

Cir On Monetary Limits For Filing Appeals Applicable Prospectively not for earlier Appeals

**Government of India
Office of the Director of Income-tax (Legal & Research)-I
3rd Floor, Drum Shape Building, I P Estate, New Delhi – 110002
Phone: 2337 8302 Fax: 2337 8826**

No. DIT (L&R) –I/SLP/393/2011/4589

Date: 02/09/11

To
All Chief Commissioners of Income-tax
All Directors General of Income-tax
Sir / Madam,

Sub- Observations of Hon'ble Apex Court- Summary dismissal of departmental appeal by Delhi High Court by retrospective application of monetary limits of tax effect revised by CBDT Inst No 3 of 2011 – filing of review petition in High Court – reg

Kindly refer to the above.

2. In a large number of cases Hon'ble Delhi High Court has summarily dismissed the appeals filed by the department prior to 09/02/11 on the ground that the tax effect involved was less than the revised monetary limits of tax effect involved prescribed by **CBDT Instruction No 3/2011 dt.09/02/11.(Given Below)**

3. As per Instruction No 3/2011 the revised monetary limit was applicable only for the appeals filed on or after 09/02/11 ie the date of issue of Instruction. As per para 11 of the Instruction, it was clarified that the appeals filed earlier would be governed by the old instructions operative at the time of filing.

4. On this issue SLP was filed in Supreme Court and one case namely **Surya Herbal** came up for hearing before the Hon'ble Supreme Court on 29/08/11. The order passed by the Hon'ble court in that case in **SLP(C) CC No 13694 of 2011** is **(Given below)**. The Supreme Court has directed that review petition be filed in High Court within two weeks. In such cases the attention of the High Court may be drawn to the observations of Supreme Court with a prayer not to apply the Instruction No 3/2011 ipso facto in respect of appeals filed prior to 09/02/11.

5. In view of the above, the Board desires that in all such cases (including the cases in which proposal to file SLP has been sent to Directorate of Legal & Research) immediate steps be taken to file review petition in High Court pointing out the observations of

Supreme Court. The officers may be advised not to send any proposals henceforth to file SLP in such cases.

Yours faithfully
(R. K. Gupta)
Director of Income-tax (L&R)-I
New Delhi

Sending again for ref.

IT vs. Surya Herbal Ltd (Supreme Court) - Liberty is given to the Department to move the High Court pointing out that the Circular dated 9th February, 2011, should not be applied ipso facto, particularly, when the matter has a cascading effect. There are cases under the Income – Tax Act, 1961, in which a common principle may be involved in subsequent group of matters or large number of matters. In our view, in such cases if attention of the High Court is drawn, the High Court will not apply the Circular ipso facto. For that purpose, liberty is granted to the Department to move the High Court in two weeks. The special leave petition is, accordingly, disposed of.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
Petition(s) for Special Leave to Appeal (Civil).. /2011
(CC 13694/2011)
(From the judgement and order(s) in dated 21/02/2011 in ITA No.379/2011 of The
HIGH COURT OF DELHI AT N. DELHI)
C.I.T CENTRAL-III VERSUS SURYA HERBAL LTD.
(With appln(s) for c/delay in filing SLP)

Date: 29/08/2011 This Petition was called on for hearing today.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Liberty is given to the Department to move the High Court pointing out that the Circular dated 9th February, 2011, should not be applied ipso facto, particularly, when the matter has a cascading effect. There are cases under the Income – Tax Act, 1961, in which a common principle may be involved in subsequent group of matters or large number of matters. In our view, in such cases if attention of the High Court is drawn, the High Court will not apply the Circular ipso facto. For that purpose, liberty is granted to the Department to move the High Court in two weeks. The special leave petition is, accordingly, disposed of.

[Alka Dudeja]

[Madhu Saxena]

Sending again for ref.

Revised Limits for Filing Appeals by Department Before Appellate Authorities

CBDT INSTRUCTION

NO. 3/2011

[F. NO. 279/MISC. 142/2007-ITJ]

DATED 9-2-2011

Reference is Invited to Board's instruction No. 5/2008 dated 15-5-2008 wherein monetary limits and other conditions for filing departmental appeals (In Income-tax matters) before Appellate Tribunal, High Courts and Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal, High Courts and Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth 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.	Appeal before Appellate Tribunal	3,00,000
2.	Appeal u/s 260A before High Court	10,00,000
3.	Appeal before Supreme Court	25,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

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 issues against which appeal is intended to be filed (hereinafter referred to as "disputed Issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In 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 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 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 can 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 assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such 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. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

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/counsels 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 for the 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. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CsIT must be maintained in a Systemic manner for easy retrieval.

8. 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 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.

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 shall not apply to writ matters and direct tax matters other than Income-tax, filing of appeals in other direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, filing of appeal in cases of Income-tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

11. This instruction will apply to appeals filed on or after **9th February 2011**. However, the cases where appeals have been filed before **9th February 2011** 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