

**F. No. 279/Misc.142/2007-ITJ (Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi the 15th March, 2024

Subject: Circular u/s 268A of the Income-tax Act, 1961 for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Ref 1: Circular No. 3/2018 dated 11.07.2018

Ref 2: Circular No. 17/2019 dated 08.08.2019

Ref 3: Board's letter in F.No.279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018

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, DGCI, 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. 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

- 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 31.05.2023 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:

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

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.

5.1 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'). Further, 'tax effect' shall be tax including applicable surcharge and cess. 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.

5.2 Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula-

$$(A-B) + (C-D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the 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 = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

5.3 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 4.1. 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 4.1. Further, even in the case of 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, 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 4.1. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately. It is clarified that the contents of this paragraph are subject to para 3.2, above.

5.4 For calculating the tax effect of cases involving TDS/TCS, the cumulative effect, of all orders passed for an assessment year of a deductor, shall be taken into account and shall include interest u/s 201(1A) of the Act.

6.1 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 Pr. Commissioner of Income-tax/ 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 the CBDT Circular dated <>".

6.2 **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 and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Act which read as under:

"(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case."

8. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/CsIT must be maintained in a systematic manner for easy retrieval. In cases where appeals are not being filed due to low tax effect despite the judgment

not being acceptable on merits or appeals are being filed despite low tax effect in view of exceptions, the Pr. CIT/CIT shall submit a monthly report, to the CIT(J)/Addl./Jt. CIT(J) office, as per Annexures-A1 and A2, respectively of CBDT's Instruction No. 1/2024 dated 09.02.2024 (issued in F.No. 279/Misc./33/2014-ITJ). Further, the CIT(J)/ Addl/Jt CIT(J) office shall collate and disseminate the departmental stand, as regards filing of appeals, in respect of the issues involved in such appeals, within the region.

9. The above may be brought to the notice of all concerned.

10. This issues under section 268A of the Act and shall come into effect from the date of issue of this Circular. This Circular will apply to SLPs/appeals to be filed henceforth before the SC/HCs/Tribunals.

11. Hindi version will follow.



(Tanay Sharma)
Jt.CIT(OSD)-ITJ, CBDT
New Delhi

Copy to:

1. The Chairman, Members and all officers in CBDT of the rank of Under Secretary and above.
2. All Pr. Chief Commissioners of Income Tax and All Directors General of Income Tax with a request to bring to the attention of all officers.
3. The Comptroller and Auditor General of India.
4. ADG (Vigilance), New Delhi.
5. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
6. All Directorates of Income-tax, New Delhi and DGIT (NADT), Nagpur.
7. Hindi Cell for translation.
8. Guard file.

Jt.CIT(OSD)-ITJ, CBDT
New Delhi