NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 21 of 2012

Assistant Commissioner of Income Tax, Circle 2(1) Bilaspur, Chhattisgarh.

---- Appellant

Versus

Shri Rajeev Agrawal, K-22, Kranti Nagar, Bilaspur.

---- Respondent

For Appellant	:	Ms. Naushina Ali, Advocate.
For Respondent	:	Shri M.K.Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

06/08/2015

1. In this appeal, the substantial question of law was framed on 5.7.2012 as follows:

> "Whether the Tribunal was justified in dismissing the appellant's (Commissioner of Income Tax) appeal by placing reliance upon CBDT Instruction No. 3 dated 09.02.2011?"

2. The short facts, necessary for disposal of the appeal, as we are satisfied to remand the matter, are as follows:- The Respondent-Assessee filed his return on 29.10.2009. Pursuant to a search under Section 132(1) of the Income Tax Act, 1961 (hereinafter called 'the Act'), the Assessment from 2002-2003 to 2007-2008 went under scrutiny. After consideration, the Assessing Officer arrived at the conclusion that the Assessee had furnished inaccurate particulars of income. Assessment was made afresh under Section 143(3) read with Section 153A and penalty proceedings started under Section 271(1)(C) and 271 AAA of the Act. The Assessee went in appeal before the Commissioner of Income Tax (Appeals) who on 16.2.2010 allowed the appeal in part. Aggrieved by the same, the Department went in appeal before the Income Tax Appellate Tribunal on 29.4.2010.

3. When the appeal was taken up for consideration by the Tribunal on 18.10.2011, it was contended by the Assessee that the tax liability as finally assessed by the Commissioner of Income Tax (Appeals) was less than Rs. 3 Lacs and therefore the appeal was not maintainable before the Tribunal in view of Central Board of Direct Taxes Instruction No. 3 dated 9.2.2011 putting a cap of Rs. 3 Lacs in filing of departmental appeal before the Tribunal. The Tribunal held that fixation of monetary limit of Rs. 3 Lacs by Instruction No. 3 dated 9.2.2011 would govern the maintainability of the appeal. The Tribunal was of the opinion that Instruction No. 5 dated 15.5.2008 which was in vogue the day appeal was filed before the Tribunal on 29.4.2010 was inconsequential and the former circular would govern the issue.

4. Learned Counsel for the Appellant placed reliance on a Division Bench order of the Court in 2011 (337) ITR 515 (Commissioner of Income Tax v. Navbharat Explosives Company (P) Limited) holding at paragraph 26 as follows:

> "26. Thus, following the decision of the Madras High Court in the matter of Kodananad Tea Eastates Co.: (2005) 275 ITR 244 (Mad) and the decision of the Kerala High Court in the case of John U. Chackola (2011) 337 ITR 385 (Ker), we hold that maintainability of appeals/references at the instance of the Revenue is to be considered on the basis of circulars/instructions prevailing at the relevant time when the appeal/reference was made and Instruction issued, vide circular dated May 15, 2008 is prospective and it has no application whatsoever to any proceedings initiated before May, 15, 2008 and the same remain undecided and pending after May 15, 2008."

5. We have heard Learned Counsel for the Assessee also.

6. If a Bench of coordinate jurisdiction has already considered the matter including interpretation of Section 268A of the Act, it binds us and the submission on behalf of the Respondent with reference to certain orders of the Bombay High Court are held to be inapplicable in view of the discussions contained in Navbharat Explosives Company (P) Limited (supra).

7. Instruction No. 3 dated 9.2.2011 supercedes Instruction No. 5 dated 15.5.2008. Clause 3 and clause 11 of the same are explicit and admit of no ambiguity, which read as follows:

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

S.No.	Appeals in Income-Tax Matters	Monetary Limit (In Rs.)
1	Appeal before Appellate Tribunal	3,00,000
2	Appeal u/s 260A before HIgh Court	10,00,000
3	Appeal before Supreme Court	25,00,000

> 11. This instruction will apply to appeals filed on or after **9th February 2011.** However, the cases where appeals have been filed before **9th February 2011** will be governed by the instruction on this subject, operative at the time when such appeal was filed."

8. We therefore answer the question by holding that it was Instruction No. 5 dated 15.5.2008 which would be applicable on 29.4.2010 when the appeal was filed before the Tribunal and the appeal with regard to the monetary limit would not be governed by the subsequent Instruction No. 3 dated 9.2.2011.

9. Resultantly, the order of the Tribunal dated 18.10.2011 is set aside and the matter is remanded to the Tribunal for consideration and disposal of the appeal in accordance with law.

10. The appeal is allowed.

Sd/- (Navin Sinha) **CHIEF JUSTICE**	Sd/- (P. Sam Koshy) **JUDGE**

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