

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JM
AND**

SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.299/CTK/2018

(निर्धारण वर्ष / Assessment Year :2013-2014)

ACIT, Circle-1(1), Cuttack	Vs.	M/s B.S.Mining Corporation Pvt. Ltd., Joda, Basti, Keonjhar,
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCB 5115 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR
निर्धारिती की ओर से /Assessee by	:	None
सुनवाई की तारीख / Date of Hearing	:	20/08/2019
घोषणा की तारीख/Date of Pronouncement	:	20/08/2019

आदेश / O R D E R

Per Bench:

This appeal is filed by the Revenue against the order passed by learned CIT(A), Cuttack, dated 17.05.2018 for the assessment year 2013-2014.

2. In order to dispose of the appeals which are below the tax limit of Rs.50 lacs, the list of such cases which fall within the threshold limits prescribed by CBDT Circular No.17/2019 dated 8th August, 2019 are pasted in the Notice Board to ensure earliest possible compliance.

3. None appeared on behalf of the assessee even the case was called for hearing on second round. Therefore, the bench decided to dispose off

the appeal of the assessee after considering the submissions of Id. DR and the material evidence available on record.

4. We find that in the present appeals filed by the Revenue, the tax effect is less than Rs.50 lakhs and, therefore, in view of CBDT Circular No.17/2019 dated 8th August, 2019, the appeals of the revenue are not maintainable.

5. Ld. DR also fairly conceded that no doubt the tax effect involved in the appeal is less than Rs.50 lakhs, thus, bound by the Departmental Instruction, however, Id. DR drew our attention to para 10 of the Circular No.3/2018, dated 11th July, 2018, which has been modified by Circular dated 20th August, 2018 and in terms of said modification, the Departmental Representatives made a prayer that permission to pray for recall of the order may be granted in case any of the conditions in the reports made available by the AO subsequently show that the issues were required to be contested. The modified para is extracted hereunder:

“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 tax 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 ultra vires, or*
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.*
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/ Directorate General of GST Intelligence (DGGI).*

(f) *Cases where prosecution has been filed by the Department and is pending in the Court. ”*

6. Earlier in Circular No.3/2018, dated 11th July, 2018, it has been decided by the CBDT 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. Henceforth, appeals/SLPs 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>
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

7. Further, the CBDT amended the above Circular vide Circular No.17/2019, dated 8th August, 2019, whereby enhancing the monetary limits for filing of appeals by the Department before the Income Tax Appellate Tribunals, High Courts and SLPs/appeals before the Supreme Court as under :-

<i>S. No.</i>	<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (Rs.)</i>
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

8. Going by the prescription of amended Circular No. 17/2019, dated 8th August, 2019, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in the appeal is admittedly less than the prescribed limit, i.e.,

Rs. 50,00,000/- for not filing the appeal, which is not maintainable as per the provisions of Section 268A of the Income Tax Act, 1961.

9. The coordinate bench of the Tribunal in ITA No.1398/Ahd/2004, order dated 14.08.2009 has dismissed the appeals filed by the Revenue below the monetary limit of Rs.50,00,000/- as prescribed by the CBDT vide Circular No.17/2019, dated 8th August, 2019. The relevant observations of the Tribunal are as under :-

“5. Having considered the rival submissions and having perused the material on record, we do not have slightest of hesitation in holding that the concession extended by the CBDT not only applies to the appeals to be filed in future but it is also equally applicable to the appeals pending for disposal as on now. Our line of reasoning is this. The circular dated 8th August 2019 is not a standalone circular. It is to be read in conjunction with the CBDT circular no 3 of 2018 (and subsequent amendment thereto), and all it does is to replace paragraph nos. 3 and 5 of the said circular. This is evident from the following extracts from the circular dated 8th August 2019:

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:

S.No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

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 limits 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.

6. Clearly, all other portions of the circular no. 3 of 2018 (supra) have remained intact. The portion which has remained intact includes paragraph 13 of the aforesaid circular which is as follows:

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.

7. In view of the above discussions, we hereby hold that the relaxation in monetary limits for departmental appeals, vide CBDT circular dated 8th August 2019 (supra) shall be applicable to the pending appeals in addition to the appeals to be filed henceforth.

8. Learned Commissioner (DR) then submits liberty may kindly be given to point out, upon necessary further verifications, and to seek recall the dismissal of appeals and restoration of the appeals in the cases (i) in which it can be demonstrated that the appeals are covered by the exceptions, and (ii) which are inadvertently included in this bunch of appeals, wherein the tax effect, in terms of the CBDT circular (supra), exceeds Rs 50,00,000. None opposes this prayer; we accept the same. We make it clear that the appellants shall be at liberty to point out the cases which are wrongly included in the appeals so summarily dismissed, either owing to wrong computation of tax effect or owing to such

cases being covered by the permissible exceptions- or for any other reason, and we will take appropriate remedial steps in this regard.

9. In the light of the above discussions, all the appeals stand dismissed as withdrawn. As the appeals filed by the Revenue are found to be non-maintainable and as all the related cross-objections of the assessee arise only as a result of those appeals and merely support the order of the CIT(A), the cross objections filed by the assessee are also dismissed as infructuous. Ordered, accordingly.”

10. Ld D.R. submitted that as per para 4 of CBDT Circular No.17/2019 dated 8th August, 2019, the modifications shall come into effect from the date of this issue of this Circular i.e. 8.8.2019. Therefore, it is not applicable to the pending appeals.

11. After considering the submission of Id D.R. and keeping in view the order dated 14.8.2019 of the ITAT Ahmedabad Bench in the case of Dinesh Mudhavlal Patel (supra), we are of the view that the relaxation in the monetary limit in departmental appeals vide circular dated 8th August, 2019 shall be applicable to the pending appeals in addition to the appeals to be filed henceforth. Thus, the contention of Id D.R. is dismissed.

12. Accordingly, we dismiss the appeal filed by the Revenue without going into merits of the case. However, it is made clear that the Department is at liberty to file Miscellaneous Application, if the tax effect is found to be more than the prescribed limit of Rs.50,00,000/- as per the amendment carried out by the CBDT in Circular No.17/2019, dated 8th August, 2019, or any of the conditions etc. as available in the amended para 10 of Circular No.3/2018, dated 20th August, 2018. Accordingly, the appeal of the Revenue deserves to be dismissed.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 20/08/2019.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 20/08/2019

प्र.कु.मि/PKM, Sr.P.S.

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack