आयकर अपीलीय अधिकरण पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, 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

Sr. No.	ITA No.	Name of appellant	Name of the Respondent	Assessment Year
1	1478/PN/2014	The Income Tax Officer, Ward 2(3), Sangli	Sou. Pallavi Satish Patil, Near Adarsh Prashala, A/p Nagaj, K. Mahankal, Dist. Sangli	2009-10
2	1530/PN/2014	The Income Tax Officer, Ward 1(2), Jalgaon	Shri Anil Dwarkadas Agrawal, C/o S.K. Oil Industries, Shivaji Nagar, Dhulia Road, Jalgaon	2008-09
3	1542/PN/2014	The Asst. Commissioner of Income Tax, Circle - 2, Nashik	M/s. Rupal Marketing, 5/6, Rushiraj Avenue, Canada Corner, Nashik – 422011	2011-12
4	1546/PN/2014	The Income Tax Officer, Ward 7(2), Pune	Smt. Bharati D Mate, Flat No.7, Suhrud Apartment, 15, Tapobhumi Co-op. Housing Society, Dattawadi, Pune – 411030	2008-09
5	1638/PN/2014	The Dy. Commissioner of Income Tax, Central Circle 1(1), Pune	Shri Jayesh B Jain, Prop. M/s. Jayesh Developers, 6, Kumar Rachana, Shanker Seth Road, Pune – 411037	2007-08
6	1693/PN/2014	The Dy. Commissioner of Income Tax, Circle 1, Jalgaon	Tulsi Extrusions Ltd., N-99, MIDC, Jalgaon – 425003	2008-09
7	1753/PN/2014	The Addl. Commissioner of Income Tax, Range – 10, Pune	Sandhu Roadlines Pvt. Ltd., 309, Patna Roadlines, Kotel Jee Building, Nashik Phata, Kasarwadi, Pune - 411034	2007-08
8	1860/PN/2014	The Joint Commissioner of Income Tax, Range – 1, Nashik	Shri Vilas Kedu Birari, Sanskruti, Murkute Colony, New Pandit Colony, Gangapur Road, Nashik – 422002	2010-11
9	1966/PN/2014	The Income Tax Officer, Ward 2(3), Aurangabad	Mr. Parvez Nazir Hussain Jafri, Prop. of M/s. Jafri Steel Traders, H.No.2-3-23, Ali Manzil, Shah Bazar, Aurangabad	2006-07
10	2042/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Shri Venkateshwara Agricultural Farm, ‘Chandan’, 8th Lane, A/p Jaysingpur, Tal - Shirol, Dist – Kolhapur - 416101	2003-04
11-12	2049 & 2050/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Shri Babulal Laxminarayan Malu, ‘Chandan’, 8th Lane, A/p Jaysingpur, Tal -Shirol, Dist – Kolhapur - 416101	2001-02 & 2002-03

13-14	2051 & 2052/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Sou. Archana Rajendra Malu, 'Chandan', 8th Lane, A/p Jaysingpur, Tal-Shirol, Dist – Kolhapur - 416101	2003-04 & 2005-06
15	2053/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Shri Venkateshwara Pan Masala Industries Pvt. Ltd., 'Chandan', 8th Lane, A/p Jaysingpur, Tal-Shirol, Dist – Kolhapur - 416101	2006-07
16-22	2101-2107/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Shri Bapusaheb B. Patil, R.S. No.4112, Patson House, P.B. Road, Shahapur, Belgaum, Karnataka - 590003	2004-05 to 2010-11
23	2170/PN/2014	The Income Tax Officer, Ward 3(2), Nanded	Shri Balaji Dattaram Manoorkar, Near Mahatma Phule Primary School, Naik Nagar, Nanded	2010-11
24	2240/PN/2014	The Addl. Commissioner of Income Tax, Range-4, Pune	M/s. Kumar Builders, Kumar Capital, 2nd Floor, 2413, East Street, Camp, Pune - 411001	2010-11
25	2244/PN/2014	The Asst. Commissioner of Income Tax, Central Circle, 2(3), Pune	Shri Raviraj Vikas Takawane, Rajyog Bungalow, Plot No.10, Sector No.28, Pradhikaran, Pune - 411044	2011-12
26	02/PN/2015	The Income Tax Officer, Ward 1(1), Nashik	Shri Prakash Lotan Bagul, N-42/VD-2/20/4, Savata Nagar, 4th Scheme, Near Mahadeo Mandir, CIDCO, Nashik – 422009	2008-09
27	09/PN/2015	The Jt. Commissioner of Income Tax, Range – 5, Pune	M/s. Dreams Properties, Office No.1, Prestige Point, 283, Shukrawar Peth, Pune	2009-10
28	38/PN/2015	The Dy. Commissioner of Income Tax, Circle 11(1), Pune	Kumar Urban Development Limited, 2413, Kumar Capital, 2nd Floor, East Street, Camp, Pune–411001	2008-09
29	105/PN/2015	The Income Tax Officer, Ward 1(2), Solapur	Sangola Urban Co-op. Bank Ltd., 1609, Shri Siddhanath Hospital, Near S.T. Stand, A/p – Sangola, Dist - Solapur	2010-11
30	118/PN/2015	The Asst. Commissioner of Income Tax, Circle-6, Pune	M/s. Size Control Gauges & Tools Pvt. Ltd., 218, Poornima Towers, 397, Shankarshet Road, Pune - 411037	2010-11
31	228/PN/2015	The Asst. Commissioner of Income Tax, Circle – 1, Nashik	The Nashik Merchant Co-op. Bank Ltd., A-16, Industrial Estate, Babubhai Rathi Chowk, Satpur, Nashik - 422007	2007-08
32	329/PN/2015	The Dy. Commissioner of Income Tax, Circle – 1, Nashik	The Nashik Road Deolali Vyapari Sah. Bank Ltd., "Kalpawriksha", Ashanagar, Nashik Road, Nashik - 422101	2009-10
33	695/PN/2015	The Jt. Commissioner of Income Tax, Range - 1, Nashik	Shri Vishnu V. Gujarathi, Prop. of Unique Enterprises, Shop No.3, Datta Bhawan, N.D. Patel Road, Nashik - 422002	2010-11
34	706/PN/2015	The Jt. Commissioner of Income Tax, Range – 10, Pune	The Seva Vikas Co-op. Bank Ltd., Laxmi Market, 2nd Floor, Opp. Railway Station, Pimpri, Pune - 411017	2011-12

35	863/PN/2015	The Income Tax Officer, Ward 1(1), Sangli	Smt. Qamarjahan Z. Patait, Prop. P.K. Engineering Works, Plot No.J-36, MIDC, Kupwad, Tal-Miraj, Dist-Sangli	2010-11
36	931/PN/2015	The Asst. Commissioner of Income Tax, Circle – 10, Pune	Pavana Sah. Bank Ltd., Plot No.83, D II Block, MIDC, Telco Road, Chinchwad, Pune - 411019	2008-09
37	937/PN/2015	The Asst. Commissioner of Income Tax, Circle – 11(2), Pune	Minilec India Pvt. Ltd., 1073/1-2-3, Mulshi Pirangut, Mutha Road, Mulshi, Pune - 412111	2010-11
38	1203/PN/2015	The Income Tax Officer, Ward 3(1), Pune	M/s. Sharada Construction & Investment Company, "Sharada Centre", 11/1, Erandwane, Pune - 411004	2009-10
39-45	1213 to 1219/PN/2015	The Income Tax Officer, Ward 2, Ichalkaranji	Smt. Khatunbi Badshah Bagwan, "Bagwan House", H.No.499, Near Onkareshwar Temple, Ichalkaranji, Dist-Kolhapur - 416115	1999-2000, 2001-02 to 2006-07
46	1290/PN/2015	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Irfan Badshah Bagwan, , "Bagwan House", H.No.499, Near Onkareshwar Temple, Ichalkaranji, Dist-Kolhapur - 416115	2005-06
47	1300/PN/2015	The Income Tax Officer, Ward 1(1), Nashik	Dhanlaxmi Gramin Bigersheti Sah. Patsanstha Maryadit, Sahakari Bhavan, Nayagaon, Tal – Sinnar, Dist – Nashik – 422103	2011-12
48	1314/PN/2015	The Dy. Commissioner of Income Tax, Circle 3(1), Dhule	Maharashtra Mahila Sah. Gruh Udyog Sanshta Maryadit, Plot No.33, Vallabh Nagar, Agrawal Nagar, Malegaon Road, Dhule - 424001	2011-12
49	1317/PN/2015	The Asst. Commissioner of Income Tax, Circle – 1, Nashik	The Janlaxmi Co-op. Bank Ltd., Samrrudhi, Gadkari Chowk, Nashik - 422001	2010-11
50	1401/PN/2015	The Income Tax Officer, Ward 3(1), Dhule	Shri Kapil Narendra Taneja, Prop. of Subham Computers, Parola Road, Dhule - 424001	2011-12
51	1386/PN/2015	The Jt. Commissioner of Income Tax, Range – 3, Nashik	Shri Rahul Deoram Pardeshi, Prop. Bhairavnath Industries, Near SBI, Malegaon Road, Nandgaon – 423106, Dist. Nashik	2011-12
52	1417/PN/2015	The Dy. Commissioner of Income Tax, Central Circle 2(2), Pune	Shri Yash B. Tapadia, Shivan, Plot No.14, Gulmohar Park, Aundh, Pune - 411007	2006-07
53-54	1621 & 1622/PN/2015	The Dy. Commissioner of Income Tax, Central Circle 1(1), Pune	Netra P. Shah, Parag Milk and Milk Products, Flat No.109, Adinath Society, Pune – 410037	2008-09 & 2009-10
55	1591/PN/2015	The Tax Recovery Officer, Range – 1, Aurangabad	M/s. Laxmi Rikshaw Body Pvt. Ltd., P.No.E-38-1, MIDC, Chikalthana, Aurangabad - 431210	2010-11

56	1580/PN/2015	The Addl. Commissioner of Income Tax, Range – 1, Nashik	M/s. Taparia Tools Pvt. Ltd., 52 & 53B, MIDC, Satpur, Nashik - 7	2011-12
57	1585/PN/2015	The Asst. Commissioner of Income Tax, Circle 3(1), Dhule	Shri Goverdhansinghji Raghuwanshi Sah. Bank Ltd., CTS-763B, Trimurti Subash Chowk, At Post Nandurbar, Dist - Nandurbar	2010-11
58-68	1083 to 1093/PN/2015	The Income Tax Officer, Ward 1, Ichalkaranji	Kaish Shoukat Bagwan, 6/464, Near Jayshree Sizing, Sangli Road, Ichalkaranji, Dist – Kolhapur	1999-2000 to 2009-10
69-79	1094 to 1104/PN/2015	The Income Tax Officer, Ward 1, Ichalkaranji	Anjum Shoukat Bagwan, 6/464, Near Jayshree Sizing, Sangli Road, Ichalkaranji, Dist – Kolhapur	1999-2000 to 2009-10
80-86	2218 to 2224/PN/2014	The Dy. Commissioner of Income Tax, Central Circle, Kolhapur	Shri Kiran Jayant Patil, R.S. No.4112, Patson House, P.B. Road, Shahapur, Belgaum, Karnataka - 590003	2004-05 To 2010-11

अपीलार्थी की ओर से / Appellant by : Shri Hitendra Ninawe

प्रत्यर्थी की ओर से / Respondent by : Shri Sunil Ganoo – Sl. No.6
: Shri M.K.Kulkarni – Sl. Nos.9, 13-15, 39-46, 58-79
: Shri Pratik Jha – Sl. No.30
: Shri Pramod Shingte – Sl. No.31 & 32
: Smt. Deepa Khare – Sl. No.49
: None – Sl. Nos.1-5, 7-8, 10-12, 16-29, 33-38, 47-48, 50-57 and 80-86

सुनवाई की तारीख / **Date of Hearing : 22.12.2015**		घोषणा की तारीख / **Date of Pronouncement: 30.12.2015**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The present bunch of appeals filed by the Revenue relating to different assessees are directed against different orders of CIT(A), relating to different assessment years mentioned therein.

2. In all these appeals filed by the Revenue, the preliminary issue raised is the tax effect involved in individual appeals not exceeding Rs.10 lakhs, consequent to the Circular issued by CBDT dated 10.12.2015. In consultation with the Members of Bar and the learned Departmental Representatives for the Revenue, issue / service of individual notices of hearing have been dispensed with and the notices are only through Notice Board, since the tax effect in the above said appeals filed by the Revenue was below Rs.10 lakhs. All the above said appeals involving the preliminary issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The learned Authorized Representative for the assessee at the outset pointed out that the tax effect in all the appeals is below the limit of Rs.10 lakhs and consequently, the appeals filed by the Revenue are to be dismissed, in view of the 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 learned Departmental Representative for the Revenue fairly agreed to the contention raised by the learned Authorized Representative for the assessee. In the appeals filed by the Revenue where none appeared, the learned Departmental Representative for the Revenue fairly conceded that the tax effect in those cases are also below Rs.10 lakhs.

5. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is in relation to the additions, wherein the tax effect in each of the year 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."*

6. 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 paras 6 and 7 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 were 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."*

7. 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."*

8. In view of the above said instructions of CBDT in all the appeals where the tax effect is less than Rs.10 lakhs, the appeals filed by the Revenue, which are pending before the Tribunal are 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 in each case, therefore, in view of the instructions of CBDT and the entirety of facts, we dismiss the appeals filed by the Revenue as not maintainable.

9. In the result, all the appeals of the Revenue are dismissed.

Order pronounced on this 30th day December, 2015.

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

पुणे / Pune; दिनांक Dated : 30th December, 2015.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The concerned CIT(A);
4. आयकर आयुक्त / The concerned CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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