

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, MUMBAI

**BEFORE HON'BLE SHRI G. S. PANNU, VP AND
HON'BLE SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./I.T.A. No. 6738, 6739 & 6740/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2007-08, 2008-09 & 2009-10)

ITO-19(1)(2) Room No. 204, Matru Mandir, Mumbai-400 607	बनाम/ Vs.	Bhawarlal M. Jain, HUF 5-7 Navyug Nagar, Teenbatti Walkeshwar, Mumbai- 400 006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AACHB 6465 N
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Chaudhary Arun Kumar Singh, DR
प्रत्यर्थी की ओर से/Respondent by	:	Shri , AR
सुनवाई की तारीख / Date of Hearing	:	31/10/2018
घोषणा की तारीख / Date of Pronouncement	:	31/10/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present three appeals filed by the revenue is directed against the order dated 25.08.16 of Commissioner of Income Tax (Appeals)-30, Mumbai (hereinafter called as the CIT(A) for assessment year 2007-08 to 2009-10.

2. We found that the tax effects so filed by the revenue in these appeals are below Rs. 20 lakhs. In order to cut down on frivolous litigation and taxpayer's grievance, the CBDT, which formulates policies for the I.T. Department, has issued recent instruction No. 3/2018 dated 11.07.18 revising the monetary threshold fixing the tax effect limit of Rs. 20 lacs for the revenue to file appeals before the ITAT and since in these appeals, the tax effect are below Rs. 20 lakhs, the appeals filed by the revenue are not maintainable and liable to be dismissed in limine. The relevant extract the said CBDT Circular (Supra) is as under:-

“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/ SLHs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder;

<i>S. No.</i>	<i>Appeals/ SLPs in Income-tax matters</i>	<i>Monetary Limit (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.

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 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 115J B 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 115 JB was 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 tiling 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 being 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 lax 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 ultravires, 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 that 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 in SLPs/appeals/cross objections/ references -; 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*

3. Considering the above, the appeals filed by the Revenue, are therefore **dismissed.**

*In the result, the **appeals of the Revenue are dismissed.***

Order pronounced in the open court on 31st Oct, 2018.

Sd/-
(G. S. Pannu)
Vice President

Sd/-
(Sandeep Gosain)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.10.2018
Sr. PS Dhannajay

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**