

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**  
**BEFORE S/SHRI B.R.BASKARAN, AM AND AMARJIT SINGH, JM**

आयकर अपील सं./I.T.A. No.8690/Mum/2010  
(निर्धारण वर्ष / Assessment Year: 2004-05)

Astt. Commissioner of Income Tax-25(3), C-11, Room No. 308, Pratyakshkar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051	<b>बनाम/</b> Vs.	M/s Mihar Builders, Shop No.3, A Wing, Hari Darshan, Bhogilal Fadia road, Kandivali (W), Mumbai-400067
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AAAFM2938F

अपीलार्थी ओर से / Appellant by	Shri S K Mishra
प्रत्यर्थी की ओर से/Respondent by	Shri Beharilal

सुनवाई की तारीख / Date of Hearing : 28.12.2015  
घोषणा की तारीख /Date of Pronouncement:28.12.2015

**आदेश / O R D E R**

**Per B R Baskaran, AM:**

The revenue has filed this appeal challenging the order dated 30.9.2010 passed by Ld CIT(A)-35, Mumbai for assessment year 2004-05.

2. At the time of hearing, the Id. Counsel appearing for the assessee submitted that the tax effect involved in this appeal is less than Rs.10 lakhs and accordingly submitted that the appeal of the revenue is not maintainable in view of the latest circular No. 21/2015 dated 10.12.2015 issued by the CBDT. The Ld A.R submitted that the revenue has filed this appeal challenging the order of Ld CIT(A) cancelling the penalty of Rs.5,31,891/- levied by the AO u/s 271(1)(c) of the Act. Accordingly he

submitted that the quantum of penalty deleted by the Ld CIT(A) was less than the prescribed limit of Rs.10.00 lakhs.

3. The Id. DR did not dispute the submissions made by the Id.AR.

4. We notice that the revenue is contesting the decision of Ld CIT(A) in cancelling the penalty of Rs.5,31,891/- and hence the tax effect involved on the above said disputed amount works out to less than Rs.10 lakhs. Recently the CBDT has issued a circular No.21/2015 dated 10.12.2015 prescribing new monetary limits for preferring appeals against the orders passed by Ld CIT(A) before the Tribunal. The relevant portion of the circular cited above reads as under:

"F No 279/Misc. 142/2007-ITJ (Pt)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board Direct Taxes

Circular No. 21/2015

New Delhi the 10th December, 2015

Sub :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 matters	Monetary Limit (in Rs)
1	Before Appellate Tribunal	10,00,000/-
2	Before High Court	20,00,000/-
3	Before Supreme Court	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.**

5. ....

6.....

7. ....

8. ....

9. ....

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."

11. ...."

It can be noticed that the CBDT has further clarified that this new circular/instruction shall apply retrospectively, i.e., even to the pending appeals. It is also stated that the quantum of penalty deleted or reduced shall be considered for determining the monetary limits.

5. It is well settled proposition that the circulars issued by the CBDT are binding on the Income Tax Authorities. For this proposition, one may gainfully refer to the decisions rendered by the Hon'ble Supreme Court in the case of Azadi Bachao Andolan (2003)(177 Taxation 775) and Pradip J Mehta Vs. CIT (2008)(300 ITR 231). Hence, the latest circular issued by the CBDT (referred supra) is binding on the income tax authorities. Accordingly, we find merit in the submissions of Ld A.R that this appeal of the revenue is not maintainable, since tax effect involved in this appeal is less than Rs.10 lakhs. Accordingly, we dismiss the appeal filed by the revenue.

6. In the result, the appeal of the revenue is dismissed.

Pronounced accordingly on 28<sup>th</sup> Dec, 2015.

घोषणा खुले न्यायालय में दिनांक: 28<sup>th</sup> Dec, 2015 को की गई।

Sd

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

मुंबई Mumbai: 28<sup>th</sup> Dec, 2015.

व.नि.स./ SRL , Sr. PS

sd

**( B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai