

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2938/M/2023
Assessment Year: 2013-14**

Income Tax Officer (Exemption)-2(1), Room No.618, 6 th Floor, MTNL Building, Cumballa Hill, Peddar Road, Mumbai - 400026	Vs.	M/s. Matoshri Arts and Sports Trust, Matoshri Meenatai Thackeray Ground, Jogeshwari Link Road, Andheri East, Mumbai - 400 093 PAN: AAATM2559G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, A.R.
Revenue by : Shri R.R. Makwana, Sr. D.R.

Date of Hearing : 01 . 10 .2024
Date of Pronouncement : 15 . 10 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 21.03.2018, impugned herein, passed by the Ld. Commissioner of Income Tax (Exemptions) (in short Ld. Commissioner) under section 263 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In the instant case admittedly the tax effect involved is less than Rs.60,00,000/- and therefore in view of the latest CBDT circular No.5/2024 dated 15.03.2024, this appeal is liable to be dismissed as withdrawn.

3. However, the Ld. D.R. submitted that where the case is based on the revenue audit objection then as per CBDT circular No.3/2018 dated 11.07.201, the case comes under the exception and therefore cannot be treated as dismissed as withdrawn.

4. On the contrary Shri K. Gopal, Ld. Sr. A.R. of the Assessee has submitted that in the latest circular No.5/2024 dated 15.03.2024 the exception for audit objection has been removed and this fact has also been considered by the co-ordinate Bench of the Tribunal in the case of ITO Ujjain vs. MP Police Sakh Sahakari Snastha Maryadit ITA No.173 & 174/Ind/2024 decided on 12.07.2024 by the Tribunal at Indore Bench.

5. We observe that the co-ordinate Bench of the Tribunal at Indore has by considering para-no.10(c) of the CBDT circular No.3/2018, *wherein the audit objection has also been considered as an exception for not allowing the dismissal as withdrawn of the appeal even in the case of low tax effect as prescribed in the circular, in the context of the latest CBDT circular No.5/2024 dated 15.03.2024 ultimately dismissed the Revenue's appeals, by holding that in the latest CBDT circular there is no exception to the monetary limit, regarding any audit objection. Conclusion drawn by the Bench is reproduced herein below:*

“5. Therefore, in this latest CBDT Circular there is no exception to the monetary limit regarding any audit objection. It is settled position that the CBDT circulars prescribing monetary limits for filing the appeals by the Department before the Tribunal/Hon'ble High Court/Hon'ble Supreme Court are also applicable on the pending appeals on the date of circular. The Hon'ble Bombay High Court in the case of CIT V/s Madhukar K Inamdar HUF 318 ITR 149 has held in para 10 to 13 as under:

“10. At this juncture, it will be relevant to note that the CBDT has also issued a Circular on 5-6-2007 directing the Department to examine all Appeals pending before this Court on case to case basis with further direction to withdraw cases wherein the criteria of monetary limits as per the prevailing instruction is not satisfied, unless the question of law involved or raised in Appeal or referred to the High Court for opinion is of a recurring nature required to be settled by the higher Court.

11. The aforesaid Circular makes it clear that on the date of issuance of Circular, prevailing instructions fixing monetary limit will hold good even for pending cases. Adopting the same approach, we are of the considered view that the CBDT Circular dated 15-5-2008 would be very much applicable to the pending cases requiring department to withdraw cases wherein the tax effect is less than the prescribed monetary limits.

12. At this juncture, it will also be relevant to mention that it was necessary for the CBDT to put a caveat, while issuing instructions vide its Circular dated 5-6-2007, that the Appeals involving substantial question of law of recurring nature should not be withdrawn since provision like section 268A of the Income-tax Act was absent. Now, in view of insertion of the provision of section 268A by the Finance Act, 2008 with effect from 1- 4-1999 in the Income-tax Act, 1961, no prejudice could be caused to the revenue even if the cases involving legal issues of recurring nature are withdrawn, since the newly inserted provision takes care of the adverse eventuality which could have been put against the revenue. The section 268A of the Act, reads as under :—

"268A. Filing of appeal or application for reference by income-tax authority –

(1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—

- (a) the same assessee for any other assessment year; or*
- (b) any other assessee for the same or any other assessment year.*

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to

contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly."

13. In the aforesaid backdrop, we are of the considered view that the Circular dated 15-5-2008 would be applicable to the cases pending before this Court either for admission or for final disposal and that it is binding on revenue. In this view of the matter, all these Appeals, having tax effect less than Rs. 4 lakhs, are dismissed with no order as to costs".

6. Accordingly in view of the judgment of Hon'ble Bombay High Court in case of CIT V/s Madhukar K Inamdar HUF (supra), the CBDT Circular No.5/2024 is applicable in the present appeals filed on 27.2.2024 and consequently due to low tax effect the appeals of the revenue are not maintainable and liable to be dismissed. We order accordingly. Since the appeals of the department are dismissed due to low tax effect therefore, we do not proposed to go into the merits of the issue of allowability of deduction u/s 80P(2)(a)(i) of the Act."

5. Considering the peculiar facts and circumstances of the case and the circulars referred to above specifically dated 15.03.2024 from which it is clear that no exception is carved out in respect of audit objection, meaning thereby that even if the case is based on the audit objection, then the case/appeal can be dismissed as withdrawn in case the tax effect/monitory limit is not exceeding Rs.50,00,000/- which is now revised to Rs.60,00,000/- by the CBDT latest circular No.9/2024 dated 17.09.2024. Hence, the appeal filed by the Revenue Department is liable to be dismissed as withdrawn.

6. In the result, the appeal filed by the Revenue Department stands dismissed as withdrawn.

Order pronounced in the open court on 15.10.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.