CBDT Circular – revision of monetary limits and certain conditions for the tax department to file appeals before the Income-tax Appellate Tribunal, High Courts and Supreme Court

Background

The Central Board of Direct Taxes (CBDT) vide Circular¹ had specified the monetary limits and other conditions for the filing of appeals by the tax department on merits before the Income-tax Appellate Tribunal (the Tribunal), High Courts and Special Leave Petitions (SLPs) before the Supreme Court.

In supersession of the above Circular, recently CBDT has issued a Circular² revising the monetary limits and conditions specified therein. The Circular states that the tax department’s appeal may be filed on merits before the Tribunal, High Courts and SLPs/appeals before the Supreme Court.

The CBDT Circular

Monetary Limits

- The monetary limits are revised as follows:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Appeals/SLPs in Income-tax matters</th>
<th>Current monetary limit of tax effect (INR)</th>
<th>Revised monetary limit of tax effect (INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Before the Tribunal</td>
<td>1 million</td>
<td>2 million</td>
</tr>
<tr>
<td>2</td>
<td>Before the High Court</td>
<td>2 million</td>
<td>5 million</td>
</tr>
<tr>
<td>3</td>
<td>Before the Supreme Court</td>
<td>2.5 million</td>
<td>10 million</td>
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</table>

- The appeals/SLPs shall not be filed in cases where the ‘tax effect’ does not exceed the monetary limits given above. Filing of an appeal is to be decided on the merits of a case.

Meaning of the term ‘tax effect’

- The term ‘tax effect’ has been defined to mean the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which an appeal is intended to be filed. Further, ‘tax effect’ shall include applicable surcharge and cess. However, the tax will not include any interest thereon, except where the chargeability of interest itself is in dispute.

- In case the chargeability of interest is the issue under dispute, the amount of interest shall be the ‘tax effect’. In cases where the returned loss is reduced or is assessed as income, the ‘tax effect’ would include a notional tax on disputed additions.

- In case of penalty orders, the ‘tax effect’ will mean a quantum of penalty deleted or reduced in order to be appealed against.

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¹ Circular No. 21/2015, dated 10 December 2015
² Circular No. 3/2018, dated 11 July 2018
**Composite orders**
- In case of a composite order of the High Court or the Tribunal, which involves more than one Assessment Year (AY) and if there are common issues in more than one AY, appeals shall be filed in respect of all such AYs even if the ‘tax effect’ is less than the prescribed monetary limits in any of the year(s).
- In the case where a composite order/decision involves more than one taxpayer, each taxpayer shall be dealt with separately.

**MAT/AMT**
- Where income is computed under the provisions of Minimum Alternate Tax (MAT)\(^3\) or Alternate Minimum Tax (AMT)\(^4\) for the purposes of determination of ‘tax effect’, tax on the total income assessed shall be computed as per the specified formula. However, where the amount of disputed issue is considered both under the provisions contained in MAT or AMT and under the general provisions, such amount shall not be reduced from the total income assessed while determining the specified amount.

**Action points when the tax department has not filed appeal observing new monetary limits**
- Where an appeal before the Tribunal or the Court is not filed only on account of the ‘tax effect’ being less than the specified monetary limit, the Principal Commissioner of Income-tax (Pr.CIT)/Commissioner of Income-tax (CIT) shall specifically record that ‘even though the decision is not acceptable, appeal is not being filed only on the consideration that the ‘tax effect’ is less than the monetary limit specified in the Circular’. In such cases, there will be no presumption that the tax department has agreed with the decision on the disputed issues. Further, the tax department shall not be precluded from filing an appeal against the disputed issues in case of the same taxpayer for any other AY, or in the case of any other taxpayer for the same or any other AY if the ‘tax effect’ exceeds the specified monetary limits.

**Exceptions to monetary limits**
- Adverse decisions relating to the following specified issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified or there is no ‘tax effect’:
  - Where the constitutional validity of the Act or the Income-tax Rules, 1962 (the Rules) is under challenge, or
  - Where a CBDT Order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
  - Where the revenue audit objection in the case has been accepted by the tax department, or
  - Where the addition relates to undisclosed foreign assets/bank accounts.

- The monetary limits shall not apply to writ matters and direct tax matters other than income tax.
- Filing of appeals in other direct tax matters shall continue to be governed by relevant provisions of the statute and rules.
- In cases where the ‘tax effect’ is not quantifiable or not involved\(^6\), the filing of an appeal shall not be governed by the limits specified and decision to file an appeal in such cases may be taken on the merits of a particular case.

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\(^3\) Section 115JB of the Act
\(^4\) Section 115JC of the Act
\(^5\) Section 268A(4) of the Act provides that the Tribunal or the Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued by CBDT and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.
\(^6\) Such as the case of registration of trusts or institutions under Section 12A/12AA of the Act
Appeals, etc. not to be filed or to be withdrawn/not pressed

- The monetary limit of INR 2 million for filing appeals before the Tribunal would apply equally to cross objections under Section 253(4)\(^7\) of the Act. Cross-objections below this monetary limit already filed should be pursued for dismissal as withdrawn/not pressed.

- Similarly, references to High Courts and SLPs/appeals before the Supreme Court below the monetary limit of INR5 million and INR10 million respectively should be pursued for dismissal as withdrawn/not pressed.

- The Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth before the Supreme Court/High Courts/Tribunal, and it shall also apply prospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits may be withdrawn/not pressed.

Our comments

Furtherance to the government's resolve to achieve a non-adversarial tax regime, various steps have been taken to reduce the pending litigation before the Tribunal/Courts. The issuance of superseding circular by CBDT is a welcome step where the monetary limits to file an appeal before the Tribunal/Courts have been increased. The Circular also applies prospectively to pending cases and the tax department has been asked to withdraw or not press such appeals which are below the revised monetary limits. The Circular seeks to ensure that the tax department will file an appeal on merits which may help in reducing tax litigation and thus the tax officials may focus on high-value cases.

In the cases where monetary limits are crossed, hope the tax department will file appeals only on merit basis. This step will reduce the cost of recovering tax dues and help in improving the ease of doing business in India.

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\(^7\) Section 253(4) of the Act provides that the AO or the taxpayer as the case may be, on receipt of notice that an appeal against the order of the CIT(A), has been preferred under the provisions by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within 30 days of receipt of notice, file memorandum of cross-objections, verified in prescribed manner, against any part of the order of the CIT(A) and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the specified time.
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