

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 2349/Del/2015
(Assessment Year: 2011-12)

ITO, Ward-14(1), New Delhi	Vs.	Kalinga Road Carriers Pvt. Ltd, 218-B, Jaina Tower-I, District Centre, Janakpuri, New Delhi PAN: AACCK1618
(Appellant)		(Respondent)
Revenue by :		Smt Naina Soin Kapil, Sr. DR
Assessee by:		Shri Baldev Raj, CA

ITA No. 961/Del/2011
(Assessment Year: 2007-08)

DCIT, Circle-16(1), New Delhi	Vs.	Theolia Wind Power Pvt. Ltd, 27-B, Prithviraj Road, New Delhi PAN: AACCN2500M
(Appellant)		(Respondent)
Revenue by :		Smt Naina Soin Kapil, Sr. DR
Assessee by:		Shri V. K. Garg, Adv

Date of Hearing	19/08/2019
Date of pronouncement	19/08/2019

O R D E R

PER BENCH

1. These are the appeals filed by Department against the order of respective the Id CIT(A) for respective assessment Years.
2. At the outset of the hearing itself, the Id. ARs brought to our attention that CBDT vide Circular No. 17/2019 dated 08th August 2019 has decided that the revenue would not prefer any appeal before the Tribunal if the tax effect is less than Rs. 50 lakhs. Therefore, he pleaded that the appeal of the revenue be decided as per the Instruction of the CBDT.
3. The Id DRs vehemently objected to the same and submitted that it applies prospectively and not to pending appeals.

4. We have heard the contention of rival parties and perused the material on record. We find that the CBDT vide Circular No. 17/2019 dated 08th August 2019 has enhanced the monetary limit for filing the appeal by the department before Income Tax Appellate Tribunal, Hon'ble High Courts and Hon'ble Supreme Court. The relevant para of the aforesaid circular is reproduced as under :-

"2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

<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>50.00,000</i>
<i>2.</i>	<i>Before High Court</i>	<i>1.00.00.000</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>2.00,00.000</i>

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed, para 5 of the circular is substituted by the following para:

"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. Further, even in the case of 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, 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 case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately."

4. The said modifications shall come into effect from the date of issue of this Circular.

5. The same may be brought to the notice of all concerned.

6. This issues under section 268A of the Income-tax Act, 1961."

5. We find that the tax effect involves in the appeal of the Revenue is below Rs. 50 lakhs. There is no dispute that the Board's instructions or directions

issued to the Income-tax authorities are binding on those authorities, therefore, the Department should have withdrawn/not pressed the present appeal in view of the aforesaid instruction since the tax effect in the instant appeal is less than the amount of Rs. 50 lakhs. The issue of applicability of the above circular to pending appeals has been decided by the coordinate bench in Dinesh Madhavlal Patel [TS-469-ITAT-2019(Ahd)] 2019-TIOL-1556-ITAT-AHM dated 14th August, 2019 .

5. In view of the above, Circular No. 17/2019 dated 08/08/2019 will apply to all pending appeals. Therefore the precedent, it is held that the appeal is not maintainable in the instant case as the tax effect is less than Rs. 50 lakhs. Accordingly, it is held that appeal filed by the revenue is not maintainable. We also hastened to add that certain times instances stated in para No. 10 of the CBDT Circular No. 3/2018 dated 11.07.2018 is not discernable from the assessment and appellate orders, therefore, in such cases, we also give liberty to revenue that if such instances comes to their notice than, revenue may file miscellaneous application with such evidences.
6. In the result, appeals filed by the department are dismissed.

Order pronounced in the open court on 19/08/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/08/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi