

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री रमित कोचर, लेखा सदस्य एवं
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2688/Chny/2017
निर्धारण वर्ष /Assessment Year: 2009-2010

The Deputy Commissioner of Income Tax,
Central Circle-2(2), International Taxation,
Room No.410, Tower – 1,
BSNL Building, Greams Road,
Chennai – 600 006.

(अपीलार्थी/Appellant)

M/s. Unitex Logistics India Private Limited,
Casa Blanca,
Vs. 11 – Casa Major Road,
Egmore, Chennai – 600 008.
[PAN: AAACU 9669A]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Ms. Vijaya Prabha, Additional CIT
: Mr. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 11.06.2020

घोषणा की तारीख /Date of Pronouncement

: 11.06.2020

आदेश / O R D E R

PER SHRI GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the Revenue call into question correctness of the relief granted to the taxpayers by the Commissioner of Income Tax (Appeals)-16, Chennai and, most importantly, the tax effect involved in this appeal does not exceed Rs.50,00,000/-.

2. Ms. Vijaya Prabha, Additional CIT represented on behalf of the Revenue and Mr. S. Sridhar, Advocate represented on behalf of the Assessee.

3. Vide CBDT circular No.17/2019 in F.No.279/Misc.142/2007-ITJ(Pt) dated 8th August, 2019, the Income Tax department has further liberalized its policy for not filing appeals against the decisions of the appellate authorities in favour of the taxpayers, wherein tax involved is below certain threshold limits, and announced its policy decision not to file, or press, the appeals, before this Tribunal, against the appellate orders favourable to the assessee in the cases in which overall tax effect, excluding interest except when interest itself is in dispute, is Rs. 50,00,000 or less.

4. In view of the above factual background and the concession by this CBDT circular, this appeal must be dismissed as withdrawn.

5. This circular, only enhances the monetary limits and gives further relaxation. The old circular, beyond any dispute or controversy, categorically applied to the pending appeals as on the date of issuance of circular.

6. The circular dated 8th August 2019 is not a standalone circular. It is to be read in conjunction with the CBDT circular No. 3/2018 (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."

7. 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 pare 3 above may be withdrawn/ not pressed."

8. The Hon'ble Supreme Court in the case of The Commissioner of Income Tax-5, New Delhi Vs. Keshav Power Ltd., in SLP No.21497/2019 dated 16.08.2019 reported in 2019(8)TMI 811(SC) has also applied the Circular No.17/2019 dated 08.08.2019 has dismissed the appeal holding as follows:

"Since the tax effect involved in the matter is less than Rs.2/- crores, going by the latest circular issued by the CBDT, we see no reason to interfere in this matter. The Special Leave Petition is dismissed, leaving all the questions of law open".

9. Learned Commissioner (DR) submits liberty may kindly be given to point out, upon necessary further verifications, and to seek recall the dismissal of appeal and restoration of the appeal in the cases (i) in which it can be demonstrated that the appeal is covered by the exceptions.

The Departmental Representative pleaded before us that liberty may be granted to the Assessing Officer to examine the present case independently.

None opposes this prayer; we accept the same. We make it clear that the appellant shall be at liberty to point out the case so summarily dismissed, either owing to wrong computation of tax effect or owing to such case being covered by the permissible exceptions- or for any other reason, and we will take appropriate remedial steps in this regard.

Under these circumstances, we find that there is merits in the submissions of the Departmental Representative. We are of the considered opinion that the Assessing Officer is at liberty to examine the payments made to non-residents, as the materials are called for and to

examine the payments made in the nature of reimbursement of freight charges.

10. In the circumstances, respectfully following the principles laid down by the Hon"ble Supreme Court in the case of Commissioner of Income Tax-5, New Delhi Vs. Keshav Power Ltd., referred to supra and in the light of the above discussions, the appeal filed by the Revenue is found to be non-maintainable.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court after conclusion of hearing on 11th June, 2020 in Chennai.

Sd/-
(रमित कोचर)
(RAMIT KOCHAR)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 11th June, 2020.

IA, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF