आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

ITA Nos.1217 to 1223/PN/2011
Assessment Years : 2000-01 to 2006-07

The Income Tax Officer,
Central, Aurangabad. .... Appellant

Vs.

Shri Popatlal Mohanlal Chordiya,
10, Ahinsanagar, Opp. Akashwani,
Jalna Road, Aurangabad – 431 001.
PAN : AAHPC1004H .... Respondent

CO Nos.82 to 88/PN/2011
(Arising out of ITA Nos.1217 to 1223/PN/2011)
Assessment Years : 2000-01 to 2006-07

Shri Popatlal Mohanlal Chordiya,
10, Ahinsanagar, Opp. Akashwani,
Jalna Road, Aurangabad – 431 001.
PAN : AAHPC1004H .... Cross Objector

Vs.

The Income Tax Officer,
Central, Aurangabad. .... Respondent

Department by : Shri S.K. Rastogi, CIT
Assessee by : Shri Sunil Ganoo

सुनवाई की तारीख / **Date of Hearing : 05.01.2016**		घोषणा की तारीख / **Date of Pronouncement: 06.01.2016**

आदेश / ORDER

PER SUSHMA CHOWLA, JM :

This bunch of seven appeals filed by the Revenue are against the consolidated order of CIT(A), Aurangabad, dated 07.07.2011 relating to assessment years 2000-01 to 2006-07 against separate orders passed under

section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act"). The assessee has also filed Cross Objections against the respective appeals of the Revenue relating to assessment years 2000-01 to 2006-07.

2. All the appeals of the Revenue relating to the same assessee and the Cross Objections filed by the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Ld. Authorized Representative for the assessee pointed out that though the present appeals filed by the Revenue relating to assessment years 2000-01 to 2005-06 were against the consolidated order of the CIT(A) but the tax effect in each of the appeals was below the limit of Rs.10 lakhs and consequently the appeals filed by the Revenue are to be dismissed, in view of CBDT's Circular No.21/2015, dated 10.12.2015, where it has been announced that subject to certain instructions, which are not relevant to the present case, no Departmental appeal would be filed against the relief given by the CIT(A) before the Tribunal, unless the tax effect excluding interest exceeds Rs.10 lakhs. It is further provided vide the said circular itself that the said limit would be applicable not only to all future tax litigations but even to the pending appeals where the tax involved in the appeals does not exceed Rs.10 lakhs and the same shall not be pressed or withdrawn.

4. The Ld. Authorized Representative for the assessee referred to the order of the CIT(A) in which tabulated details of additions made in the case of the assessee are provided at page 2 of the appellate order and also referred to the chart prepared by the assessee in pointing out the year-wise deletion of additions directed by the CIT(A), against which the Revenue is in appeal.

5. The Ld. Authorized Representative for the assessee also pointed out that the Cross Objections have been filed by the assessee on different issues, however, during the course of hearing the Cross Objections filed by the assessee were withdrawn.

6. The learned Departmental Representative for the Revenue fairly agreed to the contention raised by the learned Authorized Representative for the assessee.

7. We have heard the rival contentions and perused the record. The issue arising in the present appeals is in relation to the addition, wherein the tax effect is less than Rs.10 lakhs. In this background, we have to consider the circular No.21/2015 dated 10.12.2015 of CBDT. The CBDT vide the said circular has announced that subject to certain exceptions, no Departmental appeal would be filed against the relief given by the CIT(A) before the Tribunal, where the tax effect excluding interest does not exceed Rs.10 lakhs. The said instructions are made applicable not only to the future appeals to be filed by the Revenue but even to the pending appeals where the tax involved in each of the appeal does not exceed Rs.10 lakhs, the same are instructed not to be pressed or to be withdrawn by the Revenue. In view thereof, where an appeal is pending before the Tribunal, irrespective of the year to which it relates, the said instructions of the CBDT would be applicable and the appeals of the Revenue pending before the Tribunal where the tax effect is less than Rs.10 lakhs would become nullity. The relevant extract of the Circular is as under:-

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

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. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessment. 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 of 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 / judgment involves more than one assessee, each assessee shall be dealt with separately."

8. The CBDT has further clarified that in case the disputed issue arises in more than one assessment year, then the appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issue exceeds the monetary limit specified in para 3 i.e. Rs.10 lakhs before the Tribunal. It is further directed that henceforth, the appeals can be filed by the Revenue 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, then appeal shall be filed in respect of such assessment year, 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. Where a composite order / judgment involves more than one

assessee, then each assessee shall be dealt with separately. It is also provided further vide para 6 that where the appeal before the Tribunal was not filed only on account of tax effect being less than specified monetary limit, then the Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits. The CBDT has further vide para 8 specified the issue which should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified. Further, the specified monetary limits as per para 9 would not apply to writ matters and direct tax matters other than Income tax and also is not applicable to the appeals where tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the Act. In such cases, the decision to file an appeal is to be taken on the merits of a particulars case. The paras 6 to 9 of the circular read as under:-

> *"6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". In such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.*
>
> *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 CsIT must be maintained in a systemic manner for easy retrieval.*

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
(c) Where Revenue Audit object in the case has been accepted by the Department, or
(d) Where the addition relates to undisclosed foreign assets / bank accounts.

9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case."

9. The retrospective operation of the instructions to pending appeals is provided in para 10 of the circular, which reads as under:-

"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."

10. In the facts of the present case, and the perusal of the order of the CIT(A) and the tabulated details filed by the assessee reflect that the tax effect in each of the year in which the Revenue has filed the appeal is below Rs.10 lakhs. In view of the above said instructions of CBDT in the appeal where the tax effect is less than Rs.10 lakhs, the appeal filed by the Revenue, which is pending before the Tribunal is not to be pressed or withdrawn by the Revenue. Since the tax effect in the present appeals filed by the Revenue is admittedly less than Rs.10 lakhs, therefore, in view of the instructions of CBDT and the entirety of facts, we dismiss the appeals filed by the Revenue as not maintainable.

11. The Cross Objections filed by the assessee are withdrawn, hence the same are dismissed as withdrawn.

12. In the result, the appeals of the Revenue and the Cross Objections filed by the assessee for the respective years are dismissed.

Order pronounced on this 06th day of January, 2016.

Sd/-	**Sd/-**
(**PRADIP KUMAR KEDIA**)	(**SUSHMA CHOWLA**)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 06th January, 2016.
सुजीत

आदेश की प्रतिलिपि अग्रेषित/Copy of the order is forwarded to :

1) The Assessee;
2) The Department;
3) The CIT(A), Aurangabad;
4) The CIT, Aurangabad;
5) The DR "A" Bench, I.T.A.T., Pune;
6) Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune