

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 655/JP/2019
निर्धारण वर्ष/ Assessment Years : 2009-10

The ITO, Ward-2(1), Jaipur.	बनाम Vs.	Shri Habib Khan Prop. M/s H.K. Exports Corporation, 2259, Takia Yakeen Shah, Chokdi Top Khana, Huzuri, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABPPK 5855 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri K.C. Gupta (JCIT)
निर्धारिती की ओर से / Assessee by : None

सुनवाई की तारीख / Date of Hearing : 12/03/2020
उदघोषणा की तारीख / Date of Pronouncement : 12/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This appeal by the Department is directed against the order dated 19.02.2019 of Id. CIT(A)-I, Jaipur for the assessment year 2009-10. As per the grounds of appeal, the tax effect calculated by the AO in respect of the relief granted by the Id. CIT (Appeals) which has been challenged in the present appeal is Rs. 1,43,924/-.

2. We have heard the Id. D/R and considered the relevant material on record. At the outset, we note that the tax effect in this appeal is not exceeding the monetary limit as revised by the CBDT vide Circular dated 08.08.2019 for the purpose of filing of appeal by the department before the Income Tax Appellate Tribunal from Rs. 20,00,000/- to Rs. 50,00,000/-. For ready reference, we reproduce the CBDT Circular No. 17 of 2019 dated 08.08.2019 as under :-

Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.

Circular No. 3/2018 dated 11th July 2018 has been replaced by Circular No. 17/2019 dated 8th August 2019 to enhance Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court for reducing litigation.

<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (Rs.) (previous limit)</i>	<i>Monetary Limit (Rs.) (Revised Limit)</i>
<i>Before Appellate Tribunal</i>	<i>20,00,000</i>	<i>50,00,000</i>
<i>Before High Court</i>	<i>50,00,000</i>	<i>1,00,00,000</i>
<i>Before Supreme Court</i>	<i>1,00,00,000</i>	<i>2,00,00,000</i>

- 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 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. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit.

- *Further, even in the case of 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, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit.*
- *In case where a composite order/ judgment involves more than one assessee, each assessee shall be dealt with separately.”*

Accordingly, the appeal of the department is not maintainable being monetary limit is less than/not exceeding Rs. 50,00,000/-.

3. The Id DR has however submitted that the case falls under exception as per clause 10(e) of Circular no. 03 of 2018 dated 20-08.2018 as the case was reopened u/s 148 basis information received from Investigation Wing, Mumbai and therefore, the present appeal has been preferred by the Revenue and the same should therefore be heard on merits and not dismissed on account of low tax effect.

4. In this regard, we refer to the CBDT directive dated 20th August 2018 by which it has carved out several exceptions to its Circular No. 3 of 2018 dated 11th July 2018 relating to the withdrawal/ non-filing of appeal by the Department in low-tax effect appeals. The CBDT has specified several instances where appeals have to be filed and prosecuted despite their low-tax effect. The contents thereof read as under:

"All the Principal Chief Commissioners of Income Tax

Subject: Amendment to para 10 of the Circular No. 3 of 2018 dated 11.07.2018-reg:

Madam/Sir,

Kindly refer to the above.

2. The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court have been revised by Board's Circular No. 3 of 2018 dated 11.07.2018.

3. Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No. 3 of 2018 dated 11.07.2018 is hereby amended as under:

"10. 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 is 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 objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court."

4. The said modification shall come into effect from the date of issue of this letter.

5. The same may be brought to the knowledge of all officers working in your region.

6. This issues with the approval of the Hon'ble Finance Minister."

5. The exception 10(e) which has been referred by the Id DR relates to cases where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI). Both administratively and functionally, there cannot be any dispute that the Investigation Wing of Income Tax Department is part of Income Tax Department and is therefore clearly not an external law enforcement agency and that too, as specified in the aforesaid exception. Therefore, in the instant case, where the matter has been reopened based on information received from Investigation Wing and the assessment has been completed by the Assessing officer where the matter under appeal has tax effect less than the prescribed limit, it will continue to be

governed by low tax effect circular issued by the CBDT which is binding on the Revenue.

6. In light of the same, the present appeal filed by the Department is dismissed on account of low tax effect given the matter not covered by any exceptions so specified.

In the result, appeal of the department is dismissed.

Order pronounced in the open Court on 12/03/2020.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 12/03/2020.

*Santosh

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

1. अपीलार्थी / The Appellant- ITO, Ward-2(1), Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Habib Khan, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 655/JP/2019 }

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar