



## CBDT Circular/Instruction specifying monetary limit for filing appeal is applicable even to pending appeals/matters subject to certain conditions – Supreme Court

### Background

Recently, the Supreme Court in the case of S.R.M.B Dairy Farming (P) Ltd.<sup>1</sup> (the taxpayer) held that Circular/Instruction<sup>2</sup> issued by the Central Board of Direct Taxes (CBDT) specifying monetary limit for filing appeal before the Appellate Tribunal, High Courts and Supreme Court is applicable even to pending matters subject to certain conditions.

### Facts of the case

- The Central Board of Direct Taxes (CBDT) has issued an Instruction No.3 of 2011, providing for appeals not to be filed before the High Court where the tax impact was less than INR10 lakh. The said Instruction was in supersession of the earlier Instruction No.1979<sup>3</sup> of 2000 where the limit of the tax effect was INR4 lakh.
- The tax department contended that the Instruction/Circular is stated to have a prospective effect and, thus, cases which were pending in the High Courts and had been filed prior to the Instruction (Instruction No.3) but had tax effect of less than INR10 lakh were, thus, required to be determined on their merits and not be dismissed by applying the Circular/Instruction.
- There has been a divergence of opinion on this aspect amongst the High Courts. There have

also been certain decisions of the Supreme Court which have a divergence of view. Therefore, the Supreme Court in the instant case consider it necessary to examine this issue in detail so that conflicting orders do not arise and the High Courts are also guided appropriately.

### Supreme Court's decision

- The Karnataka High Court in the case of Ranka & Ranka<sup>4</sup> has recognised the concept of providing the monetary limit. It was held that Instruction No. 3/2011 by which revenue is precluded from filing appeals where tax effect does not exceed prescribed monetary limit, is also applicable to appeals pending on day said instruction was issued. The Karnataka High Court considered the CBDT Circular in the conspectus of the National Litigation Policy. The High Court also pointed out the anomaly in the working of the Circular were apply only prospectively.
- The Karnataka High Court has considered decisions of the Madras High Court, Kerala High Court, Chhattisgarh High Court and the Punjab and Haryana High Court wherein the courts had taken a contrary view. In those cases the court held that the existing Circular/Instruction prevailing at the relevant time when the appeal/reference was made would apply and there would be no retrospective application of the circular.

<sup>1</sup> DIT v. S.R.M.B. Dairy Farming (P) Ltd. [SLP(C) No. 24055/2013, dated 14 November 2017] – itatonline.com

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

<sup>3</sup> Instruction No.1979 of 2000, dated 27 March 2000

<sup>4</sup> CIT v. Ranka & Ranka [2013] 352 ITR 121 (Kar)

- On the other hand, the Bombay High Court, Madhya Pradesh High Court, Delhi High Court had taken the view, which was sought to be taken by the Karnataka High Court. The line of reasoning adopted in these cases is that as the value of money went down and the cases of the tax department increased, the choking docket required such an endeavor and there is no reason why the same policy should not be applied to old matters to achieve the objective of the policy laid down by the CBDT. Further, an earlier Circular dated 5 June 2007 issued by the CBDT was also taken note of, which required all appeals pending before the Court to be examined, with direction to withdraw the cases wherein criteria for monetary limit as per prevailing instructions was not satisfied unless the question of law involved or raised in the appeal referred to High Court was of recurring nature, and therefore, required to be settled by a higher court.
- Various High Courts<sup>5</sup> held that the Instruction issued by the CBDT specifying the monetary limit for filing of appeals would apply only prospectively. The view adopted by the Delhi High Court holding the Circular applicable to pending matters came up before a three Judge Bench of the Supreme Court in the case of Surya Herbal Ltd.<sup>6</sup> and the Supreme Court held that the Circular dated 9 February 2011, should not be applied *ipso facto*, particularly, when the matter has a cascading effect. There are cases under the Income-tax Act, 1961 (the Act) in which a common principle may be involved in subsequent group of matters or large number of matters. In our view, in such cases if attention of the High Court is drawn, the High Court will not apply the circular *ipso facto*.
- The aforesaid order, in our view, actually should have laid the controversy to rest. The retrospective applicability of the Circular dated 9 February 2011 was not interfered with, but with two caveats – (i) Circular should not be applied by the High Courts *ipso facto* when the matter had a cascading effect; (ii) where common principles may be involved in subsequent group of matters or a large number of matters. It was opined that in such cases, the attention of the High Court would be drawn and the tax department was even given liberty to move the High Court in two weeks.
- Unfortunately, the three Judges decision of the Supreme Court was not brought to the notice of the subsequent two Judges Bench of the Supreme Court in the case of Suman Dhamija<sup>7</sup> again arising from a Delhi High Court decision. The Supreme Court therein simply observed that since the appeals were preferred before 2011 and the Instructions were dated 9 February 2011, the earlier cases would not be covered by the Instruction. This order in turn had been followed by another two Judges Bench of the Supreme Court in the case of Gemini Distilleries<sup>8</sup>. Once again, in another matter in the case of CenturyPark<sup>9</sup>, the line adopted by the three Judges Bench of the Supreme Court in the case of Surya Herbal Ltd. case has been followed.
- The Supreme Court in the present case have already given imprimatur<sup>10</sup> to the observations made by the Karnataka High Court in a detailed analysis in Ranka & Ranka, which has dealt with the litigation policy philosophy behind applying the Circular and the benefit being extended in view thereof to all taxpayers where appeals have been pending, but below the financial limit, as otherwise an anomalous situation would arise.
- The Supreme Court also considered that its decision in the case of Suchitra Components Ltd.<sup>11</sup> on the general principle of application of Circulars. Reliance was placed on the view expressed in Mysore Electricals Industries Ltd.<sup>12</sup> observing that a beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. The Supreme Court observed that the matter needs to be put to rest and a clarity be obtained in view of the impact of this issue on pending cases before the High Courts as well as the cases which have been disposed of by various High Courts by applying the Circular of 2011 to pending litigations.
- In our view the matter has been squarely put to rest by the decision of three Judges Bench of the Supreme Court in the case of Surya Herbal Ltd., which had put two caveats even to the retrospective application of the Circular. The subsequent decisions have been passed by the two Judges Bench without those orders being brought to the notice of the Court, a duty which was cast on the tax department to have done so to avoid the ambiguity which has arisen. Thus, the said view of the three Judges Bench will have precedence and the Circular would apply even to pending matters but subject to the two caveats provided in the case of Surya Herbal Ltd.

<sup>5</sup> CIT v. Varindera Construction Co. [2011] 331 ITR 449 (P&H), CIT v. Navbharat Explosives Co. P. Ltd. [2011] 337 ITR 515 (Chhattisgarh), CIT v. Kodananad Tea Estates Co. [2005] 275 ITR 244 (Mad), CWT v. John L. Chackola [2011] 337 ITR 385 (Ker)

<sup>6</sup> CIT v. Surya Herbal Ltd. [2013] 350 ITR 300 (SC)

<sup>7</sup> CIT v. Suman Dhamija [2015] 279 CTR 329 (SC)

<sup>8</sup> CIT v. Gemini Distilleries [2017] 87 taxmann.com 112 (SC)

<sup>9</sup> CIT v. Century Park [2015] 373 ITR 32 (SC)

<sup>10</sup> A person's authoritative approval.

<sup>11</sup> Suchitra Components Ltd. v. CCE [Appeal (civil) 3596 of 2005, 17 January 2007]

<sup>12</sup> CCE v. Mysore Electricals Industries Ltd. 2007 (204) E.L.T. 517

## Our comments

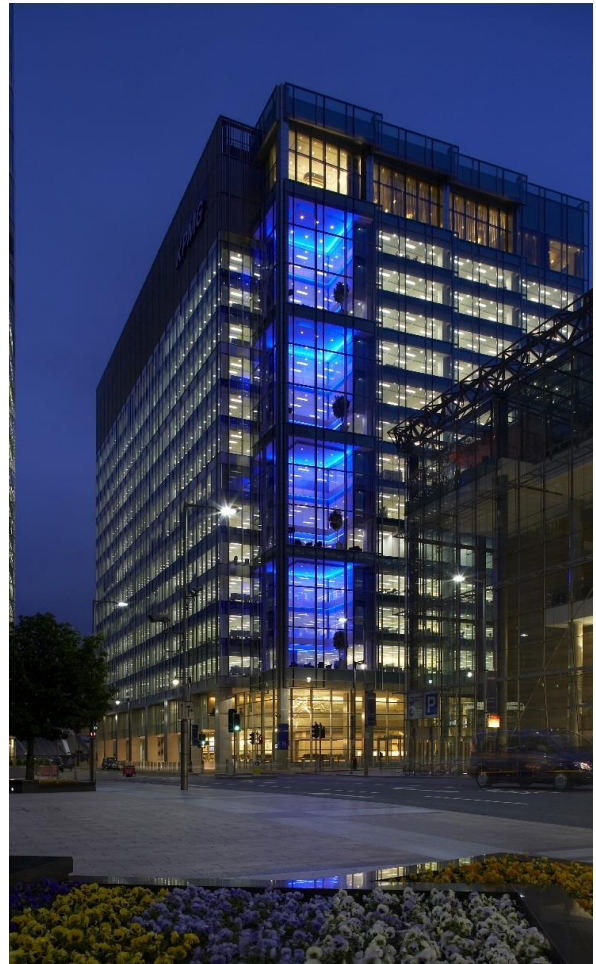
The issue with respect to CBDT Circular revising monetary limit for filing appeal before the Courts/Tribunal vis-à-vis its applicability to the pending appeals has been a matter of debate before the Courts.

Some of the Courts<sup>13</sup> have held that the Instruction issued by the CBDT specifying the monetary limit for filing of appeals would apply prospectively. However, the Supreme Court in the case of Surya Herbal Ltd.<sup>14</sup> held that the Circular dated 9 February 2011 is applicable even to pending appeals subject to certain caveats.

It is important to note that the three Judges Bench decision of the Supreme Court was not considered by the subsequent two Judges Bench of the Supreme Court in the case of Suman Dhamija<sup>15</sup> and held that since the appeals were preferred before 2011 and the Instructions were dated 9 February 2011, the earlier cases would not be covered by the Instruction. Subsequently, this decision had been followed by another two Judges Bench of the Supreme Court in the case of Gemini Distilleries<sup>16</sup> and held that the CBDT cannot issue any circular having retrospective operation.

In December 2015, the CBDT<sup>17</sup> while superseding its earlier circular revised the monetary tax limits for tax department to file appeal before High Courts to INR2 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.

The Supreme Court in the present case held that CBDT Circular/Instruction dated 9 February 2011 specifying monetary limit for filing appeal before the Appellate Tribunal, High Courts and Supreme Court is applicable even to pending matters subject to certain conditions.



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<sup>13</sup> CIT v. Varindera Construction Co. [2011] 331 ITR 449 (P&H), CIT v. Navbharat Explosives Co. P. Ltd. [2011] 337 ITR 515 (Chhattisgarh), CIT v. Kodananad Tea Estates Co. [2005] 275 ITR 244 (Mad), CWT v. John L. Chackola [2011] 337 ITR 385 (Ker)

<sup>14</sup> CIT v. Surya Herbal Ltd. [2013] 350 ITR 300 (SC) (Bench comprising of three judges)

<sup>15</sup> CIT v. Suman Dhamija [2015] 279 CTR 329 (SC)

<sup>16</sup> CIT v. Gemini Distilleries [2017] 87 taxmann.com 112 (SC)

<sup>17</sup> Vide circular 21/2015, 10 December 2015



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#### Ahmedabad

Commerce House V, 9th Floor,  
902 & 903, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

#### Chandigarh

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh – 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

#### Chennai

KRM Tower, Ground Floor,  
No 1, Harrington Road  
Chetpet, Chennai – 600 031  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

#### Gurugram

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurugram, Haryana – 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

#### Hyderabad

Salarpuria Knowledge City,  
ORWELL, 6th Floor, Unit 3, Phase  
III, Sy No. 83/1, Plot No 2,  
Serilingampally Mandal, Raidurg  
Ranga Reddy District,  
Hyderabad, Telangana – 500081  
Tel: +91 40 6111 6000  
Fax: +91 40 6111 6799

#### Jaipur

Regus Radiant Centres Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road  
Jaipur, Rajasthan, 302018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

#### Kolkata

Unit No. 603 – 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091  
Tel: +91 33 4403 4000  
Fax: +91 33 4403 4199

#### Mumbai

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai – 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park  
Tower-B, Plot# 7, Sector 142,  
Expressway Noida, Gautam Budh Nagar,  
Noida – 201305  
Tel: +91 0120 386 8000  
Fax: +91 0120 386 8999

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex, Mundhwa Road,  
Ghorpadi, Pune – 411001  
Tel: +91 20 6747 7000  
Fax: +91 20 6747 7100

#### Vadodara

iPlex India Private Limited,  
1st floor office space, No. 1004,  
Vadodara Hyper, Dr. V S Marg  
Alkapuri, Vadodara – 390 007  
Tel: +91 0265 235 1085/232 2607/232 2672

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