

## CBDT Circular Redefining Revenue's Appeals - Step Towards Litigation Reduction?

Apr 10, 2024



**Ketan Ved**

Deloitte Haskins & Sells LLP



**Shrikant Kalantri**

Deloitte Haskins & Sells LLP

Ease of doing business and providing certainty to taxpayers has been one of the main mottos of the government. Earlier Budgets contained several key steps such as introduction of the Advance Pricing Agreement scheme, upward revision in monetary limits in filing of appeals by the Revenue Department from time to time, introduction of the “Vivad Se Vishwas Act 2020”, introducing stringent provisions on reopening of assessments, laying out procedures where an identical question of law is pending before the jurisdictional High Court or Supreme Court and providing tax certainty on various issues involving litigations by issuing circulars on timely basis.

Continuing the momentum forward, the finance minister, in the interim Union Budget 2024, ushered relief, by announcing the closure of very old litigation matters and connected demands that appear as outstanding in department records. This move is expected to benefit about a crore of taxpayers.

Further, taking the next step in reducing tax litigations and thereby providing certainty to taxpayers, the Central Board of Direct Taxes (being an apex body for policies regarding Direct Taxes) [recently issued a Circular<sup>\[1\]</sup>](#) clarifying a variety of issues on the earlier versions of the low tax effect circulars.

The said Circular aims to provide more clarity on litigation management, in filing of appeals or applications for reference by an income-tax authority before the Income Tax Appellate Tribunal (ITAT), High Court (‘HC’) and Special Leave Petitions (SLPs)/appeals before the Supreme Court (‘SC’) and supersedes all earlier circulars issued in this regard<sup>[2]</sup>.

The present article summarizes the provisions of the said circular and provides a comparative analysis of the major points for consideration, vis-à-vis the earlier circulars issued in this regard.

### Points that have remained unchanged:

- Monetary threshold for filing the appeals by the Department with the respective appellate authorities has not been disturbed, i.e., the tax effect of INR 50 Lakhs for ITAT, INR 1 Crore for HC and INR 2 Crores for SC, continues to be in effect even today.
- The manner of computation of the ‘tax effect’ also remains the same, wherein the term tax effect includes surcharge and cess. Interest to be excluded in arriving at the tax effect.

- Interest should be considered only if the chargeability of interest is in dispute. In case of a loss situation, tax effect would be notional tax effect on disputed additions and in penalty cases, the tax effect shall include quantum of penalty deleted or reduced in order appealed by the assessee.
- In MAT/AMT (115JB/ 115JC) cases, the tax effect would be tax effect on disputed issue under normal provisions plus tax effect on additional issues (i.e., no dispute under normal provision) under MAT/AMT provisions.
- It is also reiterated from earlier Circulars that the calculation of tax effect, qua an assessment year, in cases involving composite order involving multiple assessment years, and in cases of common appellate order involving more than one assessee, the decision on filing of an appeal in each of such assessee, shall be dealt separately to decide on the filing of appeal.
- All other conditions and guidance in case of non-filing of appeal by the Department owing to the tax effect alone, to be clearly documented. There cannot be the presumption that non filing of appeals in such cases by the Department means the department has acquiesced (i.e., accepted without protest) on the said issues under dispute; this fact remains unchanged in the present circular.
- Further, the exceptions to provisions of section 158AB[3] remains the same as provided under the earlier circular[4] issued in this regard, which provides clarity on the deferment of appeals to be filed by the Department in cases where judicial finality is achieved in favor of Revenue in the 'other case' and where a judicial outcome in 'other case' is not in favor of Revenue and such decision is not accepted by department

#### Further clarification provided by the CBDT:

- Further, the CBDT has expanded the scope of exception(s) where the appeal is required to be filed by the Department before respective appellate authorities, irrespective of the monetary thresholds, major aspects of which, are tabulated hereunder:

Sr. no.	Exception	Remarks
a.	Where any provisions of the Act or notification issued <b>or notification issued</b> thereunder has been held to be constitutionally invalid	Challenge to the vires of any 'Notification' issued under the Act/Rules has been newly added to the list of exceptions
b.	Where order, notification, Words 'or the Government' and 'or instruction or circular of the Board <b>or the Government</b> Act <b>or otherwise constitutionally invalid</b>	Where otherwise constitutionally invalid' has been newly added to the list held to be illegal or ultra vires the of exceptions
c.	Where assessment is based on information in respect of <b>any offence alleged to have been committed</b> under any other law received from any of the law enforcement or intelligence agencies	Few of the extra agencies (NIA (National Investigation Agency Government of India), NCB (Narcotics Control Bureau), other state agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/ Commercial Taxes or GST Department) have been newly added to the existing list of exceptions
d.	Where prosecution has been filed by the dept. and trial pending in court <b>or conviction order has been passed and same has not been compounded</b>	Cases where 'conviction order is passed and has not been compounded' have been newly added to the exception list
e.	Where strictures/adverse comments have been passed and/or cost has been levied against the Department of	<b>New exception</b>

	Revenue, CBDT or their officers	
f.	Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions	Clarified that reference to the orders passed under section(s) 10(23C), 12A, 12AA, 12AB, 263 of the Act etc. is only for illustration purposes.
g.	Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account	No change
h.	Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries	<b>New exception</b>
i.	Where mandated by a Court's directions	<b>New exception</b>
j.	Writ matters	No change
k.	Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act,	Rationalized the wordings to bring in more clarity in inclusion of other laws, since the earlier clauses only referred to Direct tax matters other than Income Tax.
l.	In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and international taxation charges:	<b>New exception</b>
	i. Where dispute relates to the determination of the <u>nature of transaction</u>	
	ii. Appeals of International taxation charges where the dispute relates to the <u>applicability of the provisions of a DTAA or otherwise.</u>	
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	<b>New exception</b>

It is important to note that the manner of computation of the tax effect in case of TDS/TCS appeals have been clarified to include the **cumulative effect of all the orders passed for an assessment year** of a deductor (since TDS Order(s) are usually passed separately for each quarter) and **shall also include the interest under section 201(1A) of the Act.**

It has however been clarified that the provisions of this circular shall come into effect from the date of issue of this Circular and would be applicable to the SLPs/appeals to be filed henceforth, which again is a welcome move.

### Our thoughts

Although the circular has been issued with the intent to reduce litigation and thereby provide certainty to taxpayers, the inclusion of a wide range of cases under the exception list, wherein the Department, to file an appeal before the respective appellate Authorities irrespective of the monetary limits, could trigger a

huge scope for interpretation of the Circular and the exemption clauses contained therein.

Further, the inclusion of TDS/ TCS appeals with the tax effects including the interest leviable under section 201(1A) of the Act, is also an exception to the principle that interest should not be included in the tax effect computation under normal circumstances. Interestingly, the Circular speaks of Interest under section 201(1A) leviable for delayed deduction and payment of TDS and appears to have missed the interest leviable under the provisions of section 206C(7) of the Act on the delayed deduction and payment thereof on TCS liability.

A view possible on the subject is that the inclusion of cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries could also mean cases wherein the provisions of General Anti Avoidance Rules (GAAR) have been invoked and the transaction has been declared as impermissible.

To conclude, the intention of the providing further clarifications on the aspect implies that the intention is that legal issues /aspects are resolved by the Court rather than being left undecided by virtue of the stakes involved being less than prescribed limits.

---

[1] Circular no 5/2014 dated March 15, 2014

[2] Circular no 3/2018 dated July 11, 2018, Circular No 17/ 2019 dated August 8, 2019, and Boards letter in F No. 279/ Misc. 142/2007-ITJ(Pt) dated August 20, 2018

[3] (Deferment of filing of an appeal by the Department, where identical question of law is pending disposal before the High Court and the Supreme Court)

[4] Circular no 8/2023 dated May 31, 2023