

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "Friday": NEW DELHI

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

M.A. No. 251/Del/2016
(in ITA. No. 1945/Del/2011)
(Assessment Year: 2008-09)

&
ITA. No. 1945/Del/2011
(Assessment Year: 2008-09)

ACIT, Ward : 13 (3) New Delhi	Vs.	M/s. Jay Metal Industries Pvt. Ltd., E-48/4, Okhla Indl. Area, Phase-II, New Delhi – 110 020. PAN: AAACJ1748B
(Applicant)		(Respondent)

Assessee by :	Shri Sumit Lal Chandani, Adv.;
Revenue by:	None
Date of Hearing	16/10/2020
Date of pronouncement	21/12/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This Miscellaneous application is filed by the Id. Assessing Officer in ITA. No. 1945/Del/2011 wherein appeal filed by the Revenue for Assessment Year 2008-09 was dismissed on account of low tax effect prevailing as on that date of Rs.10 lakhs. The Revenue says that in the present case the tax effect is more than Rs.10 lakhs i.e. Rs. 10,83,779/- which is more than thresh-hold of Rs.20 lakhs. Therefore, it was submitted that there is a mistake apparent from record and the order deserves to be recalled.

2. At the time of hearing, none appeared on behalf of the ld. Assessing Officer. However, ld. AR appeared on behalf of the assessee, who expressed no objection if the I. T. Appeal is recalled.
3. In view of the above facts as the co-ordinate bench dismissed the appeal of the Revenue holding that tax effect in that case is more than Rs.10 lakhs as prevailing on that date, therefore, there is a mistake apparent from the record and hence the impugned order is recalled.
4. **Thus Miscellaneous application of revenue is allowed.**

ITA. No. 1945/Del/2011

(Assessment Year: 2008-09)

5.

6. Now after recalling the above order we find that tax effect in the present case is only Rs. 10,83,779/- which is less than the prescribed limit prevailing as on this date which is also less than the present limit of Rs.20 lakhs. We find that the CBDT vide Circular No. 17/2019 dated 08th August 2019 has enhanced the monetary limit for filing the appeal by the department before Income Tax Appellate Tribunal, Hon'ble High Courts and Hon'ble Supreme Court. The relevant para of the aforesaid circular is reproduced as under :-

“2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

S.No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	50.00,000
2.	Before High Court	1.00.00.000
3.	Before Supreme Court	2.00,00.000

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order

for more than one assessment years is passed, para 5 of the circular is substituted by the following para:

"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. 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 specified in para 3. In case where a composite order/ judgement involves more than one assessee. each assessee shall be dealt with separately."

4. *The said modifications shall come into effect from the date of issue of this Circular.*

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

6. *This issues under section 268A of the Income-tax Act, 1961."*

7. We find that the tax effect involves in the appeal of the Revenue is below Rs. 50 lakhs. There is no dispute that the Board's instructions or directions issued to the Income-tax authorities are binding on those authorities; therefore, the Department should have withdrawn/not pressed the present appeal in view of the aforesaid instruction since the tax effect in the instant appeal is less than the amount of Rs. 50 lakhs. The issue of applicability of the above circular to pending appeals has been decided by the coordinate bench in Dinesh Madhavlal Patel [TS-469-ITAT-2019(Ahd)] **2019-TIOL-1556-ITAT-AHM dated 14th August, 2019.**

6. In view of the above, Circular No. 17/2019 dated 08/08/2019 will apply to all pending appeals. Therefore the precedent, it is held that the appeal is not maintainable in the instant case as the tax effect is less than Rs. 50

lakhs. Accordingly, it is held that appeal filed by the revenue is not maintainable. We also hastened to add that certain times instances stated in para No. 10 of the CBDT Circular No. 3/2018 dated 11.07.2018 is not discernable from the assessment and appellate orders, therefore, in such cases, we also give liberty to revenue that if such instances comes to their notice than, revenue may file miscellaneous application with such evidences.

7. **In the result, the Appeal of the ld AO in ITA. No. 1945/Del/2011 for (Assessment Year: 2008-09) is dismissed.**

Order pronounced in the open court on : 21/12/2020.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 21/12/2020

MEHTA

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	10.12.2020
Date on which the typed draft is placed before the dictating member	10.12.2020
Date on which the typed draft is placed before the other member	21.12.2020

Date on which the approved draft comes to the Sr. PS/ PS	21.12.2020
Date on which the fair order is placed before the dictating member for pronouncement	21.12.2020
Date on which the fair order comes back to the Sr. PS/ PS	21.12.2020
Date on which the final order is uploaded on the website of ITAT	21.12.2020
date on which the file goes to the Bench Clerk	21.12.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	