

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “SMC-II” MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

ITA No. 799/Mum/2020 Assessment Year: 1998-99	
DCIT, Circle-3(3)(1), Mumbai Room No. 609, 6 <sup>th</sup> Floor, Aaykar Bhavan, M.K Road, Mumbai – 400 020.  PAN : ABHPS7038L	Late Shr. Kantilal Virchand Shah (through legal heir Shri. Jason K. Shah), C/o. Gill & Co. Pvt. Ltd; NTC House, N.M Marg Ballard Estate, Mumbai – 400 001.

Assessee by : Shri Anuj Kishnadwala, A.R  
Revenue by : Shri Sanjay J. Sethi, D.R

Date of Hearing : 04/08/2021  
Date of pronouncement : 05/08/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The captioned appeal filed by the revenue is directed against the order passed by the CIT(A)-8, Mumbai, dated 22.11.2019, which in turn arises from the order passed by the AO u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, (for short 'Act'), dated 09.03.2016.

2. The Id. Authorised Representative (for short "A.R") for the assessee at the very outset of the hearing of the appeal submitted that as the 'tax effect' involved in the present appeal is below the monetary ceiling of Rs. 50 lac provided in the CBDT Circular No. 17/2019, dated 08.08.2019 r.w Circular No. 3/2018, dated 11.07.2018, therefore, the same on the said count itself was not maintainable and liable to be dismissed.

3. Per contra, the Id. Departmental Representative (for short 'D.R') rebutted the aforesaid claim of the assessee. It was submitted by the Id. D.R that the aforesaid contention of the assessee's counsel

was based on misconceived facts. Elaborating on his said contention, it was submitted by the Id. D.R that though the 'tax effect' involved in the present appeal was admittedly below the monetary ceiling contemplated in the CBDT Circular No. 17 of 2019, dated 08.08.2019, however, the said appeal was saved by the exception carved out in Para (d) of the CBDT Circular No. 3/2018, dated 11.07.2018 (as amended on 20.08.2018) and was thus maintainable. In order to buttress his aforesaid claim, it was submitted by the Id. D.R that as the addition in all the aforementioned appeals was based on the information that was received by the A.O from the DGIT(Inv.), Unit IX(2), Mumbai, who in turn was in receipt of information from the French Tax Authorities that the assessee was having a foreign bank account with HSBC Private Bank, Geneva, therefore, the same would safely fall within the realm of the exception contemplated in Para (d) of the CBDT Circular No. 3/2018, dated 11.07.2018 (as amended on 20.08.2018). In order to drive home his aforesaid claim the Id. D.R took us through the exception carved out in Para (d) of the CBDT Circular No. 3/2018, dated 11.07.2018 (as amended on 20.08.2018).

4. We have heard the Id. Authorized Representative for both the parties and perused the orders of the lower authorities and the material available on record. Central Board of Direct Taxes (CBDT) vide Circular No. 17/2019 dated 08.08.2019 has amended Circular No. 3/2018, dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the department before the ITAT, High Courts and SLPs/Appeals before Supreme Court as measures for reducing litigation.

5. CBDT vide Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty order, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

At para 13 of the above Circular, it has been mentioned that:

“13. This Circular will apply to SLPs/appeals/cross objection/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.”

6. As a step towards further management of litigation, CBDT *vide* Circular No. 17/2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

7. In the present appeal filed by the Department the ‘tax effect’ involved is admittedly below the monetary limit of Rs.50,00,000/-. As regards the claim of the Id. D.R, that though the ‘tax effect’ involved in the present appeal is below the monetary ceiling provided for filing of an appeal before the Tribunal as per CBDT Circular No. 17 of 2019, dated 08.08.2019, however, as the addition made by the A.O was based on the information that was received from the DGIT(Inv.), Unit IX(2), Mumbai, who in turn was in receipt of information from the French Tax Authorities that the assessee was having a foreign bank account with HSBC Private Bank, Geneva, therefore, the same would safely fall within the realm of the exception contemplated in Para (d) of the CBDT Circular No. 3/2018, dated 11.07.2018 (as amended on 20.08.2018), we are afraid that the same does not find favor with us. Admittedly, the CBDT *vide* its Circular No. 3/2018, dated 11.07.2018 (amended on 20.08.2018) had carved out certain exceptions which override the non-maintainability of an appeal filed by the revenue involving ‘tax effect’ below the prescribed monetary ceiling. However, we find that the exception carved out in Para 10(d) of the CBDT Circular No. 3/2018, dated 11.07.2018, as had been relied upon by the Id. D.R would not come to the rescue of the revenue insofar the appeal in question is concerned. Exception carved out in Para 10(d) envisages such cases where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, and the same reads as under:

“10(d). Where addition relates to undisclosed foreign income/undisclosed foreign asset (including financial assets)/undisclosed foreign bank account..”

However, in the case before us, the A.O had in the assessment order categorically stated that in the absence of any information received from French Tax Authorities, pertaining to this year and bank statements with his office or as provided by the assessee, an estimated addition towards expenditure of Rs. 1 lac that presumably would have been incurred by the assessee on foreign travel for maintaining the bank account was being made by him. In our considered view, as the addition made in the hands of the assessee is merely in the nature of an estimated addition, the same, thus, cannot be brought within the realm of an addition related to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, therefore, the same would not fall within the meaning of “the exception carved out in Para 10(d) of the CBDT Circular No. 3/2018, dated 11.07.2018

(as amended on 20.08.2018). As such, not being persuaded to accept the aforesaid claim of the revenue that the captioned appeal of the revenue is covered by the exception carved out in Para 10(d) of the CBDT Circular No.3/2018, we reject the same.

8. Resultantly, in the backdrop of our aforesaid observations the present appeal involving a 'tax effect' of less than Rs.50 lac is dismissed.

Order pronounced in the open Court on 05/08/2021.

Sd/-  
(S. Rifaur Rahman)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 05/08/2021

\*\*PS: Rohit

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)