

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. 1792 & 1793/Kol/2008
Assessment Years: 2005-06 & 2006-07

Assistant Commissioner of Income-tax, Circle-5, Kolkata.	Vs.	M/s. Balmer Lawrie & Co. Ltd. (PAN: AABCB0984E)
Appellant		Respondent

Date of Hearing	17.12.2018
Date of Pronouncement	17.12.2018
For the Appellant	Shri Saurabh Kumar, Addl. CIT, DR
For the Respondent	Shri D. S. Damle, FCA

ORDER

Per Shri A.T.Varkey, JM

Both these appeals preferred by the revenue are against the separate orders of the Ld. CIT(A)-V, Kolkata dated 11.07.2018 for AYs 2005-06 and 2006-07.

2. At the outset itself, the Ld. Counsel for the assessee has brought to our attention to the fact that the revenue has preferred both these appeals which have tax effect of less than Rs. 20 lacs, therefore, the revenue's appeals are 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 these appeals by the revenue are less than Rs.20,00,000/-. Though these appeals had been filed by the revenue on 16.09.2008 and were 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.

6. 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.

7. In view of the above, we hold that the appeals filed by the Department, against the impugned orders of the Ld. CIT(A), are contrary to the policy decision of the Department and as such the appeals filed by the Department are dismissed *in limine*.

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

Order pronounced in the open court.

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

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

Dated: 17th December, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – ACIT, Circle-5, Kolkata.
- 2 Respondent – M/s. Balmer Lawrie & Co. Ltd., 21, N. S. Road, Kolkata-700 001.
- 3 CIT(A)-V, Kolkata (sent through e-mail)
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar