



Supreme Court clarifies on retrospective applicability CBDT circular prescribing revised monetary limits of low-tax effect in appeals filed by Income tax department

Brief Facts of the Case

- ❖ In this recent judgment, the Supreme court dealt with the issue of effective date of implementation of Instruction No. 3 of 2011 dated 9.2.2011, providing for appeals not to be filed before the High Court(s) where the tax impact was less than Rs.10 lakhs.
- ❖ The aforesaid instruction was issued in supersession of the earlier instruction, enhancing the monetary limit from Rs. 4 lakhs (laid out in Instruction No. 2 of 2005) to Rs. 10 lakhs and prescribing certain conditions.
- ❖ The Instruction/Circular in question is stated to have a prospective effect as per the Revenue due to clause 11 of the instruction which clearly stipulates that it shall apply to appeals filed on or after February 9, 2011, and, thus, cases which were pending in the High Court(s) and had been filed prior to the Instruction in question (Instruction No.3) but had tax effect of less than Rs.10 lakhs were, thus, required to be determined on their merits and not be dismissed by applying the circular/instruction.
- ❖ However, various High Courts appeared to have a divergence of view regarding applicability of this circular, whether *prospective* (i.e. only to apply on appeals filed after February 9, 2011) or *retrospective* (i.e. circular and revised monetary limits to also apply on appeals filed before February 9, 2011 but pending as on that date), Supreme Court considered it necessary to examine this issue and issue necessary clarifications and guidance to clear ambiguity on this issue.

Apex Court's Judgment

1. The Apex Court in this case, has relied upon plethora of judgments, giving its imprimatur (i.e. authoritative approval) to the decision of Karnataka high Court in the case of **CIT v. Ranka & Ranka [2013] 352 ITR 121 (Karnataka)** which laid down following principles:
 - a) Both the High Court and the Supreme Court referred to the National Litigation Policy saying that it was formulated with a view to ensure conduct of responsible litigation.

As per this Policy, the Government departments must cease to be “compulsive litigant” and the easy approach of “let the court decide” must be eschewed and condemned.

- b) Attempt should be made to reduce the pendency of the litigation by filtering frivolous and vexatious matters from meritorious ones apart from raising the monetary limit.
 - c) One of the ways of giving effect to the National Litigation Policy is to make the aforesaid CBDT circular applicable retrospectively to all pending appeals as on the date of the circular. It would substantially serve the object of the policy.
 - d) Regarding the position taken above, the Court considered the question that when the instruction expressly states that the benefit of the said policy is prospective, still can the courts place a construction on such instruction so as to make it retrospective. In this context, the High court considered the case of **CCE v. Mysore Electricals Industries Ltd. reported in [2006] 204 ELT 517 (SC): [2007] 8 RC 1**, dealing with the question how a beneficial circular is to be construed. In the said judgment, Apex court held that, “A beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have the right to claim the enforcement of the same prospectively.”
 - e) Following the above principle, in the instant case, Instruction No. 3 of 2011 is held to be more beneficial than Instruction No. 2 of 2005 and accordingly, if Instruction No. 3 of 2011 is also made applicable to the pending appeals before this court, it would grant relief to the assessee.
2. Finally, concluding the judgment, the Hon’ble Supreme Court following its own decision in the case of **CIT v. Surya Herbal Ltd. [2013] 350 ITR 300 (SC)** held that only two exceptions/ caveats have to be followed against retrospective application of Circular dated 9.2.2011:
- a) Circular should not be applied by the High Courts *ipso facto* when the matter had a cascading effect; and

- b) where common principles may be involved in subsequent group of matters or a large number of matters.

NANGIA’S TAKE:

This Supreme Court decision provides a much awaited and welcome clarification that in order to reduce the litigation and achieve the objectives of National Litigation Policy Document issued by the Government itself, it is important that revised monetary limits prescribed in CBDT circular dated February 09, 2011 be applied retrospectively, i.e. on all pending appeals as on date of issuance of this circular.

This decision also lays much needed judicial approval to the principle that Government must not be a “compulsive litigant” and appeals must not be filed just for the sake of shifting decision making to the Courts. The Government departments and officials must take a judicious view on every case and use their own well considered judgment on whether there is any need to further litigate the matter or not. Private parties and assesses do their own cost benefit analysis to litigate any matter. The court has now made it clear that the Government officials should do a similar exercise before litigating on any matter.

[Source: DIT vs. S.R.M.B. Dairy Farming \[2017\] 87 taxmann.com 288 \(SC\)](#)

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