

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SMT. DIVA SINGH, JUDICIAL MEMBER

ITA No.2267/Del/2014
Assessment Year : 2008-09

ITO,
Ward 34(3),
New Delhi

(Appellant)

Vs. Syed Jeelani,
C-53/14, St. No.07,
Chauhan Banger,
Delhi.

PAN: AFRRJ5403J

(Respondent)

Assessee By : Ms Sugandha Anand, Advocate
Department By : Shri Ravi Jain, CIT, DR

Date of Hearing : 17.12.2015
Date of Pronouncement : 17.12.2015

ORDER

PER DIVA SINGH, JM:

The present appeal filed by the Revenue is arising out of order dated 01.01.2014 of CIT(A)-XXVIII, New Delhi, pertaining to 2008-09 Assessment Year. The appeal has been listed by the Registry in view of the fact that the tax effect is less than Rs.10 lac. We find that in the present appeal the Revenue is aggrieved by the deletion of Rs.11,25,000/- odd. Before we proceed to deliberate on the issue further, considering the Circular No.21/2015 dated 10th December,

2015 of CBDT, which has revised the monetary limit for filing of the departmental appeal to the ITAT at Rs.10 lac, we deem it appropriate to first refer to section 268A of the Income-tax Act, 1961 which has been inserted by the Finance Act, 2008 with retrospective effect from 01.04.1999, reading as under:

“268A. (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.]”

2. Relevant extracts (paras 1 to 4) from the aforesaid CBDT Circular No. 21 of 2015 dated 10.12.2015 is also reproduced hereunder for ready reference:

“Subject : Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court – measures for reducing litigation – Reg.

Reference is invited to Board’s instruction No 5/2014 dated 10.07.2014 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

2. *In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.*

3. *Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:*

S. No	Appeals in Income-tax matter	Monetary Limit (in Rs)
1	<i>Before Appellate Tribunal</i>	10,00,000/-
2	<i>Before High Court</i>	20,00,000/-
3	<i>Before Supreme Court</i>	25,00,000/-

*It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.*

4. *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 the issues against which appeal is intended to be filed (hereinafter referred to as “disputed issues”). 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 orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.”

3. We have seen that the monetary limits have been made applicable retrospectively by the CBDT in the said Circular as would be evident from the following extract:-

“10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”

4. The Department was represented by CIT, DR, Shri Ravi Jain, who, in response to the CBDT Circular, stated in the present appeal which stand was taken in all the departmental appeals also that he would need time to call for the report from the Assessing Officer as well as instructions from the Administrative CIT for withdrawing the appeals as they have been filed with approval of the Administrative CIT. Referring to para 7 of the aforesaid Circular, the Id.CIT, DR also submitted that the withdrawal of the appeal by the Revenue on account of low tax effect should not be considered as a precedent in the subsequent years of the acceptance of the issues involved in a subsequent year before the ITAT where the appeal may be above the tax limit as prescribed in the Circular. Accordingly in such an eventuality, in those years the appeal by the ITAT should be decided

on merits as has been clarified by the CBDT in para 7. The relevant extract of the Circular is also extracted hereunder:-

“7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CIT must be maintained in a systemic manner for easy retrieval.”

5. The Id. AR representing the assessee submitted that the aforesaid Circular is fully and squarely applicable as the tax effect is well below the limit of Rs.10 lac.

6. We have heard the submissions of the parties before the Bench and being of the considered view that there is no necessity for adjourning the appeal as the tax effect involved in the appeals of the Revenue is less than Rs.10 lac the oral request was rejected. However, by way of abundant caution liberty is granted to the Revenue that in case on receipt of the order the Assessing Officer finds that the tax effect is above Rs.10 lac or in any other manner the Circular is not applicable, he would be at liberty to file a Miscellaneous Application pointing out these facts. We also taking note of the concerns

expressed by the Id.CIT, DR and make it clear that as a result of the dismissal of the Revenue's appeal on the ground of tax effect the said order would not act as a precedent where the tax effect is more in any subsequent or prior year where the Revenue would want to agitate the issues on similar grounds before the ITAT on merit. Accordingly, in the light of the submissions of the parties relying on the aforesaid Circular which as per judicial precedents is binding on the Revenue, the appeal of the Revenue is dismissed. Reliance is placed on orders dated 15.5.2015 in ITA No.302/Ahd/2014 and order dated 16.12.2015 in ITA No.4771/Del/2012 passed by the Delhi Benches.

7. In the result, the appeal of the Revenue stands dismissed.

Order Pronounced in the Court on 17/12/2015.

Sd/-

[G.D. AGRAWAL]
VICE PRESIDENT

Dated, 17th December, 2015.

Sd/-

[DIVA SINGH]
JUDICIAL MEMBER

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.