

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI ANIL CHATURVEDI, AM  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos.106 & 107/RPR/2012

निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

Assistant Commissioner of Income Tax,  
Central Revenue Building,  
Raipur, (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Mahamaya Agrotech (P) Ltd.,  
C/o Shri Ashok Kr. Agrawal,  
Pyarelal Agrawal Marg,  
Punjab Oil Mill Gali,  
Ramsagarpara, Raipur (CG)

PAN : AACCM8168L

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.134 to 137/RPR/2012

निर्धारण वर्ष / Assessment Years : 2006-07 to 2009-10

Assistant Commissioner of Income Tax,  
Central Revenue Building,  
Raipur, (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Bapu Agriculture Pvt. Ltd.,  
Pyrelal Marg, Ramsagarpara,  
Raipur

PAN : AACCB7355E

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao,  
Revenue by :Shri P.V. Mishra

सुनवाई की तारीख / Date of Hearing :14.01.2019

घोषणा की तारीख / Date of Pronouncement :07.02.2019

### **आदेश / ORDER**

#### **PER ANIL CHATURVEDI, AM :**

These bunches of six appeals by the Revenue in case of two different assessee's are emanating out of the order of Commissioner of Income-Tax (A), Central, Raipur for the A.Ys. 2004-05 to 2009-10.

2. The Revenue in ITA No.106/RPR/2012 has raised following grounds:

- “1. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.37,00,000/- made by the AO u/s. 68 of the I. Tax Act, 1961 on account of share capital/premium received by the assessee.
2. Whether in law and on facts & circumstances of the case, the CIT(A) was justified in admitting additional evidence in violation of Rule 46A of I. Tax Rules, 1962.
3. The Order of the Ld. CIT(A) is erroneous both in law and on facts.
4. Any other ground that may be adduced at the time of hearing.”

Identical grounds have been raised by the Revenue in all the other appeals.

3. Before us, at the outset, Ld. A.R. submitted that all the appeals of the Revenue are not maintainable on account low tax effect as per recent Circular No. 3/2018 dated 11-07-2018 issue by CBDT and therefore, the appeals of the Revenue needs to be dismissed.

4. Ld. D.R. on the other hand submitted that in the present case of both the assessee's Ld. CIT(A) has passed composite orders in both the assessee's case involving more than one assessment year and the issues are common and therefore as per para 5 to the aforesaid CBDT circular, appeals can be filed in respect of all assessment years even if the tax effect is less than the prescribed monetary limit in one of the years.

5. In the rejoinder Ld. A.R. fairly admitted that though Ld. CIT(A) has passed a consolidated order for more than one assessment year but if the amounts in dispute in the appeals for each assessment year are considered on standalone basis, all the appeals filed by the Revenue are below the monetary limit prescribed by CBDT and therefore all the appeals of Revenue are not maintainable. In support of his contention that the tax effect in the appeals have to be considered on a standalone basis for each assessment year, he relied on the decision of Hon'ble Karnataka High Court in the case of Commissioner of Income Tax, Central Circle Vs. PSI Hydraulics (2014) 226 Taxman 34 (Kar.) which has also been considered by the Bangalore ITAT in the case of DCIT Vs. Vivek B. Chand (WTA No. 15/Bang/2017 & Ors. order dated 06.07.2018). He also placed on record

the copy of the aforesaid decisions. He therefore, relying of the aforesaid decisions, submitted that the impugned appeals of Revenue are not maintainable.

6. We have heard the rival submissions and perused the material available on record. On perusing the grounds of appeal raised by the Revenue in all the appeals, we find that Revenue is aggrieved by the order of Ld. CIT(A) in respect of the relief given by him. It is also a fact that Ld. CIT(A) has passed a consolidated order for assessment years 2004-05 and 2005-06 in case of M/s. Mahamaya Agrotech (P) Ltd. and for assessment years 2006-07 to 2009-10 in the case of M/s. Bapu Agriculture Pvt. Ltd. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 11.07.2018 (Circular No.3 of 2018), no Department appeals are to be filed against relief given by ld. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.20 lakhs and it further states that the instructions will apply retrospectively to the pending appeals also. In the present case, it is an undisputed fact that on the relief which has been granted by CIT(A) and which are in dispute by the Revenue in each of the assessment years, if considered on individual and standalone basis, the tax effect is less than Rs.20 lakhs. Before us, it is not the case of the Revenue that if the appeals in each of the assessment year is considered on a standalone basis, the tax effect is more than the prescribed monetary limit. However the only contention of the Revenue is that since Ld. CIT(A) has passed a consolidated order for more than one

assessment year in case of both the Assessee's, therefore, in terms of para 5 of the CBDT Circular No. 3 of 2018, Revenue can file the appeals even though tax effect is less than monetary limit prescribed by the circular. We find that the issue of filing of appeal by Revenue in case of a consolidated order passed by Appellate Authorities was also considered by the Hon'ble Karnataka High Court in the case of Commissioner of Income Tax, Central Circle Vs. PSI Hydraulics (supra). The Hon'ble Karnataka High Court after considering para 5 of the CBDT Circular No. 3/2012 in para 19 of the order held that merely because the authority concerned for judicial convenience, clubs the cases and pass common order, the assessee should not be denied of the benefit of circular-3/2011 when the tax effect for the assessment year/years the tax effect is less than Rs. 10 lakhs. It thereafter held that whether it is a solitary order or common order, the assessee should have the benefit of the tax effect less than Rs. 10 lakhs and in all such cases whether it is a part of the common order or a solitary order, the revenue will not be entitled to file an appeal. The relevant portion of the order reads as under:

*"16. Per contra, Sri K.V. Aravind, learned counsel for the Appellants refers to para 5 of Circular No. 3/2011, which reads thus:—*

*"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 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, appeal shall be filed in respect of all such assessment years even if the "tax effect" is less than the prescribed of the year(s) in which the "tax effect" exceeds the monetary limit prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately."*

17. *In case of an assessee, where common order is passed in respect of more than one assessment year, which involves common issues even if in one of the assessment years the tax effect is more than Rs. 10 lakhs, irrespective of the fact that in respect of other assessment years which is part of the common order, the tax effect is less than Rs. 10 lakhs, the revenue is entitled to file appeal even in respect such assessment years where the tax effect is less than Rs.10 lakhs. However, in case where there is no common order and an order is passed only in respect of an assessment, year and the tax effect therein is less than Rs. 10 lakhs, the revenue cannot file the appeal.*

18. *On thorough scrutiny of para 5 of the Circular No. 3/2011, we find that there appears to be a glaring discrimination offending the spirit of Article 14 of the Constitution. In the case of a common order passed in respect of one or more assessment year/years, if the tax effect is less than Rs. 10 lakhs, the assessee is not entitled to benefit of exemption and the revenue is not debarred from filing an appeal, even though the tax effect in respect of one or more assessment years is less than Rs. 10 lakhs. In other words, the revenue can file an appeal against all the assessment orders which is a part of the common order, irrespective of the fact, whether for one of the assessment year/years, the tax effect is less than Rs. 10 lakhs. However, if it is a solitary order and tax effect is less than Rs. 10 lakhs, the assessee is entitled to the benefit of exemption and the revenue cannot file the appeal.*

19. *The para-5 of the circular is highly discriminatory. After all the bunching and clubbing of cases and passing common orders is a procedure adopted for convenient disposal of the cases by the court or quasi judicial authority. The assessee has no say in the matter of clubbing of cases and passing of common orders. Merely because the authority concerned for judicial convenience, clubs the cases and pass common order, the assessee should not be denied of the benefit of circular-3/2011 when the tax effect for the assessment year/years the tax effect is less than Rs. 10 lakhs. Therefore, it is to be held that whether it is a solitary order or common order, the assessee should have the benefit of the tax effect less than Rs. 10 lakhs and in all such cases whether it is a part of the common order or a solitary order, the revenue will not be entitled to file an appeal."*

7. We find that though the Hon'ble Karnataka High Court order in the case of PSI Hydraulics (supra) has considered para 5 of Circular No. 3/2011 as referred to in para 16 of the order but it is similar to the para 5 of CBDT Circular No. 3 of 2018 dated 11-07-2018 issued by CBDT. We further find that the aforesaid decision of Hon'ble Karnataka High Court was followed by the Bangalore Bench of Tribunal in the case of DCIT Vs. Vivek B. Chand (supra) wherein it was held that the Revenue cannot take the plea of considering cumulative tax effect.

8. Before us, Revenue has not placed any material on record to demonstrate that the aforesaid decision of Hon'ble Karnataka High Court has been set aside/stayed by higher judicial authorities or the ratio of the aforesaid decision is not applicable to the present cases. We therefore relying on the aforesaid decision of Hon'ble Karnataka High Court hold that the appeals of Revenue are not maintainable on account of low tax effect prescribed by CBDT Circular of 2018. Further, in the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeals are covered by exceptions provided in para 10 of the aforesaid CBDT Circular, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeals of the Department. We accordingly dismiss all the appeals of Revenue without expressing any opinion on merits of the case. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular

is not applicable, it would be open to the Revenue to seek revival of the appeal. Thus, the grounds of the Revenue are dismissed.

9. In the result, all the appeals of Revenue are dismissed.

Order pronounced on 7<sup>th</sup> day of February, 2019.

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
JUDICIAL MEMBER

Sd/-  
**ANIL CHATURVEDI**  
ACCOUNTANT MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 7<sup>th</sup> February, 2019.

RK

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

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur

//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर/ ITAT, Raipur.

|    |  | Date       |          |
|----|--|------------|----------|
| 1  | Draft dictated on                                  | 14.01.2019 | Sr.PS/PS |
| 2  | Draft placed before author                         | 14.01.2019 | Sr.PS/PS |
| 3  | Draft proposed and placed before the second Member |            | JM/AM    |
| 4  | Draft discussed/approved by second Member          |            | AM/JM    |
| 5  | Approved draft comes to the Sr. PS/PS              |            | Sr.PS/PS |
| 6  | Kept for pronouncement on                          |            | Sr.PS/PS |
| 7  | Date of uploading of order                         |            | Sr.PS/PS |
| 8  | File sent to Bench Clerk                           |            | Sr.PS/PS |
| 9  | Date on which the file goes to the Head Clerk      |            |          |
| 10 | Date on which file goes to the A.R                 |            |          |
| 11 | Date of dispatch of order                          |            |          |