IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202 (4 cases) **ITA-198-2002**
Date of Decision: 15.10.2025

THE COMMISSIONER OF INCOME TAX, PANCHKULA
…Appellant
Versus

M/S SURJIT & SURINDERA INVESTMENTS PVT. LTD.
…Respondent
With

Sr. No.	Case No.	Appellant	Respondent
2.	ITA-41-2003	The Commissioner of Income Tax, Panchkula	M/s Surjit & Surindera Investments Pvt. Ltd.
3.	ITA-199-2002	The Commissioner of Income Tax, Panchkula	M/s Surjit & Surindera Investments Pvt. Ltd.
4.	ITA-279-2004 (O&M)	The Commissioner of Income Tax, Panchkula	M/s Surjit & Surindera Investments Pvt. Ltd.

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: - Mr. Saurabh Kapoor, Sr. Standing Counsel and
Mr. Rana Gurtej Singh, Standing Counsel for the appellant

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JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned appeals, with the consent of learned counsel for the appellant, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *ITA-198-2002*.

2. The appellant through instant appeal under Section 260A of the Income Tax Act, 1961 is seeking setting aside of common order dated 24.04.2002 passed by Income Tax Appellate Tribunal for the Assessment Year (for short '**AY**') 1984-1985 and 1985-1986.

3. The appellant has raised following questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the investment allowance under Section 32A of the Income Tax Act, 1961 to the assessee company on the plant and machinery which was not actually utilized by the assessee itself for the purposes of business of construction, manufacture or production of any article or thing and was instead hired out to its sister concern namely M/s G.S. Attwal & Co. which also did not, in turn, use it for the purposes of business of construction, manufacture or production of any article of thing (so called mining in the given case) as per the report of M/s Eastern Coal Fields Ltd. for which M/s G.S. Attwal & Co. was actually engaging the plant and machinery?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in ignoring the report of M/s Eastern Coal Fields Ltd. regarding the true nature of the contract and activities of M/s G.S. Attwal & Co. when M/s Eastern Coal Fields Ltd. happens to be an authority on the subject of mining?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the investment allowance on dumpers under Section 32A of the Income Tax Act, 1961 to the assessee company even when the dumpers were only road transport vehicles and not actually used by the lessee company in the so called mining operations?

4. The Tribunal has adjudicated aforesaid issues, in favour of respondents, on the basis of its earlier orders as well as different High Court and Hon'ble Supreme Court judgments.

5. The appellant has filed two appeals with respect to AY 1984-85 and 1985-86. Appeal No. 198 of 2002 and 279 of 2004 relate to AY 1984-85 and 1985-86 respectively. With both the appeals, assessment order of AY 1985-86 has been enclosed. As per assessment order, the assessing officer has denied deduction of investment allowance to the tune of ₹13,01,407/-.

6. As per Circular No.5/2024 dated 15.03.2024 issued by CBDT threshold limit to file appeal before High Court is ₹2 Crores. This is a bunch of 4 appeals and issue relates to deduction of investment allowance. The amount of deduction claimed in all the four appeals leaving aside amount of tax is even less than ₹2 Crores. Circular dated 15.03.2024 reads as:

"*CIRCULAR NO. 5/2024 [F. NO. 279/MISC.142/2007-ITJ(PT.)]*

SECTION 268A OF THE INCOME-TAX ACT, 1961 - FILING OF APPEAL OR APPLICATION FOR REFERENCE BY INCOME-TAX AUTHORITY - FILING OF APPEALS BY DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL, HIGH COURT AND SLPs/APPEALS BEFORE

SUPREME COURT - MEASURES FOR REDUCING LITIGATION

CIRCULAR NO. 5/2024 [F. NO. 279/MISC.142/2007-ITJ(PT.)], DATED 15-3-2024 [AS AMENDED BY CIRCULAR NO. 9/2024 [F.NO. 279/MISC./M-74/2024-ITJ] DATED 17-9-2024]

Ref 1: Circular No. 3/2018, dated 11-7-2018

Ref 2: Circular No. 17/2019, dated 8-8-2019

Ref 3: Board's letter in F.No. 279/Misc. 142/2007-ITJ (Pt), dated 20-8-2018

Reference is invited to the above wherein monetary limits and other conditions for filing Departmental appeals under the Income-tax Act, 1961 (hereinafter referred to as the Act) before Income Tax Appellate Tribunals ('ITAT'), Hon'ble High Courts ('HCs') and Special Leave Petitions ('SLPs')/appeals before Hon'ble Supreme Court ('SC') were specified by the Central Board of Direct Taxes ('CBDT' or 'Board').

2. In supersession of the above referred communications issued by CBDT, the following may be noted in respect of departmental appeals to be filed before ITATs and HCs and SLPs/appeals before SC:-

3.1 Monetary limits given in paragraph 4 with regard to filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:-

a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or *b.* *Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or*

c. *Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or*

d. <u>*Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or*</u>

e. *Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or*

f. *Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.*

g. *Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or*

h. *Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or*

i. *Where mandated by a Court's directions, or*

j. *Writ matters, or*

k. *Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or*

l. *In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-*

i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or

ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise

m. *Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.*

3.2 Attention is drawn to Circular No. 8/2023 issued vide F.No. 279/Misc./M-93/2018-ITJ(Pt.), dated 31-5-

2023 in respect of deferral of appeals u/s 158AB of the Act. Exceptions in such cases operate as follows:

a. When judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' is contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.

b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.

4.1 Appeals/SLPs, not falling in the exceptions as detailed in para 3 above, shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

Sl. No.	*Appeals/SLP in Income-tax matters*	*Monetary Limit (Tax effect in Rs.)*
1.	*Before Income Tax Appellate Tribunal*	*60 lakh*
2.	*Before High Court*	*2 Crore*
3.	*Before Supreme Court*	*5 Crore*

4.2 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. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their Income-tax assessments while taking a decision regarding filing an appeal.

[Emphasis supplied]

7. Learned counsel for the appellant, during the course of hearing, conceded that it is factually correct that amount involved in all the appeals is substantially less than prescribed monetary limit, however, submits that Revenue has filed prosecution against the respondents, thus, case falls under exception clause, thus, they cannot withdraw the appeals. He also conceded that despite multiple opportunities, they have failed to serve respondents.

8. Learned counsel except to submit that prosecution was launched before learned Chief Judicial Magistrate, Jagadhri could disclose nothing about status of the prosecution. This Court through staff tried to find out status of the prosecution and it was revealed that prosecution is not going on and might be adjourned *sine die*.

9. Appeals are pending before this Court since 2002 and the appellant despite multiple opportunities is unable to serve the respondents. The amount of tax involved in each appeal is small and appellant is unable to serve respondents because address of respondents is not known. Despite filing prosecution, the appellant is unable to serve respondents. Appeals relate to AY 1983-84, 84-85, 85-86. If appellant is unable to serve respondents or continue prosecution, there seems no possibility of recovery if appeals are allowed. It would be more academic than substantive adjudication.

10. In the afore-stated circumstances, unescapable conclusion is that appellant is unable to withdraw instant appeals on account of lodging prosecution against respondents which till date has not taken any colour or contour.

11. In the backdrop, we are of the considered opinion that instant appeals, at this stage, deserve to be dismissed and accordingly dismissed. The appellant is at liberty to move an appropriate application, within six months from today, if cause survives.

12. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

15.10.2025
Deepak DPA

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No