

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5140/Del/2016  
Assessment Year: 2012-13**

DCIT, Circle 3(1)(2),  
New Delhi.

vs. M/s. SMS Meer GmbH,  
C/o Mohinder Puri & Co., CAs,  
1A-D, Vandhna Building,  
11, Tolstoy Marg, New Delhi.

**PAN : AALCS8877R**  
(Appellant)

(Respondent)

Appellant by : Smt. Parvinder Kaur, CIT/DR  
Respondent by: Ms. Richa Agarwal, CA

Date of hearing: 14/09/2021

Date of order : 14/09/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

This appeal by the Revenue for the assessment year 2012-13 is directed against the order of Ld. Commissioner of Income-tax (Appeals)-43, New Delhi dated 20.07.2016.

2. At the outset of the hearing itself, the ld. DR brought to our attention that CBDT vide Circular No. 17/2019 dated 08<sup>th</sup> August 2019 has decided that the revenue would not prefer any appeal before the Tribunal if the tax effect is less than Rs. 50 lakhs. Therefore, he pleaded that the appeal of the revenue be decided as per the Instruction of the CBDT. Learned AR of the

assessee submits that in view of CBDT circular, the appeal of the Revenue is not maintainable and is liable to be dismissed as withdrawn.

3. We have heard the contentions and perused the material on record. We find that the CBDT vide Circular No. 17/2019 dated 08<sup>th</sup> 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 issue of applicability of the above circular to pending appeals has been decided by the coordinate bench in Dinesh Madhavlal Patel [TS-469-ITAT-2019(Ahd)]**2019-TIOL-1556-ITAT-AHM dated 14<sup>th</sup> August, 2019 .**

5. In view of the above, Circular No. 17/2019 dated 08/08/2019 will apply to all pending appeals. Therefore, 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.

6. We may, however, add that certain times instances stated in para No. 10 of the CBDT Circular No. 3/2018 dated 11.07.2018 are not discernible from the assessment and appellate orders. We, therefore, give liberty to Revenue in such cases where the instances stated in para No 10 of the Circular exist, to file miscellaneous application with evidences.

7. In the result, appeal filed by the department is dismissed.

**Order pronounced in the open court on this the 14<sup>th</sup> day of  
September, 2021 just after conclusion of virtual hearing.**

Sd/-

**(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

Dated: 14/09/2021

'aks'

Sd/-

**(K. NARSIMHA CHARY)  
JUDICIAL MEMBER**