

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5087/De/2017
(Assessment Year: 2012-13)

ACIT, Circle-3, Noida	Vs.	Resident Welfare Association Township, Gurinder Vihar, AWHO Township, Pocket-P5, Sector-Chi-I, Greater Noida, Greater Noida, Uttar Pradesh
(Appellant)		(Respondent)

Revenue by :	Ms. Rinku Singh, Sr. DR
Assessee by:	None
Date of Hearing	19/01/2020
Date of pronouncement	19/01/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT(A)-1, Noida dated 30.05.2017 for the Assessment Year 2012-13, wherein, penalty levied u/s 271(1)(c) of the act of 31,86,041/- by the Id AO is deleted. Thus, Tax effect in this appeal is Only Rs. 31,86,041/-.
2. At the outset of the hearing itself, the Id. DR brought our attention to CBDT Circular No. 17/2019 dated 08/08/2019 on low tax effect which applied to the pending appeals also.
3. 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."

4. 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 coordinate bench has decided the issue of applicability of the above

circular to pending appeals 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, appeal filed by the department filed by the assessee is dismissed.

Order pronounced in the open court on 19/01/2021.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/01/2021
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi