

# ***CBDT revises monetary limits for filing of appeal by tax department***

July 13, 2018

## ***In brief***

The Central Board of Direct Taxes (CBDT) *vide* a circular,<sup>1</sup> had prescribed the monetary limits for filing of appeal by the income-tax department (tax department) before the Income-tax Appellate Tribunals (Tribunals) and High Courts (HCs), and Special Leave Petition (SLP) before the Supreme Court (SC).

In supersession of the above circular, the CBDT *vide* a recent circular,<sup>2</sup> prescribed the revised monetary limits, wherein it states that the tax department may file an appeal on merits before the Tribunals, HCs, and SLP before the SC, as per the prescribed revised monetary limits and conditions.

Further, it states that all the existing departmental appeals having tax effect below the prescribed monetary limits should be pursued for dismissal as withdrawn/ not pressed.

## ***In detail***

- The appeals/ SLPs shall not be filed where the tax effect does not exceed the following monetary limits:

<b>Appeal with respect to income tax matters before</b>	<b>Monetary limit (in INR)</b>
<b>Tribunal</b>	2 million
<b>HCs</b>	5 million
<b>SC</b>	10 million

- An appeal should not be filed just because the tax effect exceeds the monetary limits prescribed above. The decision of filing of an appeal should be based on merits.
- The word “tax effect” means as under and shall include applicable surcharge and cess. However, the tax will not include any interest thereon, except for situation no. III mentioned below.

<b>Situation</b>	<b>Meaning of tax effect</b>
<b>I. In case of addition in returned income</b>	Tax on the total income assessed <b>Less:</b> Tax on difference between such total assessed income and disputed issues (issues against which appeal is intended to be filed)

<sup>1</sup> Circular no. 21/2015 dated 10 December, 2015

<sup>2</sup> Circular no. 3/2018 dated 11 July, 2018

Situation	Meaning of tax effect
<b>II. In case where returned loss is reduced or assessed as income</b>	Notional tax on disputed issues
<b>III. In case where chargeability of interest is disputed</b>	Amount of interest
<b>IV. In case where penalty is disputed</b>	Quantum of penalty deleted or reduced in the order to be appealed against

- In case the disputed issue arises in more than one assessment year (AY), an appeal can be filed for such AY(s) in which the tax effect in respect of disputed issues exceeds the specified monetary limit.

- In case of a composite order of any HC or Appellate authority, which involves more than one AY and common issues in more than one AY, appeal shall be filed for all such AYs, even if the tax effect is less than the prescribed monetary limit in any of the AY(s), if it is decided to file appeal in respect of the year(s) in which the tax effect exceeds the monetary limit prescribed.

- In case of a composite order/ judgement involves more than one taxpayer, each taxpayer shall be dealt with separately.

- In case income is computed as per the provisions of section 115JB or 115JC (referred to as “MAT provisions”) of the Income-tax Act, 1961 (the Act), the tax effect shall be calculated as per the below formula:

$$\text{Tax effect} = (A - B) + (C - D)$$

where,

A = total income assessed as per provisions other than MAT provisions (herein referred as “general provisions”);

B = total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = total income assessed as per the MAT provisions;

D = total income that would have been chargeable had the total income assessed as per the MAT provisions been reduced by the amount of disputed issues under the said provisions.

However, where the disputed issues are considered under the MAT provisions and general provisions, such amount shall not be reduced from the total income assessed while determining the amount under “D” above.

- Where appeal before a Tribunal or a court is not filed only on account of the “tax effect” being less than the specified monetary limit, the Pr. Commissioner of Income-tax (Pr. CIT)/ CIT shall specifically record so.
- The tax department shall not be precluded from filing an appeal against the disputed issues in case of the same taxpayer for any other AY, or in case of any other taxpayer for the same or any other AY, if the tax effect exceeds the specified monetary limits.
- 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 were 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 are acceptable to the department.

- Adverse judgements relating to the following issues should be contested on merits, notwithstanding that the tax effect entailed is less than the prescribed monetary limits:
  - Where the constitutional validity of the provisions of the Act or rule is challenged, or
  - Where the CBDT’s circular, notification, instruction has been held to be illegal or ultra vires, or
  - Where the revenue audit objection in the case has been accepted by the department, or
  - Where the addition relates to undisclosed foreign assets/ bank accounts.
- The prescribed monetary limit shall not apply to writ matters and direct tax matters other than income-tax. The filing of appeals in other direct tax matters shall continue to be governed by the relevant provisions of the statute and rules.
- In case the tax effect is not quantifiable or not involved, as in the registration of trusts or institutions under section 12A/ 12AA of the Act, etc. the filing of appeal in such cases may be taken on the merits of a particular case.
- The prescribed monetary limit for filing an appeal before the Tribunal would equally apply to

cross objections under section 253(4) of the Act.

- This circular will apply to SLPs/ appeals/ cross objections/ references to be filed henceforth in the SC/ HCs/ Tribunals and it shall also apply retrospectively to pending SLPs/ appeals/ cross objections/ references. Pending SLPs/ appeals below the prescribed tax effect may be withdrawn/ not pressed.

### ***The takeaways***

- This is a welcome circular

providing relief to the taxpayers in cases where the tax effect is less than the specified monetary limit. The circular is in line with the government's initiative and commitment to reduce litigation and improve ease of doing business.

- The circular categorically states that even where the tax effect exceeds the specified monetary limits, the appeal shall be preferred only based on the merits of each case.

- The circular also clarifies that the monetary limits shall apply retrospectively to all the pending appeals, and directs the tax officers to withdraw/ not to press the appeals wherein the tax effect is less than the limits mentioned above.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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