

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” 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. No. 463/Kol/2017**  
**Assessment Year: 2013-14**

M/s. Elcon Estate Pvt. Ltd. (PAN: AABCE5473D)	Vs.	Income-tax Officer, Wd-13(1), Kolkata
Appellant		Respondent

&

**I.T.A. No. 893/Kol/2017**  
**Assessment Year: 2013-14**

Income-tax Officer, Wd-13(1), Kolkata	Vs.	M/s. Elcon Estate Pvt. Ltd.
Appellant		Respondent

Date of Hearing	19.09.2018
Date of Pronouncement	27.09.2018
For the Assessee	Shri S. M. Surana, Advocate
For the Revenue	Shri Kapil Mondal, JCIT, Sr. DR

**ORDER**

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

These cross appeals preferred by the assessee and the Revenue are against the order of Ld. CIT(A)-5, Kolkata dated 03.02.2017 for AY 2013-14.

2. At the outset itself, the Ld. AR has brought to our attention 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:*

<i>Sl. 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 28.04.2017 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. Coming to assessee's appeal. The Ld. Counsel for the assessee at the outset stated that the assessee is not inclined to press ground no. 3, which reads as under:

*"3. For that the Ld. CIT(A) erred in reducing only Rs.58,51,902/- as against Rs.86,56,503/- claimed as deduction from the value of inventory towards the cost of common roads when on the facts and circumstances of the case full deduction should have been allowed."*

Since this ground has not been pressed by the assessee's counsel at the time of hearing before us, we dismiss the same as not pressed.

8. The only ground remained for adjudication i.e. ground no. 2 which is against the action of Ld. CIT(A) in confirming the action of AO in not accepting the claim of the assessee that income arising out of sale of agricultural land was exempt since it was agricultural income within the meaning of sec. 2(1A) read with sec. 2(14) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

9. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing the Ld. Counsel for the assessee pointed out that this is no longer res integra as the same issue arose in the earlier assessment year in assessee's own case for AY 2011-12 which was decided by this Tribunal in ITA No. 1522/Kol/2015 vide order dated 01.06.2018 wherein the assessee's appeal was allowed and operative portion of that order reads as under:

*"8. We find the ratio of the said judgment is squarely applicable to the instant case and we therefore held that the income derived from the purchase and sale of agricultural land by the*

*assessee is an agricultural income and not liable to be charged under the Income Tax Act. It is well settled that entries in the books of account do not determine the taxability or otherwise of a receipt. If a receipt is taxable under the Income Tax Act, 1961, then only it should be computed as income. We, therefore, set aside the order passed by the Ld. CIT(A) and allow the appeal of the assessee.”*

Ld. DR could not controvert this fact by producing any cogent material. Since no change in law or facts are there, we respectfully following the decision in assessee's own case cited supra, allow this ground of appeal of assessee.

5. In the result, appeal of assessee is partly allowed and that of the revenue is dismissed.

Order is pronounced in the open court on 27th September, 2018.

Sd/-

(Dr. A. L. Saini)  
Accountant Member

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 27th September, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Elcon Estate Pvt. Ltd., 1, Madhusudan Paul Chowdhury Lane, Howrah-711101..
2. Respondent – ITO, Ward-13(1), Kolkata.
3. CIT(A)-5, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary