

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

ITA No.472 of 2017

Date of decision:14.8.2018

Pr. Commissioner of Income-Tax-2, Chandigarh

..... Appellant

VERSUS

M/s Mala Builders Pvt. Ltd.

..... Respondent

ITA No.473 of 2017

Pr. Commissioner of Income-Tax-2, Chandigarh

..... Appellant

VERSUS

M/s Mala Builders Pvt. Ltd.

..... Respondent

ITA No.485 of 2017

Pr. Commissioner of Income-Tax-2, Chandigarh

..... Appellant

VERSUS

M/s Mala Builders Pvt. Ltd.

..... Respondent

ITA No.486 of 2017

Pr. Commissioner of Income-Tax-2, Chandigarh

..... Appellant

VERSUS

M/s Mala Builders Pvt. Ltd.

..... Respondent

ITA No.504 of 2017

Pr. Commissioner of Income-Tax-2, Chandigarh

..... Appellant

VERSUS

M/s Mala Builders Pvt. Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms.Urvashi Dhugga, Senior Standing Counsel for
the appellant(s)
Mr.Divya Suri, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of five appeals, namely, ITA Nos.472, 473, 485, 486 and 504 of 2017 as common question of law and facts are involved in these appeals. For brevity, the facts are being taken from ITA No.472 of 2017.

2. To adjudicate the issue regarding jurisdiction revolves around the maintainability of appeal before this Court on the cut-off monetary limits prescribed in Circular No.3/18 issued on 11.7.2018 by the Central Board of Direct Taxes. The relevant extract of the aforesaid Circular is reproduced 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:

S.No.	Appeals/SLPs in Income-tax matters	Monetary limit (Rs.
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

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.

Xxxx

xxxx

xxxx

xxxx"

3. The `tax effect' for the assessment years involved in the present appeals is given below:

Sr.No.	ITA No.	Assessment year	Tax effect
1.	472	2008-09	₹1,90,134/-
2.	473	2006-07	₹1,84,463/-
3.	485	2005-06	₹2,99,431/-
4.	486	2007-08	₹1,63,377/-
5.	504	2004-05	₹5,80,872/-
Total			₹14,18,277/-

4. Learned counsel for the revenue submitted that vide the composite impugned order dated 23.8.2016 passed by the - Income Tax Appellate Tribunal, Chandigarh, though the `tax effect' involved is not ₹50 lacs, however, the appeals filed by the revenue(s) are very much maintainable before this Court in view of the clause 5 of the aforesaid Circular which is in the following terms:

“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.”

5. On the other hand, learned counsel for the assessee(s) submitted that in case the entire ‘tax effect’ involved in the present appeals is calculated, even then it would

be less than the cut-off monetary limit prescribed i.e. ₹50 lakhs. Moreover, the aforesaid Circular specifically provides that the cut-off limit prescribed for filing the appeal before the High Court by the revenue is ₹50 lakhs. Thus, the appeals would not be maintainable.

6. After hearing learned counsel for the parties, we find force in the submissions of learned counsel for the assessee(s).

7. The aforesaid Circular clearly provides that the departmental appeals may be filed on merits before the Income Tax Appellate Tribunal and the High Courts and SLPs/appeals before the Supreme Court keeping in view the monetary limits and conditions prescribed therein. To facilitate the 'jurisdiction' for filing the appeal(s) before the Tribunals/Courts, the cut-off monetary limits are prescribed. According to the Circular, the revenue may approach this Court where the 'tax effect' is more than monetary limits i.e. ₹50,00,000/-.

8. On a plain reading of clause 5 of the aforesaid Circular on which revenue has placed reliance, we do not find that any portion supports her contention. According to clause 5, the Assessing Officer is required to calculate the tax effect separately for every assessment year relating to disputed issues in the case of every assessee. The tax effect involved in each year is to be seen while deciding about filing of an appeal.

However, where a composite order has been passed involving

more than one assessment year and common issues, appeals shall be filed in respect of all such assessment years even where tax effect is less than the prescribed limit in any of the assessment year(s) where decision has been taken to file an appeal relating to a year or years where the tax effect is more than the monetary limit prescribed. The case of each assessee is to be dealt with separately in case of any composite order concerning more than one assessee.

9. It may be noticed that circular No.3/18 dated 11.7.2018 issued by the Central Board of Direct Taxes, New Delhi prescribes that a monetary limit for filing an appeal before the High Court is ₹50 lakhs, whereas cumulative tax effect involved in all these appeals is ₹14,18,277/- which is much below the said limit.

10. In view of the above and also keeping in view the order of the Apex Court in Commissioner of Income Tax v. Dhanalekshmi Bank Ltd., [2015] 373 ITR 526 (SC) where the Supreme Court had dismissed the appeal without going into the merits of the appeal due to low tax effect leaving the question of law open, the present appeals are dismissed. It is, however, clarified that dismissal of the appeals shall not be taken to be affirmation of order of the Tribunal on merits. Further, the legal

issue as claimed by the revenue is being left open to be adjudicated in an appropriate case.

(AJAY KUMAR MITTAL)
JUDGE

August 14, 2018
KD/gbs

(AVNEESH JHINGAN)
JUDGE

Whether speaking / reasoned	Yes / No
Whether Reportable	Yes / No