

IN THE HIGH COURT OF MADHYA PRADESH

ITR No.38/98

COMMISSIONER OF INCOME TAX, BHOPAL

Vs

KEWALCHAND PRATAPCHAND

Krishn Kumar Lahoti and Smt Sushma Shrivastava

Dated: February 24, 2011

JUDGEMENT

It is a reference by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur in Case No. R.A. No.63/Jab/1992 by which following question has been referred for the opinion of this Court u/s 256(2) of the Income Tax Act 1961 :

"Whether on the facts and in the circumstances of the case, the I.T.A.T. Was justified in confirming the order of the DCIT(A) deleting the amount of Rs.1,38,000/- on the basis of finding given by the Tribunal vide order dated 25.9.1989 when the said order was not in conformity with the earlier findings of the Tribunal for the Asstt. Years 1976-77 and 77-78 ?"

Learned counsel appearing for respondent raised a preliminary objection that in the case, tax liability is less than Rs.2 lakh, so the aforesaid reference is incompetent and may be decided in the light of the judgment of this Court in Commissioner of Income- Tax Vs. Ashok Kumar Manibhai Patel & Co., (2009) 317 ITR 386 (MP).

So far as factual position that the tax liability in the present reference is less than Rs.2 lakh is not disputed by Shri Sanjay Lal, learned counsel for the revenue though he insisted that the aforesaid question may be answered.

The Division Bench in Ashok Kumar Manibhai Patel & Co.(supra) considering the question held thus :

"13. Quite apart from the above, we may also note that this court in the case of CWT v. Dr. Ajad Kumar Jain (HUF), Sagar (W.P. No.162/98), while taking note of the tax impact and placing reliance on the decision rendered in CIT v. Pithwa Engineering Works (2005) 276 ITR 519 (Bom), has opined thus :

"11. The factual scenario can be perceived from another aspect, submission of Mr. A.K. Shrivastava, learned counsel for the respondent is that the tax impact is Rs.52,565 and, therefore, as per the circular of the Central Board of Direct Taxes the reference need not be adverted to. A Division Bench of the High Court of Bombay in the case of CIT v. Pithwa Engg. Works (2005) 276 ITR 519 (Bom) in paragraph 6 expressed the view as under (page 520) :

'This court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, the assessee on the file of the Department have been increased consequently, the burden on the Department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. In this view of the matter, the Board has rightly taken a decision not to file references if the tax effect less than Rs.2 lakhs. The same policy for old matters needs to be adopted by the Department. In our view, the Board's circular dated March 27, 2000, is very much applicable even to the old references which are still undecided. The Department is not justified in proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with decades old references having negligible tax effect.' “.

The CBDT has also issued a Circular dt.15.5.2008 which reads as under :

**Circulars
INCOME**

TAX

Instruction No.5 of 2008, dt.15th May, 2008

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

Reference is invited to Board's instructions No.1979 dt. 27th March, 2000, No.1985 dt.29th June, 2000, No.6 of 2003, dt. 17th July, 2003, No.19 of 2003, dt.23rd Dec., 2003, No.5 of 2004, dt.27th may, 2004, No.2 of 2005 dt. 24th Oct., 2005 [(2005) 198 CTR (St) 41] and No.5 of 2007, dt. 16th July, 2007 [(2007) 210 CTR (St) 76] 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 suppression 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
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 had such total income been reduced by the amount of income in respect of the issue against which appeal is intended to be filed (hereinafter 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 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 issue 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 issue 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 or 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 as 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 of 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 268A(1) of the Income-tax Act, 1961.

[F.No.279/Misc.142/2007-ITJ]

From the perusal of aforesaid, it is apparent that the Board Circular dt.27.3.2000 was applicable even to the old references which are still pending and are undecided. By circular dated 27.3.2000 financial limit to the extent of tax liability of Rs.2 lakh was fixed, which is applicable in this case.

In view of the aforesaid settled position of the law by the Division Bench, we find that the question need not be answered in the light of the aforesaid circular of the CBDT and the judgment of this Court in Ashok Kumar Manibhai Patel & Co.(supra).

Accordingly, the reference is disposed of finally.