

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

APPELLATE JURISDICTION

Income Tax Appeal No.201(D) of 2001

Commissioner of Income Tax, Kanpur ... Appellant

Versus

M/s Roshan Lal Talwar (Maj Qrs.), Jhansi ... Respondent

AND

Income Tax Appeal No.205(D) of 2001

Commissioner of Income Tax, Kanpur ... Appellant

Versus

M/s Roshan Lal Talwar (Maj Qrs.), Jhansi ... Respondent

Mr. Shambhu Chopra, Standing Counsel for the appellant

Mr. S.D.Singh, Adv. for the respondent

**CORAM : Hon'ble H.L.Gokhale, C.J.
Hon'ble R.K.Agrawal, J.**

DATE May 1, 2007

P.C. :

1. Heard Mr. Shambhu Chopra, Standing Counsel for the Income Tax Department, the appellant herein, and Mr. S.D.Singh for the respondent.

2. These appeals seek to challenge the order of the Income Tax Appellate Tribunal wherein the Tribunal has upheld the decision of the Commissioner of Income Tax (Appeals), allowing a reduction in the income of the respondent assessee to the tune of Rs.3,26,950/-.

3. Mr. Singh, learned counsel appearing for the respondent, points out that the tax effect which is reduced on account of this relief, will obviously be less than Rs.2,00,000/-.

4. He has drawn our attention to a circular issued by the Central Board of Direct Taxes on 27th March, 2000, which lays down certain monetary limits for the Income Tax Department to file appeals/references before the appellate Tribunal, the High Courts and the Supreme Court. In his submission, the Revenue ought not to have filed this appeal in view of the fact that the tax effect

does not exceed Rs.2,00,000/-. This circular is referable to Section 119 of the Income Tax Act, 1961. It reads as follows:-

Instruction No.1979

"F.No.279/126/98-ITJ
Government of India,
Ministry of Finance (Department of Revenue)
Central Board of Direct Taxes
New Delhi, dated the 27th March, 2000

To
All Chief Commissioner of Income Tax/

Directors General of Income-tax.

Sir,

Subject: Revising monetary limits for filing Departmental appeals/references before Income-tax Appellate Tribunal, High Courts and Supreme Court - Measures for reducing litigation - Regarding.

Reference is invited to the Board's Instruction No.1903, dated 28th October, 1992, and Instruction No.1777, dated 4th November 1987, wherein monetary limits of Rs.25,000 for Departmental appeals (in income-tax matters) before the Appellate Tribunal, Rs.50,000 for filing reference to the High Court and Rs.1,50,000 for filing appeal to the Supreme Court were laid down.

2. In supersession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder:

(Tax effect)	Rs.
(i) Appeal before the Appellate Tribunal (in income-tax matters)	1,00,000
(ii) Appeal under Section 260A/reference under Section 256(2) before the High Court	2,00,000
(iii) Appeal in the Supreme Court	5,00,000

The new monetary limits would apply with reference to each case taken singly. 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 the Board's earlier instruction referred to above.

3. Adverse judgments relating to the following should be contested irrespective of revenue effect:

(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.

(iv) Where the constitutional validity of the provisions of the Act are under challenge.

4. Special leave petitions under Article 136 of the Constitution are filed before the Supreme Court only in consultation with the Ministry of Law. Therefore, where the Chief Commissioner decides to contest an adverse judgment by filing special leave petition before the Supreme Court, they should send the proposal to the Board for further processing.

5. These instructions will apply to litigation under other direct taxes also, e.g., wealth-tax, gift-tax, estate duty, etc.

6. These monetary limits will not apply to writ matters.

7. This instruction will come into effect from April 1, 2000.'

(Sd.) Anuradha Goyal

Deputy Secretary to the Government of India"

5. Mr. Singh has also drawn our attention to a judgment of the Bombay High Court in Commissioner of Income Tax v. Camco Colour Co., reported in (2002) 254 ITR 565. A Division Bench of the Bombay High Court has taken the view that the instructions issued by the Central Board of Direct Taxes contain a policy decision not to file an appeal in certain types of cases and the same is binding on the Revenue.

6. He has also drawn our attention to a clarification with respect to this

instruction no.1979, dated 27th March, 2000. The subsequent clarification has clarified that the monetary limits and tax effect will have to be read as a Revenue effect and would denote the amount of tax, interest, penalty, fine or any other sum involved. This clarification reads as follows:-

"Clarification regarding monetary limit for filing appeal before SC/High Court/ITAT. - "Reference is invited to Board's Instruction No.979, dated 27th March, 2000. Instruction No.1985, dated 29th June, 2000, as also to earlier instructions issued to reduce litigation by fixing monetary limit for filing departmental appeals before SC/HC/ITAT.

In order to avoid ambiguity and to adopt uniformity in approach while filing appeals by the field formation, it is hereby clarified by the Board that the words "monetary limit" and "tax effect" in the aforesaid instruction be read as "revenue effect" which denotes the amount of tax, interest, penalty, fine or any other sum involved.

The instruction is clarificatory in nature and will apply to litigation under other Direct Taxes also, e.g., wealth-tax, gift-tax, estate duty, etc.'

[Source: Instruction No.6/2003, dated 17th July, 2003:

(2004) 138 Taxman (St.) 464.]"

7. Mr. Singh has drawn our attention to a further revision of monetary limits under the instruction dated 27th March, 2000. This has been effected by instruction dated 24.10.2005. As far as appeals under Section 260A are concerned, the monetary limits has been revised to Rs.4,00,000/-. This instruction no.2/2005, dated 24.10.2005, reads as follows:- "Clarification regarding revision of monetary limits for filing appeals by Department before various appellate bodies or appellate authorities.

"1. Reference is invited to Board's Instruction No.1979, dated 27th March, 2000 [F.No.279/126/98-IT, dated 27th March, 2000], and Instruction No.1985, dated 29th June, 2000 [F.No.279/126/98-IT, dated 29th June, 2000] wherein monetary limits for filing appeals/references before various appellate authorities have been prescribed.

2. In partial modification of the above instruction, it has now been decided by the Board that appeals will henceforth be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder:-

Sl.No. Income-tax Tax effect

(i) Appeal before Appellate Tribunal 2,00,000

(ii) Appeal under Section 260A 4,00,000

(iii) Appeal before the Supreme Court 10,00,000

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 case, should be separately considered on merits without being hindered by the monetary limits.

4. Subject to the paragraphs 2 and 3 above the Instruction No.1979, dated 27th March, 2000, as clarified subsequently in Instruction NO.1985, dated 29th June, 2000, will continue to govern the decision for filing of departmental appeals.

5. This instruction will come into effect from 31st October, 2005.'

[Source: Instruction No.2/2005, dated 24th October 2005 : (2005) 148 Taxman (St.) 26.]"

8. Mr. Singh has, therefore, submitted that the present case is the one which ought not to have been carried to the High Court.

9. Mr. Shambhu Chopra, learned Standing Counsel for the Income Tax Department, on the other hand, has drawn our attention to a Division Bench decision of this Court in Jugal Kishore Arora v. Deputy Commissioner of Income Tax, reported in (2004) 269 ITR 133. In the last paragraph of this judgment, the Division Bench of this Court has considered the submission of the assessee that the appeal should not have been entertained in that particular matter in view of the direction of the Central Board of Direct Taxes, dated 27th March, 2000. The Division Bench has expressed the opinion that the instructions of the Central Board of Direct Taxes are internal matter of the Department and the assessee cannot object to the filing of the appeal. The observation of the Division Bench in the last paragraph are as follows:-

"As regards the contention that the appeal should not have been entertained in view of the direction of the Central Board of Direct Taxes dated March 27, 2000, we are of the opinion that the instructions of the Central Board of Direct Taxes regarding filing of appeals are only internal matters of the Department, and the assessee cannot object to filing of an appeal despite such an instruction. The

appeal is clearly maintainable before the Tribunal on behalf of the Department under Section 253(2) of the Income Tax Act, and this right to file an appeal is a statutory right and cannot be taken away or prohibited by executive instructions. Moreover, the instructions themselves state that an appeal can be filed if the matter is of a recurring nature."

10. Mr. Chopra, therefore, submits that it is a matter for the Revenue to decide whether to file an appeal or not. He submits that the Revenue also has a right to file an appeal under Section 260-A of the Income Tax Act, 1961 and it cannot be curtailed at the instance of the assessee.

11. We have noted the submissions of both the counsel. There is a good amount of force in the submissions of Mr. Chopra that the Revenue has a right to file an appeal under Section 260-A, as pointed out by him, and also as observed in the judgment of the Division Bench of this Court that such instructions are internal matters of the Department and the assessee cannot object to filing of an appeal despite such an instruction.

12. The fact, however, remains that though such notification contains internal instructions, it is expected of the Income Tax Department to examine the merits of such cases which involve a tax effect of less than Rs.4,00,000/-. Such an instruction has been issued obviously with an intention not to file appeals in all and sundry cases. It indicates that the Revenue is conscious of the fact that the Court is flooded with a number of matters including those of the Income Tax Department. It also indicates that the Revenue is also conscious of the fact that the time of the Court should be utilised in matters where greater stakes are involved.

13. The instruction, undoubtedly, carves out certain exceptions as it can be seen from the circular itself. Thus, it is a matter of self-restraint for the Tax Department. In our view, it would be in the fitness of things that the authorities in-charge of filing such an appeal, must apply their mind and examine in all such cases where the amount involved is less than Rs.4,00,000/- as to whether the appeal falls in any of those exceptions contained in the instructions. It would be better that in every such appeal involving an amount of Rs.4,00,000/-, a

specific averment is made, in a separate paragraph in the memo of appeal, that the officer concerned of the Tax Department has applied his mind to this particular aspect and in his view the appeal is to be filed as per a particular clause under the circular, dated 27th March 2000, as modified on 24th October, 2005.

14. We adjourn this appeal for the appellant to examine this aspect and to place an additional paragraph in the appeal if they choose to carry this appeal further.

15. On the request, the matter is to stand over for three weeks.
1.5.2007

R.K.Agrawal Chief Justice