

ito Vs. Amrit Kumar Patel

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Dec-10-2007

Judge : N Vasudevan

Appellant : ito

Respondent : Amrit Kumar Patel

Judgement :

1. This is an appeal by the revenue against the order dated 5/12/2006 of the learned. Commissioner (Appeals)-XXIV, New Delhi, relating to the assessment year 1998-99.

2. I have gone through the grounds of appeal filed by the revenue and I find that the tax effect in the instant appeal is less than Rs. 2 lakhs. In view of CBDT Instructions No. 2 dated 24-10-2005, the department should not have filed the appeal before the Tribunal. The Central Board of Direct Taxes, in the above circular had asked all officers of the Income-tax department under their control not to file appeals before the Appellate Tribunal in cases where the tax effect involved in appeal did not exceed Rs. 2 lakhs. These instructions in question are binding on all departmental authorities and they could not be by passed and treated as of no consequence on the pretext that these were private only, and the authorities are bound to follow, comply with and see that the policies laid down by the Board achieve their objectives. These instructions had been issued to avoid unnecessary litigation in small cases particularly, it was very difficult for a small assessee to come from a remote and distant place to defend an appeal filed against him in the

Tribunal. The legal fees payable to the lawyer, travelling and other incidental expenses involved, were likely to be more than the tax effect in the appeal and the financial loss to such an assessee would be more, even if he legally succeeded in the appeal. Therefore, the circular/instruction definitely aimed at redressing problems of small assessees. The assessees are entitled to urge the Tribunal to enforce it.

3. The instructions for not filing the appeals with regard to the quantum of revenue effect being less than particular amount have not been issued by the Central Board of Direct Taxes in a light hearted manner. These are issued after a great deal of deliberations and discussion where every aspect of the matter, more particularly the question of loss of revenue is examined in depth. Every officer is enjoined with the duty to advance the policies laid down by the Central Board of Direct Taxes and see that these are not defeated. The instructions are also aimed at reducing arrears of appeals in courts and Tribunals. It was observed by the Hon'ble Madras High Court in CWTv. S. Annamalai that in order to reduce the litigation for filing departmental appeals /references before the Income Tax Appellate Tribunal, High Courts and the Supreme Court, the Central Board of Direct Taxes by Circular F. No. 279/ 126/98ITJ, dated 27-3-2000, revised the monetary limits. It was held that in case of matters not covered by the exceptions like: (i) where revenue audit objection in the case has been accepted by the department, (ii) where the Board's order, notification, instruction or circular is the subject matter of an adverse order, (iii) where prosecution proceedings are contemplated against the assessee, and (iv) where the constitutional validity of the provisions of the Act are under challenge, the appeals filed by the department should be dismissed. It was observed by ITAT Special Bench in the case of Income Tax Officer v. Bir Engg. Works (2005) 94 ITD 164 (Asr.) that with a view to reduce the pendency of appeals in the Tribunal, High Court and Supreme Court and also to redress difficulties of small assessees in meeting cost of litigation, CBDT has been issuing various instructions to revenue officials prescribing the monetary limit for filing appeals before the above forums.

4. With regard to the binding nature of these instructions issued by the CBDT, on the income-tax authorities, the provisions of Section 119 of Income Tax Act are

very much clear. On a plain reading of Section 119, it is clear that Sub-section (1) refers to orders, instructions and directions to the income-tax authorities by the Board. The section itself provides that all such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. Only exceptions provided under the proviso are that such instructions cannot interfere with the discretion of the Commissioner (Appeals) in exercise of appellate functions and also cannot direct any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner. Otherwise, Section 119(1) itself mandates that such instructions shall be binding on the income-tax authorities. Section 119(2) refers to specific orders with reference to any class of income or class of cases either by way of relaxation of any of the provisions of section mentioned therein or with reference to class of income or class of cases. These instructions could be in the form of guidelines, principles or procedure to be followed by the income-tax authorities in the work relating to assessment, collection of revenue or the initiation of proceedings for the imposition of penalties. Here also the Board may, if it is of the opinion that it is necessary in the public interest to do so, publish and circulate such instructions.

Therefore, it is not in all cases that instructions/circulars issued by the Board under Section 119(2) are published by the Board. Thus, the only difference between Sub-section (1) and subsection (2) of Section 119 is that while Sub-section (2) is more specific with reference to particular class of income or class of cases. The contention of the revenue could not be accepted that instructions issued under Sub-section (1) were more in the nature of administrative instructions and, therefore, were not binding on the authorities because section itself mandates that such instructions shall be followed by the revenue authorities. Nowhere Section 119 provides any exception to income-tax authorities not to follow such instructions except in a case where such instructions interfere with the discretion of Commissioner (Appeals) or with the jurisdiction and power of particular income-tax authority in a particular case. Admittedly, instructions issued by the CBDT prescribing monetary limit for filing the appeals before the Tribunal, High Court or Supreme Court are not in nature which could interfere with the discretion of Commissioner (Appeals) or interfere with the powers and jurisdiction of income-tax

authorities to complete the assessment order to dispose of a particular matter in a particular case in a particular manner. Therefore, these instructions are binding on income-tax authorities.

5. The Hon'ble Delhi High Court in the case of CIT v. Manish Bhambri (IT Appeal No. 683 of 2007 order dated 1-8-2007), has also upheld dismissal of appeal by the Tribunal where such appeal was filed in violation of the CBDT instructions regarding tax effect for filing appeal before the Tribunal.

6. In view of the above discussion and keeping in view that the tax effect in the appeal is undisputedly less than the prescribed limit of Rs. 2 lakhs, I am inclined to dismiss the appeal of the revenue

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