
(2007) 05 DEL CK 0288
In the Delhi High Court
Case No : ITA No. 484 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Kiran Securities P. Ltd.

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2008) 304 ITR 48

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant;

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The tax effect in this case is hardly Rs. 86,000/-.

2. Our attention has been drawn to Instruction No. 1979 dated 27th March, 2000 issued by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes). This Instruction pertains to monetary limits for filing departmental appeals/references before the Income Tax Appellate Tribunal, High Courts and Supreme Court. The Instruction also concerns measures for reducing litigation.

3. It has been mentioned in the Instruction that the Central Board of Direct Taxes (CBDT) has decided that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits which, in respect of appeals filed in the High Court u/s 260A of the Income Tax Act, 1961 is Rs. 2 lakhs. It has also been mentioned in the Instruction that the monetary limits would apply with reference to each case taken singly. This has been clarified as follows:

In other words, in group cases, each case should individually satisfy the new monetary limits. The working out of monetary limits will Therefore not take into consideration the cumulative revenue effect as envisaged in Board's earlier Instruction referred to above.

4. This Instruction was subsequently modified by Instruction No. 1985 dated 29th June, 2000. The expression "each case taken singly" has been explained to mean that if a case pertaining to two (or more) assessment years is decided, the monetary limit in Instruction No. 1979 would apply taking together both (or more) assessment years.

5. A further Instruction being Direct Tax Instruction No. 2 dated 24th October, 2005 has since been issued which raises the monetary limit for an appeal u/s 260A of the Act to Rs. 4 lakhs. In this Instruction, it has also been stated that the CBDT has decided that in cases involving a substantial question of law of importance as well as in cases where some question of law will repeatedly arise, either in the concerned case or in similar cases, the cases should be individually considered on merits without being hindered by the monetary limits.

6. As mentioned earlier, the tax effect in the present case is only Rs. 86,000/-.

7. It is submitted by learned Counsel for the Revenue that the issue that has been raised in the appeal, namely, whether the Assessing Officer has to record his satisfaction in the assessment order for initiating penalty proceedings, is pending consideration in this Court and, Therefore, this appeal should be entertained, regardless of the low tax effect.

8. We are of the view that the entire purpose of the Instructions referred to above is to reduce litigation and if the argument of learned Counsel for the Revenue is accepted then, even in a case where the tax effect may be Rs. 10/- or Rs. 15/-, the High Court would be obliged to entertain the appeal, if that question is pending in the High Court or if it arises repeatedly. We do not think that this is the effect of the Instructions particularly in the context of its purpose, that is, to reduce litigation. We are of the opinion that it is only on merits, that is only in deserving cases, where the question has wide ramifications or the tax effect is substantial, that the Revenue should file an appeal. In other cases, the Revenue may accept an unfavorable order without foreclosing its rights to have that order set aside in an appropriate case.

9. In so far as the present case is concerned, the tax effect is well below the monetary limits laid down by the CBDT even for filing an appeal before the Tribunal. Therefore, even if the question arises (and it has actually arisen) in several other cases, if this case is considered individually, as is the intention of the Instructions issued by the CBDT, then it is not such a case as would compel a departure from the norms laid down by the CBDT.

10. Consequently, while dismissing this appeal on its own facts, we leave the question of law open for determination in an appropriate case.