IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 3018/Del/2018 : Asstt. Year : 2010-11

Income Tax Officer, Ward-3(2), Noida-201301	Vs	Rohit Chauhan, A-5, Sector-108, Noida, Uttar Pradesh-201301
(APPELLANT)		**(RESPONDENT)**
PAN No. DBTPS4951K		

Assessee by : Sh. Rohit Chauhan
Revenue by : Sh. Surender Pal, Sr. DR

Date of Hearing : 18.09.2018		**Date of Pronouncement : 18.09.2018**

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 25.09.2017 of ld. CIT(A)-1, Noida.

2. During the course of hearing, learned counsel for the assessee, at the very outset, stated that the appeal filed by the department is not maintainable in view of Circular No.3/2018 dated 11.7.2018 issued by the CBDT wherein the monetary limit for tax effect for filing the appeal before the ITAT has been increased to Rs.20 lakhs.

3. The ld. Sr. DR, submitted that Circular No.3/2018 is not a blanket bar on filing of appeals before ITAT and para 10 details the exceptions to file the appeal where tax effect is less than Rs.20 lacs and also clarifies that in cases where tax effect is less than Rs.20 lakhs and also clarifies that in cases where tax effect cannot be

quantified as in the case of Registration u/s 12AA, the monetary limit would not be applicable. It was further submitted that the aforesaid circular No.3/18 has been amended vide letter F.No.279/Misc.142/2007-ITJ(Pt) dated 20th July, 2018 as under:-

> *(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 addition relates to undisclosed foreign income/undisclosed foreign assets including financial assets/undisclosed foreign bank account.*
> *(e) where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).*
> *(f) cases where prosecution has been filed by the department and is pending in the court.*

Strictly speaking, all issues pertaining to Section 153A/153C fall within the ambit of 10(a) as these issues have been decided by the Courts without appreciating the clear and unambiguous provisions of the Act and on most issues the Revenue is in appeal against the said judgments.

4. We have considered the submissions of both the parties. In our opinion, the amended circular is not applicable to the facts of the present case rather it is covered by the original circular No.3/18 dated 11.07.2018, vide which the CBDT has revised the monetary limit to Rs.20,00,000/- for not filing the appeal before the Tribunal, the said circular reads as under:

"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 (in 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 1I5JCwas 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 fires, 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 pare 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."

5. From Clause 12 & 13 of the above said circular it is clear that these instructions are applicable to the pending appeals also and as per clause 13, there is clear cut instruction to the department to withdraw or not to press the appeals filed before the ITAT wherein tax effect is less than Rs.20,00,000/-. These instructions are operative retrospectively to the pending appeals.

6. Keeping in view the CBDT Circular No. 3 of 2018 dated 11.07.2018, we are of the view that the Revenue should not have filed the instant appeal before the Tribunal.

7. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 18/09/2018)

Sd/-	Sd/-
(Suchitra Kamble)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 18/09/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR