

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

I.T.A. Nos. 939 & 940/Ind/2016
Assessment Years: 1995-96 & 1996-97

Asstt. Commissioner of Income Tax

3(1), Bhopal

:: अपीलार्थी/Appellant

Vs

Dr. J.P. Paliwal

Bhopal

PAN – ABEP9484C

:: प्रत्यर्थी /Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
निर्धारिती की ओर से/Assessee by	None
सुनवाई की तारीख Date of hearing	22.3.2017
उद्घोषणा की तारीख Date of pronouncement	23.3.2017

आदेश /O R D E R

PER BENCH

These appeals have been filed by the Revenue against consolidated order of the learned CIT(A)-II, Bhopal, dated 30.6.2016 in First Appeal Nos. CIT(A)-2/Bhopal-307/2009-10 and CIT(A)-

2/Bhopal-308/2009-10 for the assessment years 1995-96 and 1996-97, respectively.

3. When the case was called for hearing, neither the respondent assessee nor his representative appeared nor there is any application for adjournment. However, on perusal of appeal record, we find it appropriate to decide the appeals after hearing the learned DR and thus we proceed accordingly.

4. At the very outset, the learned DR drew our attention towards para 5 of Board Circular No. 21/2015 dated 10.12.2015 and submitted that the order of the learned CIT(A)-II, Bhopal, dated 18.3.2010 has been passed disposing of two appeals of the assessee and hence the same is a consolidated order for the assessment years 1995-96 and 1996-97. The learned DR, therefore, submitted that in view of para 5 of the Board Circular (supra), these appeals cannot be dismissed on account of monetary limit enhanced by the Circular dated 10.12.2015 (supra).

5. On careful consideration of the above submissions, for the sake of completeness and clarify in our findings, para 5 of the Board Circular dated 10.12.2015 (supra) is reproduced hereunder :-

“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. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a 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, appeal shall be filed in respect of all such assessment years even if the ‘tax effect’ is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which ‘tax effect’ exceeds the monetary limit prescribed. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately.”

6. On careful consideration of the above, in our humble understanding, the intention of the Board Circular as per second limb of para 5 is that in a case of composite order of any Hon'ble High Court or appellate authority including the learned CIT(A), which involves more than one assessment year and common issues in more than one assessment year, then the appeal(s) shall be filed in respect of all such assessment years if it is decided by the Revenue to file appeal before the Tribunal in respect of the year in

which tax effect exceeds the monetary limit prescribed, even if the tax effect is less than the prescribed monetary limit in any of the other year(s). In our considered opinion, the directions contained in para 5 of the Circular provide that in a case of composite order by any appellate authority including the learned CIT(A), which involves more than one assessment year and if the revenue decides to file appeal in respect of the year(s) in which the tax effect exceeds the prescribed monetary limit then the appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limit in any of the other year(s), which is also arising from such composite order.

7. In view of the above, for application of directions contained in para 5 of the Circular (supra), it is necessary that the tax effect should exceed the monetary limit prescribed in atleast one appeal and if the revenue decides to file the appeal for that year wherein the tax effect exceeds the monetary limit prescribed then the appeals shall be filed in respect of all such assessment years despite the fact that tax effect is less than the prescribed monetary limit in any of the other year(s). In the present case, admittedly and undisputedly the learned CIT(A)-II, Bhopal has passed a composite

order for the assessment years 1995-96 and 1996-97 and the revenue by filing these appeals has agitated the issue of deletion of addition on account of unexplained investment in construction of hotel building of Rs.29,01,680/- and Rs.28,50,550/- for the assessment years 1995-96 and 1996-97, respectively and the learned DR could not controvert his fact that the tax effect in both the appeals is less than the prescribed monetary limit provided by the Board Circular dated 10.12.2015 (supra). Thus, we are inclined to hold that the tax effect in both the appeals is less than the prescribed monetary limit and there is no appeal wherein the tax effect exceeds the monetary limit prescribed by the Board Circular (supra) which is arising from the impugned composite order of the learned CIT(A). Therefore, in our considered opinion, the directions contained in para 5 of the Board Circular (supra) do not apply to the present appeals and, therefore, we decline to accept the contention of the learned DR placed on the strength of para 5 of the Board Circular, as reproduced hereinabove.

8. We have heard both the sides. We find that the CBDT vide Circular no. 21/20145 issued on 10.12.2015 has revised the monetary limit for filing of appeal before ITAT fixing the tax effect

limit at Rs.10 lacs. We find that the tax effect involved in the present appeals is below the monetary limit, therefore, we dismiss these departmental appeals *in limine* being not maintainable.

3. In the result, both the appeals of the revenue are dismissed.

The order has been pronounced in open Court on 23rd March, 2017.

Sd/-

लेखा सदस्य
(O.P.Meena)
Accountant Member

sd/-

न्यायिक सदस्य
(C.M. Garg)
Judicial Member

March 23rd, 2017.

Dn/