

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष

BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No.1223/Chd/2019

निर्धारण वर्ष / Assessment Year : 2011-12

The DCIT, Circle Sector -2, Parwanoo Himachal Pradesh	बनाम	M/s Surge Industries Vill- Ogli, Kala Amb, Dist: Sirmour Himachal Pradesh
स्थायी लेखा सं./PAN NO: ABRFS3311E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sameer Kohli, CA

राजस्व की ओर से/ Revenue by : Shri Arvind Sudarshan, JCIT (Sr. DR)

सुनवाई की तारीख/Date of Hearing : 28/05/2020

उदघोषणा की तारीख/Date of Pronouncement : 28/05/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Revenue against the order of the Ld. CIT(A), Shimla, H.P. dt. 25/06/2019.

2. During the course of hearing the Ld. Counsel for the Assessee contended that the appeal filed by the Department is not maintainable in view of the Circular No. 17/2019 dt. 08/08/2019 issued by CBDT wherein the monetary limit for filing the appeals by the Department before the ITAT has been increased to Rs. 50,00,000/- from Rs. 20,00,000/-.

3. In the rival submissions the Ld. Sr. DR submitted that the Circular No. 17/2019 dt. 08/08/2019 is not clearly retrospective in as much as it specifically states in para 4 that " the said modification shall come into effect from the date of issue of this Circular" It was stated that the aforesaid sentence clearly gives an impression that the said Circular is applicable after the date mentioned there

in and thereafter the departmental appeals which come in the specified tax effect limit will not be filed. The Ld. Counsel for the Assessee vehemently opposed the contention of the Ld. Sr. (DR) and said that the Circular must be held to have retrospective application and must equally apply to the pending appeals as well, since the present Circular only modifies the monetary limit earlier mentioned in Circular No. 3 of 2018 dt. 11/07/2018.

4. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is an admitted fact that the CBDT vide Circular No. 17/2019 enhanced the monetary limit to Rs. 50,00,000/- for not filing the appeal by the department before the ITAT, earlier this limit was specified at Rs. 20,00,000/- in the original Circular no. 03/2018 dt. 11/07/2018. Now vide the new Circular no. 17/2019 dt. 08/08/2019 the Tax Effect limit has been enhanced and this new Circular dt. 08/08/2019 read as under;

Circular No. - 17 of 2019
Date - 8th August 2019

Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.

Circular No. 3/2018 dated 11th July 2018 has been replaced by Circular No. 17/2019 dated 8th August 2019 to enhance Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court for reducing litigation.

Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.) [Previous Limit]	Monetary Limit (Rs.) (Revised Limit)
Before Appellate Tribunal	20,00,000	50,00,000
Before High Court	50,00,000	1,00.00.000
Before Supreme Court	1,00,00,000	2.00.00,000

- 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. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit

- *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*
- *In case where a composite order/ judgement involves more than one assessee. each assessee shall be dealt with separately.*

5. From the contents of the aforesaid Circular it is crystal clear that the anomaly in the earlier Circular no. 3 of 2018 dt. 11/07/2018 at page 5 has been removed and the limit specified in para 3 of the earlier Circular has been enhanced. It is also not in dispute that the earlier Circular was applicable retrospectively to the pending appeals / cross objections and para nos. 12 & 13 of the original Circular no. 03/2018 dt. 11/07/2018 read as under:

12. It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the IT AT 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 to SLPs/ appeals/ cross objections/ references to be filed henceforth in SCIHCs/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.

6. Now the CBDT simply enhanced the monetary limit and the directions given earlier vide para nos. 12 & 13 of the Circular no. 3 / 2018 dt. 11/07/2018 are still intact which is crystal clear from the language of the Circular no. 17/2019 wherein it has been mentioned that there is enhancement of monetary limit and amendment to Circular no. 3 /2018 for reducing the litigation. I am of the view that the amended Circular No. 17/2019 now issued by the CBDT is also applicable to the pending appeals as has been specified in para 13 of the original Circular no. 3/2018 dt. 11/07/2018 and that the Department ought not

have filed the appeals before the ITAT where the tax effect is Rs. 50 Lacs or less. For the aforesaid view I also fortified by the decision dt. 14/08/2019 of the coordinate Bench i.e; ITAT, Ahmedabad Bench 'A' Ahmedabad in ITA No. 1398/Ahd/2004 for the A.Y. 1998-99 in the case of ITO, Ward-3(2) Ahmedabad Vs. Dinesh Madhavlal Patel, Ahmedabad & others wherein it has been held in para 5 to 7 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 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.

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.

7. In view of the aforesaid discussion the appeal filed by the Department is dismissed.

(Order pronounced in the open Court on 28/05/2020)

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 28/05/2020

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File