

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD 'A-1' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and S S Godara JM]

I.T.A. No.:302/Ahd/2014
Assessment year: 1994-95

Dy Commissioner of Income Tax
Circle 8, Ahmedabad (and 250 others, as per column 4 of list
attached as Annexure 1 to this order*)**Appellant**

Vs.

Soma Textiles & Industries Limited**Respondent**
[PAN: AADCS0405R](and 250 others, as per column 5 of the list
attached as Annexure 1 to this order*)

And related 7cross objections- as per list attached

[*related PAN numbers of the assessee and the related assessment years are set
out in Annexure 1 Col 6 and 3 respectively]

Appearances by:

Dinesh Singh for the appellant

GC Pipara for the assessee

**Office bearers and Members of the ITAT Bar Association, Ahmedabad
and other counsel** representing various taxpayers as per list attached

Date of concluding the hearing :December 15, 2015

Date of pronouncing the order :December 15, 2015

ORDER

Per bench:

1. All these appeals are departmental appeals, filed by the Assessing Officers, under the Income Tax Act, 1961, all these appeals call into question correctness of the relief granted to the taxpayers by the Commissioners (Appeals) and, most importantly, the tax effect involved in all these appeals does not exceed Rs 10,00,000 in each of these appeals. In the lead case, the issue involved is whether or not the learned CIT(A) was justified in deleting, vide his order dated 20th November 2013 and for the assessment year 1994-95, the penalty of Rs 7,43,060 imposed on the assessee under section 271(1)(c) of the Act. In these cases, in the light of the discussions with the Principal Chief Commissioner of Income Tax

(Gujarat) and representatives of the Ahmedabad ITAT Bar Association, individual notices are dispensed with; notices only through the notice board.

2. It is in this background that we need to take note of a very pragmatic initiative, taken by the Central Board of Direct Taxes last week, for reducing litigation in direct taxes. Vide circular no. 21/ 2015 dated 10th December 2015, the Central Board of Direct Taxes has, *inter alia*, announced that, subject to certain exceptions- which are not relevant in the present context, henceforth, no departmental appeals will be filed against relief given by the CIT(A), before this Tribunal, unless the tax effect, excluding interest, exceeds Rs 10,00,000. What is even more important is that not only that such a taxpayer friendly measure will be implemented in all future tax litigation, even the pending appeals, wherever the tax involved in the appeals does not exceed Rs 10,00,000, shall not be pressed or withdrawn. In effect thus, irrespective of the year to which the departmental appeal before the Tribunal pertains, as long as such an appeal is pending before the Tribunal, this will be a legal nullity. The relevant extracts of the aforesaid circular are as follows:

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 in Income-tax matters	Monetary Limit (in Rs)
1.	Before Appellate Tribunal	10,00,000/-
2.	Before High Court	20,00,000/-
3.	Before Supreme Court	25,00,000/-

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.

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”). 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, appeal 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.

3. So far as retrospective operation of this measure is concerned, the relevant portion of the CBDT circular is as follows:

10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.....

4. It is in this backdrop that the we proposed to fix all these appeals for hearing and put the learned Departmental Representative to notice as to why all these appeals not be dismissed as non maintainable in the light of the circular no. 21/2015 dated 10th December, 2015. However, in all fairness to the revenue authorities, this proposal was subject to following conditions to safeguard their legitimate interests:

(a) In terms of paragraph 6 and 7 of the said circular, this dismissal will be without any prejudice to the rights of the revenue authorities to raise the same issue, in the case of the relevant assessee or any other assessee, as and when the tax effect involved in such litigation crosses the threshold limit for that assessment year. The relevant paragraphs of the CBDT circular, for ready reference, are as follows:

6. 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 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 instruction". 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.

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

(b) The revenue authorities will have the liberty to approach this Tribunal, upon necessary verifications, to recall the dismissal of appeals and seek restoration of the same in the cases in which it can be demonstrated that the appeals are covered by the exceptions set out in paragraph 8 of the said circular which states as follows:

8. 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 are 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.

5. Shri Pipara, learned counsel for the assessee, took us through the CBDT circular to demonstrate as to how, in the light of this CBDT circular, the appeal should be dismissed as withdrawn. Learned Departmental Representative very fairly did not oppose the action proposed by this Tribunal, in principle, but has requested that the legitimate interests of the revenue authorities be suitably protected so as the appeals which are ultimately found to be not covered by the provisions of the aforesaid circular are reinstated and decided on merits. He also submits that it is humanly impossible to verify tax effect in all these cases, and seeks time so as to call for a report from the Assessing Officer concerned. He also submits that in the cases of composite orders involving more than one assessment year in the case of a single assessee, even if tax effect is less than Rs 10,00,000 in certain assessment years, the appeals are to be filed for all the years nevertheless. In addition to the materially similar arguments in support of all these cases being covered by the CBDT circular, having been made by a large number of learned counsel, a few other points were also made. Shri Devatia submits that the expression "composite order" is not defined in the circular and in any case it is not relevant for dismissal of appeals, as it is restricted only to filing of appeals. Shri Tushar Hemani submits that while there are no issues with respect to the cross objections, which only support the conclusions arrived at by the CIT(A), the dismissal of the cross objections could damage interests of the assessee in the cases involving substantive grounds. Shri Sanjay Shah submitted that in some of the cases, even appeal documents are not served on the respondent assessee and, as such, the assessee's rights to file the CO are adversely affected by dismissal of appeals. Ms Urvashi Shodhan points out that in one of the cases, listed at item no. 93, the assessee has also filed a cross objection but the same is not listed before us. It is pointed out that the CO has an independent ground which requires adjudication on merits. We, however, see no need to deal with this aspect of the matter at this stage as the CO is not listed before us. Similarly, other issues raised before us, as set out above, are somewhat hypothetical at this stage. As for the apprehensions raised by the learned Departmental Representative, suffice to say in the event any specific cases having

been wrongly included in this bunch of appeals, the same will be recalled in accordance with the law. Learned Departmental Representative is at liberty to point out the specific cases, if any, for appropriate remedial action.

6. While we have checked and rechecked each case individually and we are satisfied that in none of these cases tax effect involved is not more than Rs 10,00,000, we accept that human errors are possible and no such error should be allowed to prejudice legitimate interests of the revenue. The liberty is, therefore, specifically granted to the Assessing Officers to approach this Tribunal in case there are any cases, inadvertently included in this bunch of appeals, wherein the tax effect, in terms of the CBDT circular (*supra*), exceeds Rs 10,00,000, so that the related appeals can be recalled for adjudication on merits.

7. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to dismiss all these appeals as non maintainable. Without any prejudice to the generalities of the legal rights of both the parties, this dismissal is specifically subject to the liberty granted to the revenue authorities in terms of the assurances in the paragraphs 4 and 6 above.

8. We have also noted that in seven of the cases, as a result of the appeals having been filed by the revenue, the assesseees have also filed the cross objections. However, the right to file a cross objection arises only when the appeal filed by the other party is admitted, and, in a situation in which the appeal itself is held to non maintainable, the very foundation for the cross objection ceases to hold good in law. As the appeals are found to be non maintainable and as the cross objections arise only as a result of these appeals, these cross objections also dismissed. In any case, all these cross objections merely support the conclusions arrived at by the CIT(A), donot raise any grievance requiring adjudication by us and are, therefore, required to be dismissed as infructuous. All the cross objections are, therefore, dismissed.

9. As we part with these appeals, we would like to place on record our appreciation for the information regarding the issuance of the CBDT circular having been quickly circulated by www.itatonline.org. Within a day of the CBDT circular having been issued, www.itatonline.org was able to put this information in public domain and also send the intimation emails to everyone who has opted to be in their database. It is really amazing as to how some public spirited people, like ITAT Bar Association Mumbai, can do such of selfless service without any monetary consideration and for such a noble cause. We must also place on record our deep appreciation for the registry and the office staff members who virtually worked entire weekend to segregate all these appeals and ensure that all the necessary ground work was done quickly. We also place on record our deep appreciation for the cooperation and active involvement of Shri Chandra, Principal Chief Commissioner

of Income Tax (Gujarat), in this special drive to clear the cases covered by the new CBDT initiative, and, to Shri Tushar Hemani President and his colleague Members of the ITAT Bar Association, Ahmedabad, for their active cooperation and involvement in the whole process. It is because of the able leadership of, and the quick initiative taken by, the Hon'ble Vice President Shri Agarwal and Hon'ble President Justice Sud, and their active support and guidance, that it has been possible for our benches to identify and take up all these appeals so as to bring a sigh of relief to thousands of taxpayers that the relief granted to them by the first appellate authority has reached finality.

10. It is indeed heartening to note that in one stroke, the Government has not only prevented, but withdrawn, thousands of appeals before this Tribunal and before Hon'ble High Courts. In Ahmedabad benches and E-Court alone, as a result of this laudable initiative, almost 1,500 such appeals are listed for hearing this week, and will hopefully go off ITAT pendency dockets. We are sure this will allow everyone to concentrate on really important work and contribute to speedier resolution of serious and more important tax litigation. In an environment in which retrospectivity was attached only to the taxation and not to tax reliefs or concessions, such a paradigm shift in approach is unprecedented and possibly a game changing initiative heralding a new era in thoughtful litigation management.

11. In the results, all the 251 appeals as also all the 7 cross objections are dismissed. Pronounced in the open court today on 15th day of December, 2015.

Sd/-
SS Godara
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Dated: the 15th day of December, 2015.

Copies to: (1) The appellant (2) The respondent
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*