

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A No. 2498/Kol/2017

Assessment Year : 2010-11

ITO, Ward-13(1), Kolkata

-vs-

M/s Diamond Scaffolding Pvt. Ltd.

[PAN: AACCD 3608 E]

(Appellant)

(Respondent)

For the Appellant : Shri C.J. Singh, Sr. DR

For the Respondent : Shri I. Banerjee, FCA

Date of Hearing : 05.11.2018

Date of Pronouncement : 05.12.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-5, Kolkata [in short the ld CIT(A)] in Appeal No. N157/CIT(A)-5/Wd-13(1)/16-17 dated 27.10.2017 against the penalty order passed by the ITO, Wd-13(1), Kolkata [in short the ld AO] under section 271(1)(c) of the Income Tax Act, 1961 (in short “the Act”) dated for the Assessment Year 2010-11.

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. In the present case, the total penalty amount of Rs 14,48,049/-. So, 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 21.12.2017 and was 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. The appeal under consideration has certainly been filed contrary to the Circular issued by the CBDT Circular No.3 dated 11.07.2018.

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. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the Court on 05.12.2018

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 05.12.2018
SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-13(1), Kolkata, 9th Floor, 110, Shantipally, Aayakar Bhawan (Poorva), Kolkata-700107.
2. M/s Diamond Scaffolding Pvt. Ltd., CIT Road, Biradingi, Netajigarh, Howrah-711108.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches