

Revision of monetary limits for filing appeals by the Department before Income tax Appellate Tribunals, High Courts and Supreme Court- measures for reducing litigation

INSTRUCTION NO. 5/2008, DATED 15-5-2008

Reference is invited to Board's instructions No. 1979 dated 27-3-2000, No. 1985 dated 29-6-2000, No. 6 of 2003 dated 17-7-2003, No. 19 of 2003 dated 23-12-2003, No. 5/2004 dated 27-5-2004, No. 2/2005 dated 24-10-2005 and [No. 5/2007 dated 16-7-2007](#), wherein monetary limits for filing departmental appeals (in Income-tax matters) and other conditions were specified, for filing appeals before Appellate Tribunals, High Courts and Supreme Court.

2. In supersession of the above instructions, it has been decided by the Board that departmental appeals will be filed before Appellate Tribunals, High Courts and Supreme Court as per monetary limits and conditions specified below.

3. Appeals will henceforth be filed only in cases where the tax effect exceeds monetary limits given hereunder :—

| Sl. No. | Appeals in Income- tax matters | Monetary Limit(In Rs.) |
|----------------|---|-------------------------------|
| 1. | Appeal before Appellate Tribunal | 2,00,000/- |
| 2. | Appeal under section 260A before High Court | 4,00,000/- |
| 3. | Appeal before Supreme Court | 10,00,000/- |

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 issue against which appeal is intended to be filed (hereafter referred to as "disputed issues"). However, the tax will not include any interest thereon. Similarly, in loss

cases notional tax effect should be taken into account. In the cases 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 assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal shall 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 will 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 or appellate authority, which involves more than one year, appeal shall be filed in respect of all 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.

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". Further, 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/counsel 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 by 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.

8. Adverse judgments relating to the following should be contested irrespective of the tax effect.

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge.

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires.

(c) Where Revenue Audit objection in the case has been accepted by the Department.

9. The proposal for filing Special Leave Petition under Article 136 of the Constitution before the Supreme Court should, in all cases, be sent to the Directorate of Income-tax (Legal & Research) New Delhi and the decision to file Special Leave Petition shall be in consultation with the Ministry of Law and Justice.

10. The monetary limits specified in para 3 above will not apply to writ matters.

11. This instruction will apply to appeals filed on or after 15th of May 2008. However, the cases where appeals have been filed before 15th of May 2008 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

12. This issues under section 268 A(1) of the Income-tax Act, 1961.

Instruction of 2007

Revision of monetary limits for filing appeals by the department before various appellate bodies or appellate authorities
Instruction No. 5 dated 16-7-2007

Reference is invited to **Board's Instruction No. 02/2005, dated 24-10-2005** wherein monetary limits for filing appeals before various appellate authorities have been prescribed.

2. With reference to para 2 of the above instruction, it is clarified that the 'tax effect' specified in para 2 means the tax only, i.e. **tax excluding interest**.

3. Para 3 of the Instruction No. 02/2005 is substituted as under:

"The Board has also decided that cases where the question of law involved or raised in appeal is/are of a recurring nature to be decided by the Court, should be separately considered on merits without being hindered by the monetary limits."

4. Subject to paragraphs 2 and 3 above, the Instruction No. 979, dated 27-3-2000 clarified subsequently by Instruction No. 985, dated 29-6-2000 and Instruction No. 2/2005, dated 24-10-2005, will continue to govern the decision for filing of departmental appeals.

5. This Instruction will **come into effect from 16-7-2007**.

Direct Tax Instruction No. 2 dated 24 October 2005 LexDoc Id: **283276**

The CBDT revised the prescribed monetary limits for filing appeals, which had been notified vide Instruction No. 1985 dated 27 March 2000 and Instruction No. 1985 dated 29 June 2000. It also clarified that in cases where a substantial question of law was involved, the appellate authorities could proceed without being hindered by monetary limits.

To

All Chief Commissioners of Income Tax and
Directors General of Income Tax.

Revision of monetary limits for filing appeals by Department before various appellate bodies or appellate authorities – clarification thereon – regarding.

Reference is invited to Board's Instruction No.1979 dated 27.3.2000 [F.No.279/126/98-ITJ dt. 27.3.2000] and Instruction No.1985 dated 29.6.2000 [F.No.279/126/98-ITJ dated 29.6.2000] wherein monetary limits for filing appeals/references before various appellate authorities have been prescribed.

2. In partial modification of the above instruction, it has now been decided by the Board that appeals will henceforth be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder: -

| SI. No. | INCOME-TAX | TAX EFFECT |
|---------|----------------------------------|----------------|
| (i) | Appeal before Appellate Tribunal | Rs.2,00,000/- |
| (ii) | Appeal u/s 260A | Rs.4,00,000/- |
| (iii) | Appeal before the Supreme Court | Rs.10,00,000/- |

¹3. The Board has also decided that cases where the question of law involved or raised in appeal is/are of a recurring nature to be decided by the Court, should be separately considered on merits without being hindered by the monetary limits.¹

4. Subject to the paragraphs 2 and 3 above, the Instruction No.1979 dated 27.3.2000 as clarified subsequently in Instruction No.1985 dated 29.6.2000, will continue to govern the decision for filing of departmental appeals.

5. This Instruction will come into effect from 31.10.2005.

Sd/-

S.C.L.

Dhamija

OSD (ITJ)

F.No.279/Misc.-64/05-ITJ