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Analysing developments impacting business

ADDITIONAL EXCEPTIONS TO REVISED MONETARY THRESHOLD (TAX EFFECT) FOR FILING OF APPEAL BY THE INCOME-TAX DEPARTMENT

28 August 2018

Introduction

Recently, the Central Board of Direct Taxes (CBDT) vide circular (Circular) dated 11 July 2018 (please access our newsflash on this Circular by clicking [here](#)) had revised the monetary thresholds of the 'tax effect' on matters, below which an appeal should not be filed by the Income-tax Department (Tax Department) with certain exceptions carved out in Paragraph 10 (Para 10) of the Circular. For the cases covered in Para 10, even if the tax effect of an appeal is lower than the revised monetary threshold, the Tax Department can still contest the issue on merits before the higher appellate authorities.

Change in scope

The CBDT has on 20 August 2018, amended Para 10 of the Circular by adding some more cases in which tax effect of an appeal would not be relevant.

- Originally, the Tax Department could file an appeal on merits before the higher appellate authorities even if the tax effect was within the revised monetary threshold in the following cases:
 - where the constitutional validity of the provisions of any legislation has been challenged;
 - where a notification, instruction or circular issued by the Central Board of Direct Taxes has been challenged as being illegal or ultra vires;
 - where a revenue audit objection in a case has been accepted by the Department; or
 - where the addition relates to undisclosed foreign assets/ bank accounts.
- The scope of aforesaid exceptions has now been further expanded as under:
 - Disputes relating to undisclosed foreign income / undisclosed foreign assets (including financial assets) / undisclosed foreign bank account;

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- Cases where addition is based on information received from various other law enforcement agencies such as Central Bureau of Investigation India / Enforcement Directorate / Department of Revenue Intelligence / Serious Fraud Investigation Office / Directorate General of GST Intelligence (DGGI); and
- Cases where prosecution has been filed by the Tax Department and is pending in the Court

Thus, in these scenarios, it will be permissible for the Tax Department to appeal before the higher appellate authorities even if the tax effect is within the revised monetary threshold. These modifications are in effect from 20 August 2018.

Comment

These additional exceptions lay emphasis on the fact that tax evasion cases where either the information has been received from other law enforcement agencies or where the prosecution has already been filed, should not escape the tax net merely on account of low tax effect.

It is pertinent to note here that these modifications are effective from 20 August 2018 and not from the release of the original Circular dated 11 July 2018. There could be a practical situation wherein appeals falling in the recently added exception list may have been withdrawn by the Tax Department before the Income-tax Appellate Tribunal / High Court / Supreme Court on account of low tax effect and an order disposing the appeal is passed by the Income-tax Appellate Tribunal / High Court / Supreme Court before 20 August 2018, recording the fact that the appeal is not pressed / withdrawn. In such cases, the tax Department may not be in a position to revive the concluded appeal proceedings.

In cases wherein appeals have not been filed based on revised monetary threshold and the case is covered by the recently added exceptions, the Tax Department may file an appeal (with a request for condonation of delay explaining the delay caused on account of this modification, if any).

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