



## **CBDT cannot issue any Circular/Instruction having retrospective operation – Supreme Court**

### **Background**

Recently, the Supreme Court in the case of Gemini Distilleries<sup>1</sup> (the taxpayer) dealt with the retrospective applicability of Circular/Instruction issued by the Central Board of Direct Taxes (CBDT). In February 2011, CBDT<sup>2</sup> revised the minimum monetary tax effect for the filing of revenue appeals. The taxpayer based on revised monetary limits contended that the Instruction applies even in the past pending cases. However, the Supreme Court held that the CBDT cannot issue any circular having retrospective operation.

### **Facts of the case**

- As per Section 268A(1) of the Income-tax Act, 1961 (the Act), the CBDT may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions.
- The CBDT vide Instruction No. 3/2011 revised the minimum monetary tax effect for the filing of revenue appeals. As per para 11 of the Instruction, it was clarified that the appeals filed earlier would be governed by the old instructions operative at the time of filing.
- The question before the Supreme Court in this batch of appeals is as to whether the said instruction issued by the CBDT will have a retrospective operation or not.

<sup>1</sup> CIT v. Gemini Distilleries (Civil Appeal No. 16815/2017, dated 12 October 2017) (SC)

<sup>2</sup> CBDT Instruction No. 3/2011, dated 9 February 2011

### **Supreme Court's decision**

- The Supreme Court in the case of Suman Dhamija<sup>3</sup> has held that Instructions/Circular dated 9 February 11 is not retrospective in nature and they shall not govern cases which have been filed before 2011, and the same will govern only such cases which are filed after the issuance of the aforesaid instructions dated 9 February 2011.
- The Supreme Court is of the considered opinion that the CBDT cannot issue any circular having retrospective operation.
- Following the above decision, the Supreme Court allowed tax department's appeal. The decision<sup>4</sup> passed by the High Court is set aside. The matter is remitted back to the High Court for re-adjudication on merits and in accordance with law.

### **Our comments**

Some of the courts<sup>5</sup> have taken a view that circulars issued by CBDT prescribing monetary limit for preferring appeal is only prospective and is not applicable to the pending proceedings. In other words, circular which is invoked on the date of filing of the appeal is to be taken into consideration which necessarily does not apply to cases which are filed prior to the issue of that

<sup>3</sup> CIT v. Suman Dhamija (Civil Appeal Nos.4919-4920/2015) (SC)

<sup>4</sup> ITA No.887/2006 dated 2 November 2011

<sup>5</sup> CIT v. Varindera Construction Co. [2011] 331 ITR 449 (P&H), CIT v. Kodananad Tea Estates Co. [2005] 275 ITR 244 (Mad), CIT v. Navbharat Explosives Co. Pvt. Ltd [2011] 337 ITR 515 (Chattisgarh)

Circular. However, in some of the cases<sup>6</sup>, the Courts have held that Circulars will apply to pending appeals also.

The Supreme Court in the case of Suchitra Components Ltd<sup>7</sup> observed that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the taxpayer, they have right to claim enforcement of the same prospectively.

In December 2015, the CBDT<sup>8</sup> while superseding its earlier circular revised the monetary tax limits for tax department to file an appeal before High Courts to INR 2 million. The Circular states that revised threshold to apply retrospectively to pending appeals and that pending appeals below revised limits to be withdrawn/not pressed.

However, the Supreme Court in the present case has held that CBDT cannot issue any circular having retrospective operation.

<sup>6</sup> CIT v. Pithwa Engg. Works [2005] 276 ITR 519 (Bom), CIT v. Ashok Kumar Manibhai Patel & Co. [2009] 317 ITR 386 (MP), CIT v. P.S.Jain and Co. [2011] 335 ITR 591 (Del), CIT v. Delhi Race Club Ltd (ITA No. 128/2008, dated 3 March 2011), CIT v. Madhukar K. Inamdar (HUF) [2009] 318 ITR 149 (Bom), CIT v. Ranka & Ranka [2013] 352 ITR 121 (Kar)

<sup>7</sup> Suchitra Components Ltd v. CCE [2007] 208 ELT 321 (SC)

<sup>8</sup> Circular 21/2015, 10 December 2015



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