
(2011) 02 MP CK 0097

In the Madhya Pradesh High Court

Case No : IT Appeal No's. 201 to 204 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Mangilal Jain

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2011) 02 MP CK 0097

Hon'ble Judges : S.S. Kemkar, J; Abhay M. Naik, J

Bench : Division Bench

Judgement

1. This appeal as also the connected appeals, being IT Appeal No. 202 of 2007, IT Appeal No. 203 of 2007, IT Appeal No. 204 of 2007 are being decided by this common order as they raise the following substantial question of law :

Whether the Tribunal committed an illegality in not deciding the appeal on merits merely on account of the fact that the tax effect was less than Rs. 2,00,000 in which case the CBDT had issued instructions to the Department, not to file appeals ?

2. By circular dt. 24th Oct., 2005 ((2005) 198 CTR 4J], the CBDT laid down certain monetary limits to emphasise upon the Department that if the tax effect of the case was below the monetary limits prescribed in cl. 2 of the said circular, the Department should not file any appeal. An exception was, however, carved out in the cases covered by para 3 of the said circular, which reads as under :

3. This Board has also decided that cases, where the question of law involved or raised in appeal is/are of recurring nature to be decided by the Court, should be separately considered on merits without being hindered by the monetary limits.

Learned senior counsel has also invited attention to Instruction No. 5 of 2007 dt. 16th July, 2007 [(2007) 210 CTR (St) 76] making certain modification in the circular dt. 24th Oct., 2005. The main modification made in the said circular is contained in para 3 which reads as follows :

3. The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar cases, should be separately considered on merits without being hindered by the monetary limits.

3. These appeals have been filed against the order of the Tribunal declining to decide the appeal on merit on the ground that the tax effect in the case was less than Rs. 2,00,000 and, therefore, the appeal was contrary to the explicit instructions of the CBDT to the effect that where the tax effect was less than Rs. 2,00,000, appeal should not be filed. In dismissing the appeal on the said technical ground, the Tribunal took into account the decision of the Bombay High Court in *The Commissioner of Income Tax Vs. Pithwa Engg. Works*, to the effect that the circular of the Board also applies to the pending cases. Learned senior counsel for the Revenue has, however, pointed out that Rajasthan High Court in decision in *Commissioner of Income Tax Vs. Rajasthan Patrika Ltd.*, has held that the High Court ought not to have dismissed appeal or rejected the reference merely on account of the pecuniary limits fixed with regard to the tax effect. Reference has also been made to the decision of the Supreme Court in *Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana*, to the effect that circulars are not binding on appellate authorities, Court, Tribunal or assessee. However, we may point out that their Lordships were not considering any question involving, interpretation of the circular issued by the CBDT. Learned senior counsel has further pointed out a decision of the Punjab & Haryana High Court in (2006) 101 ITD 353 . Our attention was, in particular, invited to the discussion contained in para 29 of the said report. However, we find that the said decision follows the case of the Supreme Court in *CIT v. Hero Cycles (P) Ltd. Etc. (supra)* and holds that circular issued by the CBDT can bind the rTO but not the appellate authority or the Tribunal or the Court or even the assessee.

4. We have considered the contention raised by the learned senior counsel. Before considering the cases cited by the learned senior counsel, we may point out that a Division Bench of this Court has held in *Commissioner of Income Tax Vs. Suresh Chand Goyal*, that in cases where tax effect is below Rs. 2,00,000, Revenue cannot file appeal contrary to the terms of circular which is binding on the Department. The relevant discussion contained in para 16 of the said report reads as extracted below :

16. The another question raised by learned counsel for the respondent is about the filing of appeal contrary to the circular issued by the CBDT, according to which the appeal under s. 260A of the IT Act on the tax effect of less than Rs. 2 lacs should not be filed by the Revenue and placed reliance on the decision of the Bombay High Court in the case of *Commissioner of Income Tax Vs. Camco Colour Co.*, Learned counsel for the respondent also relied upon the decision of the Supreme Court in the cases of *Navnit Lai C. Javeri v. K.K. Sen AAC (1965) 56 ITR 198 (SC)*; *Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal*,

Calcutta, and K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, to contend that the circular issued by the CBDT is binding on all the officers and CITs and appeal or reference contrary to the instructions issued in the circular will not be considered by the Courts and the Division Bench of the Bombay High Court was satisfied that the Board has taken a policy decision not to file appeal in a type of ease in hand and the same is binding on the Revenue and in the result the appeal was dismissed following the circular. The similar view was taken by the Division Bench of the High Court of Madhya Pradesh in the case of Aradhna Oil Mills Vs. Commissioner of Income Tax and Another, and following the circular of CBDT, the appeal was dismissed.

5. We may point out that the circular issued by the CBDT as referred to above carves out only one exception with regard to the permissibility of filing of appeals etc. notwithstanding the embargo contained in the circular of the monetary limit. It is only in cases involving substantial question of law of importance as well as cases where the same question of law will repeatedly arise either in the case concerned or in similar cases that the Department will not be hindered by the monetary limits. The question, therefore, arises as to whether the Department can be left at liberty to defeat the circular of CBDT restraining its power to file appeal in case of the tax effect being below the monetary limit by capriciously taking subterfuge under the specious plea that the case is one of the excepted category of cases. It has not been brought to our notice that the IT Department has devised any procedure to consider whether a particular case falls within the excepted category thus, permitting the Revenue to agitate the matter before the higher forums. In cases where no such procedure has been devised, it is expected that while filing appeal in no adherence of the circular, the Department would place material before the appellate forum that the case falls within the excepted category and therefore, is not covered by the restraint contained in the circular. The learned senior counsel for the appellant has also invited attention to the decision of the Punjab & Haryana High Court in Rani Paliwal Vs. Commissioner of Income Tax, of Delhi High Court in Commissioner of Income Tax Vs. Blaze Advertising (Delhi) (P) Ltd., and of Madras High Court in Commissioner of Income Tax Vs. Kodananad Tea Estates Co. and Others, We are, however, of the view that, as held by this Court in CIT v. Suresh Chand Goyal (supra), where tax liability of the assessee is below the monetary limit prescribed, Revenue cannot file an appeal in transgression of the circular by which it is bound. However, we may add that in a case which falls within the excepted category, it would always be open to the Department to bring it to the notice of the forum approached and to insist that the question being covered by the exceptions contained in cl. 3 of the circular dt. 24th Oct., 2005 as modified by the Instruction No. 5 of 2007 dt. 16th July, 2007, the same deserves to be considered by the superior forum, the circular of the CBDT notwithstanding.

6. In view of the above, we answer the question raised in these appeals against the Department subject to the liberty that if a case falls within the excepted category, it would be open to the Department to bring the said fact to the notice

of the Court or the Tribunal so that the appropriate authority/Court applies its I mind to the necessity of formulating the question for rendering decision thereon.

7. This appeal is, thus, disposed of. A copy of this order kept in the record of the connected appeals.