

Circular No. 5/2017

FTS No. 279157/1TJ

Government of India

Ministry of Finance

Central Board of Direct Taxes

January 23rd, 2017

Subject: Measures for reducing litigation - Clarification on Circulars 21/2015 and 8/2016 reg.

Instructions were issued vide CBDT Circular No. 21/2015 dated 10.12.2015, to the effect that appeals/SLPs should not be filed in cases where tax effect does not exceed the monetary limits specified under para 3 of the said Circular. It was also clarified therein that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed in the said Circular.

2. In para 8 of the aforesaid Circular No. 21/2015, it has been unambiguously and expressly provided that adverse judgements relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in Circular or even if 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 Objection in the case has been accepted by the Department
- d. Where the addition relates to undisclosed foreign assets/ bank accounts.

The direction to 'contest on merits' negates the mechanical filing of appeals in these cases.

3. However, it has been noticed that para 8 (c) of Circular No. 21 / 2015, regarding cases where addition made on account of Revenue Audit Objection is deleted, is being erroneously interpreted and appeals are being mechanically filed by the Department without proper examination of the case on merits. This is contrary to the instructions contained in Circular No. 21/2015 and Circular No. 8/2016. It is, therefore, clarified that the import and intent of para 8 of the Circular No. 21/2015 is that even on issues mentioned in the said para, appeals against the adverse judgment should only be filed on merits.

4. Accordingly, henceforth, appeals should not be filed by the Department in violation of instructions mentioned above. Further, appeals that may have been filed in violation of these instructions may be withdrawn.

5. The above may be brought to the notice of all concerned.

(Neetika Bansal)

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