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 आर. के. पांडा, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI R.K. PANDA, AM

आयकर अपील सं. / ITA No. 390/PN/2010
निर्धारण वर्ष / Assessment Year : 2006-07

The Addl. Commissioner of Income Tax,
Range – 3, Pune .... अपीलार्थी/Appellant

Vs.

M/s.PIH Finvest Co Ltd.,
13/A, Kirloskar Visan Premises,
Karve Road,
Pune – 411038 .... प्रत्यर्थी / Respondent

PAN: AAACP6085F

आयकर अपील सं. / ITA No. 893/PN/2010
निर्धारण वर्ष / Assessment Year : 2007-08

The Asst. Commissioner of Income Tax,
Circle – 4, Pune .... अपीलार्थी/Appellant

Vs.

M/s.PIH Finvest Co Ltd.,
13/A, Kirloskar Visan Premises,
Karve Road,
Pune – 411038 .... प्रत्यर्थी / Respondent

PAN: AAACP6085F

अपीलार्थी की ओर से / Appellant by : Shri B.C. Malakar
प्रत्यर्थी की ओर से / Respondent by : Shri Sunil Pathak

सुनवाई की तारीख / **Date of Hearing : 02.07.2015**		घोषणा की तारीख / **Date of Pronouncement:08.07.2015**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The captioned appeals filed by the Revenue are against separate orders of CIT(A)-II, Pune, dated 10.12.2009 and 16.03.2010 relating to assessment years 2006-07 and 2007-08 against respective orders passed under section 143(3) of the Income Tax Act , 1961.

2. At the outset of hearing, the learned Authorized Representative for the assessee pointed out that both the appeals filed by the Revenue are not maintainable as the tax effect in the appeals was less than Rs.4 lakhs.

3. On perusal of the record, we find that the present appeals are filed by the Revenue and the total tax effect in the present appeals is below Rs.4 lakhs. The learned Departmental Representative for the Revenue fairly admitted that the tax effect in the present appeals was less than Rs.4 lakhs.

4. We find that the issue in the present appeals is squarely covered by the ratio laid down by the Hon'ble Bombay High Court in the case of CIT Vs. Smt. Vijaya V. Kavekar reported in (2013) 350 ITR 237 (Bom) that the proposition regarding the Circulars issued by the CBDT are not only applicable to the new cases but would also applicable to the pending appeals.

5. Under the provisions of section 268(1) of the Act, the CBDT is empowered to issue Instructions fixing the monetary limits for the Revenue to file appeals before the Tribunal, all the High Courts and the Supreme Court. The CBDT from time to time, issues Instructions fixing the monetary limits with the object of not burdening the Courts and the Tribunal with matters where the tax effect was on a lower side. The CBDT vide Instruction No.5 of 2014 issued on 10.07.2014 had revised the earlier Instruction No.3 of 2011, dated 09.02.2011 wherein, the

monetary limits and other conditions for filing the Departmental appeals in income tax matters before the appellate Tribunals, High Courts and Supreme Court were specified. The Instructions issued on 10.07.2014 were in supersession of the earlier Instructions and the monetary limits have been enhanced by the present Instruction and it has been provided that the appeals 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*	*4,00,000/-*
2.	*U/s 260A before High Court*	*10,00,000/-*
3.	*Before Supreme Court*	*25,00,000/-*

6. The revised monetary limit for filing the appeals before the appellate Tribunal was fixed at in excess of Rs.4 lacs. Further, under the said Instruction, it was also directed that the Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues. In case of every assessee where, the disputed issue arises in more than one assessment year, it was directed that appeal could be filed in respect of such assessment year or years in which, the tax effect in respect of the disputed issue exceeded the monetary limit fixed. In other words and henceforth, the appeals can be filed only with reference to the tax effect in the relevant assessment year. In case of composite order of any High Court or appellate authority, it was further clarified that if the appeal is to be filed in respect of the year/s in which, tax effect exceeds the monetary limit prescribed then, such appeals could also be filed in respect of all such assessment years even if the tax effect is less than prescribed monetary limits.

7. In the facts of the present case, the Revenue had filed both the appeals on 15.03.2010 and 14.06.2010 respectively. Admittedly, in the years under appeal, the tax effect is less than Rs.4 lacs as prescribed in Instruction No.5 of

2014 issued by the CBDT. At the time of hearing of the appeal s, the monetary limits prescribed by the CBDT stand revised by the said Instruction No.5 of 2014, dated 10.07.2014 under which, it has been provided that where the tax effect does not exceed Rs.4 lacs in any of the assessment year then, no appeal can be filed before the appellate Tribunal. The issue arising before us is whether the said revised Instructions which were issued subsequent to the filing of the appeal by the Revenue could be applied to the pending appeal or applicable only to the new cases to be filed by the Revenue after the date of issue of the Instructions.

8. We find that the said issue has been considered by the Hon'ble Bombay High Court in the case of CIT Vs. Smt. Vijaya V. Kavekar (supra). The Hon'ble High Court in the case of CIT Vs. Smt. Vijaya V. Kavekar (supra), had in turn followed the ratio laid down by another Division of Bombay High Court in the case of CIT Vs. Polycott Corporation reported in (2009) 318 ITR 144 (Bom) wherein, it was held as under:-

> *"8. In case of "Commissioner of Income Tax V/s Polycott Corporation" reported at "(2009) 318 ITR 144 (Bom), a another Division Bench of this Court construed the same instruction no. 2 of 2005, dated 24th October, 2005. The Division bench observed while construing the paragraph no. 5 of the circular, as thus :*
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>> *"9. Having considered the contentions, in our opinion, the instructions cannot be interpreted as a statute though it is pursuant to the power conferred under Section 268A of the IT Act. What the Court has to consider is the plain language of the para and the object behind the said provisions. The object appears to be not to burden Courts and Tribunals in respect of matters where the tax effect is less than the limit prescribed. Even before this Instruction, CBDT has been issuing instructions, the last one being on 24th Oct., 2005 where the monetary limit has been fixed. In those instructions the only exception had been that in cases involving, substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar case, appeal should be filed without being hindered by the monetary limits. The present instructions seem even to limit the issues insofar as the same question of law or recurring issue except to the extent provided in para 5.*
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>> *On a proper reading of para 5 of the instructions it would be clear that a duty is cast on the AO that even if the disputed questions arise for more than one assessment year then an appeal should be filed only in respect of those years where the monetary limit as*

specified in para 3 of the instruction. The exception, however, is carved out in respect of a composite order of the High Court or appellate authority. In other words where the High Court or Tribunal has passed a composite order in respect of the same assessee on the same question and/or on different question and for one of the assessment years, the tax effect is more than the monetary limit then the appeal shall also be filed in respect of all the assessment years. The submission on behalf of the assessee is that the composite order must relate to a common issue. We beg to disagree on a plain and literal construction of the instruction. The expression "which involves more than one year" would have no meaning if it was restricted only to the expression "common issues". The expression, therefore, of a composite order will have to be read to mean an order in respect of the same assessee for more than one year. An (order) disposing of several appeals on a common question of law by appellate authority, cannot be said to be a composite order as the order involves appeals by different persons, which appeals for the sake of convenience have been only clubbed together for the purpose of disposal on that issue. In our opinion, this would be the correct reading of para 5 of the instruction."

9. The Hon'ble Bombay High Court further held as under:-

"15. The position of law, therefore, emerging from the aforesaid judgements, is that the circulars or instructions issued under Section 268A of the Income Tax Act by the Central Board of Direct Taxes, are applicable not only to new cases but to pending cases as well. Such circulars have been issued under Section 268A of the Income Tax Act, which is an exception to the provisions of Section 260 of the Act. The CBDT being mindful of this position has issued the aforesaid instructions. In our opinion, therefore, the instructions would be applicable to pending cases as well. We have already found that the Instruction no. 5 of 2008 and Instruction no. 3 of 2011 are para-materia. The Instruction no. 5 of 2008 has already been interpreted by this Court in CIT V/s Madhukar Inamdar (supra). It is not disputed that this judgement has not been challenged by the Revenue and therefore still holds the field."

10. Following the above said proposition laid down by the Hon'ble High Court in the case of CIT Vs. Smt. Vijaya V. Kavekar (supra), we hold that in view of the revised Instruction issued by the CBDT under which, the monetary limit for filing the appeals before the appellate authorities, Tribunals has been revised and fixed at Rs.4 lacs i.e. only appeals with tax effect exceeding Rs.4 lacs were maintainable. In the present appeals filed by the Revenue, the monetary limit admittedly, is less than Rs.4 lacs. In view of Instruction No.5 of 2014 which are applicable not only to the new appeals to be filed by the Revenue, but also to the

appeals pending before the Tribunal, we dismiss both the appeals filed by the Revenue because of small tax effect.

11. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on this 8th day of July, 2015.

Sd/-	Sd/-
(**R.K. PANDA**)	(**SUSHMA CHOWLA**)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 8th July, 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 CIT(A)-II, Pune;
4. आयकर आयुक्त / The CIT – II, Pune;
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