

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (SMC), JODHPUR**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No. 551/Jodh/2018
(ASSESSMENT YEAR-2010-11)

The Income Tax Officer, Ward-2, Hanumangarh	Vs	Smt. Lalita Saraf, C/o Mangi Lal Saraf, In front of Mandi Studio, Hanumangarh Town
(Appellant)		(Respondent)
PAN: AETPS2761K		

C.O. No. 10/Jodh/2019
(In ITA No. 551/Jodh/2018)
(ASSESSMENT YEAR-2010-11)

Smt. Lalita Saraf, C/o Mangi Lal Saraf, In front of Mandi Studio Hanumangarh Town	Vs	The Income Tax Officer, Ward-2, Hanumangarh
(Appellant)		(Respondent)
PAN: AETPS2761K		

ITA No. 561/Jodh/2018
(ASSESSMENT YEAR-2009-10)

The Income Tax Officer, Ward-2, Hanumangarh	Vs	Sh Anil Kumar Saraf, C/o Mangi Lal Saraf, In front of Mandi Studio, Hanumangarh Town
(Appellant)		(Respondent)
PAN: AAEHA5243B		

C.O. No. 04/Jodh/2019
(In ITA No. 561/Jodh/2018)
(ASSESSMENT YEAR-2009-10)

Sh Anil Kumar Saraf, C/o Mangi Lal Saraf, In front of Mandi Studio, Hanumangarh Town	Vs	The Income Tax Officer, Ward-2, Hanumangarh
(Appellant)		(Respondent)
PAN: AAEHA5243B		

Revenue By	Sh. P.K. Singi, DR
Assessee By	Shri R.N. Jangid
Date of hearing	01.05.2019
Date of Pronouncement	06.05.2019

ORDER

These appeals by the Department and Cross Objections by the assessee are directed against the separate orders each dated 31.08.2018 of Ld. Commissioner of Income Tax (Appeals), Bikaner.

2. Since the appeals & cross objections having similar facts were heard together, therefore, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, I shall deal with the appeal of the Department and the Cross Objection of the assessee in the case of Smt. Latita Saraf,

Hanumangarh in ITA NO. 551/Jodh/2018 and C.O. No. 10/Jodh/2019 for the A.Y. 2010-11.

4. As regards the appeal of the Department, the Ld. Counsel for the assessee at the very outset stated that the appeal filed by the department is not maintainable in view of Circular No.3/2018 dated 11.7.2018 issued by the CBDT wherein the monetary limit for tax effect for filing the appeal before the ITAT has been increased to Rs.20 lakhs.

5. The Id. DR, submitted that Circular No 3/2018 is not a blanket bar on filing of appeals before ITAT and para 10 details the exceptions to file the appeal where tax effect is less than Rs.20 lakhs and also clarifies that in cases where tax effect is less than Rs.20 lakhs or where tax effect cannot be quantified as in the case of Registration u/s 12AA, the monetary limit would not be applicable. It was further submitted that the aforesaid circular No.3/18 has been amended vide letter F.No.279/Misc.142/2007-ITJ(Pt) dated 20th July 2018 as under:-

(a) where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) where Revenue Audit objection in the case has been accepted by the Department, or

(d) where addition relates to undisclosed foreign income/undisclosed foreign assets including financial assets/undisclosed foreign bank account.

(e) where addition is based on information received from external sources in the nature of law enforcement agencies such

as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).

(f) cases where prosecution has been filed by the department and is pending in the court.

6. After considering the submissions of both the parties and the material on record. In my opinion, the amended circular is not applicable to the facts of the present case, rather it is covered by the original circular No.3/18 dated 11.07.2018, vide which the CBDT has revised the monetary limit to Rs.20,00,000/- for not filing the appeal before the Tribunal, the said circular reads as under:

“Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Reference is invited to Board’s Circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In supersession of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

<i>S No</i>	<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (in Rs)</i>
<i>1</i>	<i>Before Appellate Tribunal</i>	<i>20,00,000/-</i>
<i>2</i>	<i>Before High Court</i>	<i>50,00,000/-</i>
<i>3</i>	<i>Before Supreme Court</i>	<i>1,00,00,000/-</i>

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, 'tax effect' means 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 appeal is intended to be filed (hereinafter referred to as 'disputed issues'). Further, 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where 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 returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

6. Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula-

$$(A - B) + (C - D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax 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 this Circular”. Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the

provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which read as under :

“(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.”

9. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr. CsIT/CsIT must be maintained in a systemic manner for easy retrieval.

10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/ bank accounts.

11. The monetary limits specified in para 3 above 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 statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/ 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken on merits of a particular case.

12. It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly,

references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and SLPs/ appeals below these limits may not be considered henceforth.

13. This Circular will apply to SLPs/ appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.

14. The above may be brought to the notice of all concerned.

15. This issues under Section 268A of the Income-tax Act 1961.”

7. From Clause 12 & 13 of the above said circular it is clear that these instructions are applicable to the pending appeals also and as per clause 13, there is clear cut instruction to the department to withdraw or not to press the appeals filed before the ITAT wherein tax effect is less than Rs.20,00,000/-. These instructions are operative retrospectively to the pending appeals.

8. Keeping in view the CBDT Circular No. 3 of 2018 dated 11.07.2018, I am of the view that the Revenue should not have filed the instant appeal before the Tribunal.

9. In the result the appeal of the Department is dismissed.

10. In the **Cross objection No. 10/Jodh/2019**, filed by the assessee, following grounds have been raised:-

1) *The Ld. Pr. CIT was not competent to authorize filing of 2nd appeal before ITAT as the tax effect involved is less than 20 lakhs.*

2) *On the facts and in the circumstances of the case the Ld. CIT(A) has erred in sustaining addition of Rs. 2,50,000/- in the trading results without*

adequate justification and in total disregard to the fact that there was not a single amount of purchase or sale of goods which remained unrecorded.

11. From the above grounds, it is gathered that the only grievance of the assessee relates to the sustenance of addition of Rs. 2.5 lacs.

12. Facts of the case in brief are that the assessee filed the return of income on 26.7.2010 declaring an income of Rs. 2,60,50/- . thereafter the Assessing Officer received information from the DGIT (Investigation) Mumbai that the assessee made purchases from some parties which were found to be bogus and such purchases were of Rs. 85,18,926/-. He therefore, on the basis of information received initiated proceedings u/s 147 of the Income Tax Act, 1961 [in short' the Act']. The assessment was framed by the Assessing Officer on 27.3.2014 at an income of Rs. 2,60,150/-. Thereafter the Principal CIT, Bikaner exercised his powers u/s 263 of the Act and directed the Assessing Officer to do the assessment de novo after giving due opportunity to the assessee. Subsequently, the Assessing Officer by invoking the provisions of section 145(3) of the Act, considered the purchases of Rs. 85,18,926/- from following two parties as bogus:-

1.	<i>M/s Bhoomi Sales Corporation</i>	<i>Rs. 57,91,028/-</i>
2.	<i>M/s Saj Enterprises</i>	<i>Rs. 27,27,898/-</i>
	<i>Total</i>	<i>Rs. 85,18,926/-</i>

The Assessing Officer added 25% of the aforesaid purchases amounting to Rs. 21,29,732/- in the income of the assessee.

13. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) and submitted that the Assessing Officer was not justified in making the addition of Rs. 21,29,732/- as the material purchased from two parties was recorded in the purchase register and purchase bills were filed before the Assessing Officer. The assessee also furnished copies of the bills, copies of ledger account and confirmations of accounts of the concerned parties before the Ld. CIT(A) and submitted that the payments were made by account payee cheques and that the details such as cheque numbers and dates had been given to the Assessing Officer.

14. The Ld. CIT(A) after considering the submissions of the assessee observed that he had called for and carefully perused the assessment record and found that documents as mentioned by the assessee relating to the purchases made from M/s Bhoomi Sales Corporation and M/s Saj Enterprises were filed during the course of assessment proceedings also, as such the assessee discharged the primary onus cast upon him to establish the genuineness of the purchases which were sufficient to establish that the purchases / transactions done were genuine. He also observed that the Assessing Officer accepted the sales as genuine and when the sales had been accepted as genuine then how he could have held the corresponding purchases as bogus. He also observed that the payments were made through banking

channels by cheque and it was not the case that the assessee did not maintain the stock register or quantitative details. The Ld. CIT(A), however, sustained the addition of Rs. 2,50,000/- by observing as under;_

“In the instant case, it may be noted that purchases are made to inflate the purchases prices and to save the taxes on such purchases, thus to cover that hidden income, a reasonable disallowance is required to be made in the light of judicial decisions discussed above. In the present case, in my considered opinion, a disallowance of Rs.2,50,000/- would be reasonable to cover up hidden profit in these purchases. The AO is directed to make addition of Rs.2,50,000/- instead of Rs.21,29,732/-. The appellant partly succeeds on this ground.”

15. Now the assessee has filed the Cross objection.

16. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that the assessee produced the entire record before the Assessing Officer i.e. all purchases & sales vouchers, stock register, copies of bank accounts in support of the payments made for purchase & sales consideration realized and the Assessing Officer did not find any default in those documents to support the allegations. It was further stated that the allegations mentioned in the investigation made by the VAT Department were found to be unwarranted as there was no case of declaration of speculation profit, short or long term capital gains, application of share money or introducing money as gift rather all the purchases and sales were vouched and the accounts were supported by the stock register. Thus, there was no case for invoking the provisions of section 145(3) of the Act at the

level of the Assessing Officer who had not found any hidden profit, therefore, the additions sustained by the Ld. CIT(A) at Rs. 2,50,000/- was not justified.

17. In his rival submissions, the Ld. Sr. DR strongly supported the assessment order passed by the Assessing Officer and reiterated the observations made therein. It was further submitted that an information was received from VAT Department, Mumbai that the assessee had made purchases from the parties who were only entry providers and Assessing Officer found that the assessee had shown purchases from M/s Bhoomi Sales Corporation and M/s Saj Enterprises who provided the accommodation entries only without making actual sales or delivery of goods. It was contended that the assessee could not produce the above parties so, the Assessing Officer made the addition @ 25% of the bogus purchases, therefore, the additions sustained by the Ld. CIT(A) was fully justified. It was further submitted that the Mumbai Bench of the Tribunal in the case of 'Ratnagiri Stainless (P) Ltd Vs. ITO reported at (2017) 164 ITD 136 upheld the gross profit of Rs. 12.5% as against 4.3% declared by the assessee i.e. around three times of the bogus purchases while in the case of assessee the GP declared was at 3.01%. Therefore, no further relief is to be granted to the assessee.

18. I have considered the submissions of both the parties and perused the material available on record. In the present case, it is noticed that the

Assessing Officer applied net profit rate of 25% on the purchases of Rs. 85,19,926/-. The Ld. CIT(A) sustained the addition of Rs. 2.50 lacs out of the addition of Rs. **21,29,732/-** made by the Assessing Officer. In the instant case, it is also noticed that the Ld. CIT(A) clearly stated in the impugned order at page No. 9 that all the details and evidences were filed before the Assessing Officer but those were not considered. He also mentioned at page No. 8 of the impugned order that he had called and carefully perused the assessment record and found that the documents in the form of copies of bills, copies of ledger and confirmation of accounts received from M/s Bhoomi Sales Corporation and M/s Saj Enterprises were filed during the course of assessment proceedings. The Ld. CIT(A) mentioned that the assessee by filing various details of evidences in respect of purchases from the aforesaid parties, had discharged the primary onus cast upon him to establish the genuineness of the purchases. He also mentioned that the Assessing Officer accepted the sales as genuine and that when the sales had been considered as genuine then how could Assessing Officer doubt the corresponding purchases without establishing the same as bogus. In the present case, the assessee also maintained the stock register and the payments were made by cheques through banking channels. therefore, the addition sustained by the Ld. CIT(A) amounting to Rs. 2.50 lacs to cover up the hidden profit in the purchases was not justified particularly when nothing was brought on record to substantiate that the purchase were made to inflate the purchase price. In view of the aforesaid discussion, the additions sustained by the Ld. CIT(A) is deleted.

19. The facts relating to the case of **Shri Anil Kumar Saraf in ITA No. 561/Jodh/2018 filed by the Department and Cross objection No. 4/Jodh/2019 for A.Y. 2009-10** filed by the assessee are similar as were involved in the case of Smt. Lalita Saraf, Hamumagarh in ITA No. 551/Jodh/2018 and Cross Objection No. 10/Jodh/2019 for the A.Y. 2010-11. The only difference is in the amount involved. Therefore, my findings given in the former part of this order shall apply mutatis mutandis.

20. In the result, the appeals of the Department are dismissed and the Cross objections of the assesseees are allowed.

(Order Pronounced in the Court on 06.05.2019)

Sd/-
(N.K. SAINI)
Vice President

Dated : 06. 05.2019
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
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