty need not be levied. In view of the facts and circumstances discussed above, we hold that there was an inadvertent mistake on the part of the assessee and since the provision for employee's benefit was reported in Tax Audit Report also we are of the opinion that there was no concealment of income as alleged by the AO, therefore, the Ld. CIT(A) has rightly deleted the penalty as imposed by the AO u/s. 271(1)(c) of the Act and we confirm the same. Therefore, the appeal of the revenue is dismissed.

10. In the result, both the appeals by the Revenue are dismissed.

Order pronounced in the open court on 29th August, 2018.

Sd/-  
(Dr. A. L. Saini)  
Accountant Member

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

Dated: 29th August, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – DCIT, Circle-10(1), Kolkata.
- 2 Respondent – Akzo Nobel Coatings India (P) Ltd., 8B, Middleton Street, Kolkata-700 071.
- 3 CIT(A)-4, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary