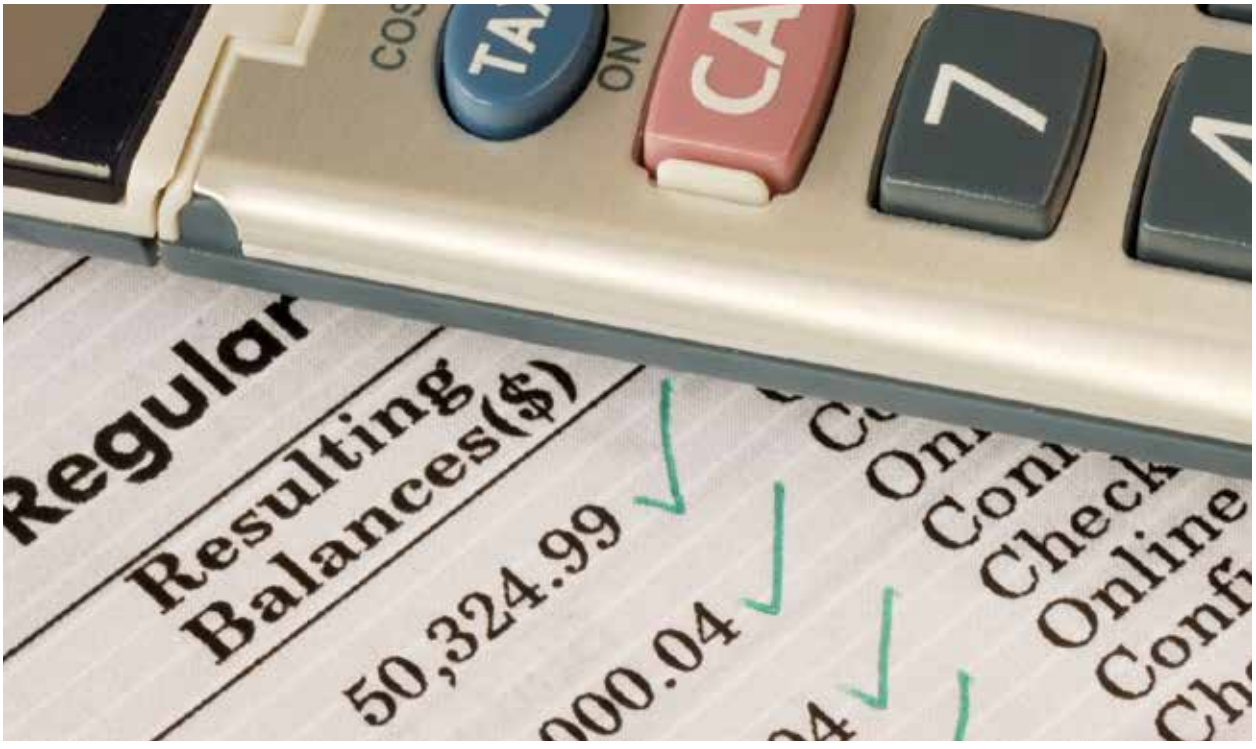
Monetary Limits for Filing Departmental Appeals in Income Tax



The enormous volume of pendency at various levels of Indian courts is not oblivious to anyone. As on 30th September, 2010, a total of 2.8 crore cases were pending in subordinate courts and 42 lakh in High Courts. Approximately 9% of these cases had been pending for over 10 years and a further 24% cases for more than five years. In income tax, recently the High Court of Karnataka has passed a judgment that the instructions issued by the CBDT prescribing the monetary limits for filing departmental appeals is retrospective in nature, even though such instructions specifically state that they shall apply only in relation to the departmental appeals after the date of coming into force of such instructions. Read on to know more about this verdict…

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1. Introduction

1.1. On 19th March, 1955, Shri Jawaharlal Nehru, while addressing the members of the Punjab High Court at the inauguration of its new building in Chandigarh, had said: *Justice in India should be simple, speedy and cheap.* He remarked that litigation was a disease and it could not be a good thing to allow any disease to spread and then go out in search of doctors.

1.2. What he meant to embark upon was the fact that the

judiciary of India is looked up with great respect and with a feeling of trust, faith and confidence by its various stakeholders. Thus, it would not be a good sign if the litigation syndrome would be allowed to broaden without having the adequate number of doctors, i.e. the courts, available to cure such diseases.

1.3. The enormous quantity of pendency at various levels of Indian courts is not oblivious to anyone. Just to put the things into perspective: As on 30th September, 2010, a total of 2.8 crore cases were pending in subordinate courts and 42 lakh in High Courts. Approximately, 9% of these cases had been pending for over ten years and a further 24% cases pending for more than five years[1]. Furthermore, about 55,000 cases were pending with the Supreme Court of India. With such mammoth numbers speaking for themselves, litigation in India is bound to be a legacy which gets passed on from one generation to another generation and if you are among the few unfortunate ones, then to another generation.

2. Government of India, a Compulsive Litigant?

2.1. A court case involves at least two parties. In many such cases, the Government of India (GOI) and its various agencies are the predominant litigants in courts and Tribunals in the country. Most of the times, the GOI acts as a compulsive litigant and initiates the legal proceedings just for the sake of it even though the GOI itself might not consider the case to be strong on merits.

2.2. At this instant, it would be apposite to refer to the National Litigation Policy ("NLP" for short) of the GOI which was announced by Dr. M. Veerappa Moily, former Minister of Law and Justice, with the objective to reduce the cases pending in various courts in India under the National Legal Mission, to reduce average pendency time from 15 years to 3 years. It means that the GOI is also not oblivious to the facts that the average pendency time in Indian courts is not acceptable. The aim of the NLP is to transform the Government into an efficient and responsible litigant. Moreover, the Government must cease to be a compulsive litigant. The relevant extracts of this NLP are reproduced herein for the sake of ready reference:

"2. *Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the court decide," must be eschewed and condemned.*

3. *The purpose underlying this policy is also to reduce Government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the Goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of Government have to keep in mind the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority."*

2.3. A perusal of the above NLP makes it clear that the Government acts as a compulsive litigant and is attracted to adopt the easy approach, "Let the court decide". The NLP also contained specific provisions instructing the Government departments to review all the pending appeals involving Government and filtering the frivolous & vexatious matters from the meritorious ones.

3. Income Tax Angle

3.1. Keeping into consideration the above, NLP formulated by the GOI and the various other mandates issued from time to time, the Central Board of Direct Taxes (CBDT), the apex body for the regulation of direct taxes in India, issues instructions to its officers refraining them to file appeals against the assessees if the tax effect involved in a particular case falls short of the

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[1] *http://pib.nic.in/newsite/erelease.aspx?relid=72970 (Speech of Union Law Minister on reduction of pendency in courts, 1st July, 2011.)*

monetary limits prescribed for filing appeals at various appellate forums. The concept of prescribing the monetary limit for preferring an appeal by the Revenue is not new. The CBDT has prescribed such limits from time to time and with the changing passage of time, the CBDT has revised these limits to conform them to the change in the value of rupee. A summary of the movement in these monetary limits is:

(Amount in ₹)

S. No.	Particulars	Appeals before Appellate Tribunal	Appeals before High Court	Appeals before Supreme Court
1	Instruction No.1777 dated 04-11-1987	25,000/-	50,000/-	1,50,000/-
2	Instruction No.1979 dated 27-03-2000	1,00,000/-	2,00,000/-	5,00,000/-
3	Instruction No.2 dated 24-10-2005	2,00,000/-	4,00,000/-	10,00,000/-
4	Instruction No.3 dated 09-02-2011	3,00,000/-	10,00,000/-	25,00,000/-

3.2. One thing common to all these instructions is that each of these instructions stated that all the appeals filed on or after the date of coming into force of such instruction shall be governed by such instruction, and that all the appeals filed before the date of coming into force of such instruction shall be governed by instruction as existed on the date of the filing of such appeal. In other words, the instruction to be considered before filing any departmental appeal shall be the instruction as in force on the date of filing of such appeal.

3.3. The two aspects which become clear from the above paras are:

3.3.1. All such monetary limits are applicable only to filing of appeals by the Income Tax Department i.e., the assessee shall be free to file an income tax appeal whether or not the amount of tax effect qualifies the above specified monetary limits or not;

3.3.2. The monetary limits are in respect to the 'filing' of departmental appeals i.e. these limits should be considered only on the date of 'filing' these departmental appeals and not on the date of their 'hearing'. It means that if a departmental appeal qualifies the monetary limits applicable on the date of its filing, then such appeal shall not be dismissed even if the amount of tax effect involved in such departmental appeal doesn't satisfy the monetary limits as applicable on the date of its 'hearing'.

4. Controversy

4.1. In spite of the plain, simple and unambiguous language used in these instructions, it has been a matter of repeated judicial intervention as to the applicability of these instructions i.e., whether these instructions are prospective or retrospective. In other words, as soon as the above mentioned limits for filing departmental appeals are revised, what shall be the fate of those pending appeals initiated by the Department which qualified such limits as per the instruction applicable on the date of their filing but fail to qualify the revised limit as would be applicable on the date of their hearing. In this regard, for the sake of reference, one such clause (Clause no. 11 in the Instruction No. 3/2011 dated 09-02-2011) is reproduced herein:

> *"This instruction will apply to appeals filed on or after 09-02-2011. However, the cases where appeals have been filed before 09-02-2011 will be governed by the instructions on this subject, operative at the time when such appeal was filed."*

4.2. A similar matter came up for discussion recently before the Karnataka High Court in the *case of CIT vs. Ranka & Ranka* reported at [2012] 19 taxmann.com 65 (Kar) which judgment was delivered on 2nd November, 2011 wherein the High Court held that the Instruction No.3/2011 dated 09-02-2011 is also applicable to pending appeals. However, equally opposite views are also available on

One more thing to note from the judgment of the High Court is the recognition expressed towards the good quality work being performed by the Appellate Tribunals across the country coupled with the disparagement and the condemnation towards the "let the court decide" approach being adopted by the Departmental officers.

this subject matter. Before analysing this recent judgment, it would be pertinent to apprise with the divergent views expressed by the various High Courts of the country.

5. Contradictory Position

5.1. Judicial precedents holding that the instructions prescribing the monetary limits for filing departmental appeals are retrospective in nature

S. No.	Judgment	Particulars
1	• *CIT vs. Kodanand Tea Estates Co*. (2005) 275 ITR 244 (Mad) • *CWT vs. John L Chackola* (2011) 337 ITR 385 (Ker) • *CIT vs. Navbharat Explosives Co. Pvt Ltd* (2011) 337 ITR 515 (Chattisgarh)	*"The maintainability of appeals/references at the instance of the revenue is to be considered on the basis of the circulars/instructions prevailing at the relevant time when the appeal/reference was made and instruction issued, vide circular dated 15th May, 2008 is prospective and it has no application whatsoever to any proceedings initiated before 15th May, 2008 and the same remain undecided and pending after 15th May, 2008."*
2	• *CIT vs. Varindera Construction Co*. (2011) 331 ITR 449 (P&H)	*"After due consideration of the rival contentions, we are in agreement with the contention raised on behalf of the Revenue. Circular laying down monetary limit controls the filing of the appeals and not their hearing. Appeals filed as per the applicable limit at the time of filing cannot be governed by circular applicable at the time of hearing. We respectfully differ from the view taken by the Bombay High Court as followed by this Court. The object of the circular under section 268A as already mentioned is only to govern monetary limit for filing of the appeals. There is no scope for reading the circular as being applicable to pending appeals. Even the Bombay High Court held that the circular was not retrospective. It only observed that having regard to the falling money value and choking Court docket, policy of monetary limit was needed to be adopted for pending matters. The document referred to as circular dated 5th June, 2007 in our view has not been properly appreciated. It only says that the Department was not following instructions as to monetary limit while filing the appeals and should examine whether pending appeals which did not conform to the prescribed monetary limits should be withdrawn. The said memorandum was purportedly issued on a direction of the High Court and was applicable only to cases pending in the Bombay High Court. The same cannot be read to mean that in all High Courts, all pending appeals were to be examined in the light of the monetary limits applicable on the date of hearing and not on the date of filing."*

A perusal of the above judgments makes it clear that regarding the retrospective/prospective applicability of the departmental instructions prescribing the monetary limits for filing departmental appeals, the view adopted by the High Courts of Madras, Kerala, Chattisgarh and Punjab and Haryana can be summarised:

- Maintainability of departmental appeals is to be considered on the basis of circulars/instructions prevailing at the relevant time when the appeal was filed.
- Circular laying down monetary limit for departmental appeals controls the filing of the appeals and not their hearing.
- Appeals already filed and pending for hearing are governed by the monetary limit laid down at the time of filing of those appeals.

5.2. Judicial precedents holding that the instructions prescribing the monetary limits for filing departmental appeals are prospective in nature.

S. No.	Judgment	Particulars
1	• *CIT vs. Pithwa Engg Works* (2005) 276 ITR 519 (Bom) [This judgment of the Bombay High Court was followed in *CIT vs. Ashok Kumar Manibhai Patel and Co*. (2009) 317 ITR 386 (MP); *CIT vs. PS Jain and Co* (2011) 335 ITR 591 (Delhi); *CIT vs. Delhi Race Club Ltd* in ITA No. 128/2008 dated 03-03-2011]	*"One fails to understand how the Revenue can contend that so far as new cases are concerned, the circular issued by the Board is binding on them and in compliance with the said instructions, they do not file/references if the tax effect is less than Rs.2 lakh. But the same approach is not adopted with respect to the old referred cases even if the tax effect is less than Rs.2 lakh. In our view, there is no logic behind this approach.* *This Court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, the assessees on the file of the Department have increased; consequently, the burden on the Department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. In this view of the matter, the Board has rightly taken a decision not to file references if the tax effect is less than Rs.2 lakh. The same policy for old matters needs to be adopted by the Department. In our view, the Board's circular dated 27th March 2000 is very much applicable even to the old references which are still undecided. The Department is not justified in proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with decades old references having negligible tax effect."*
2	• *CIT vs. Madhukar K.Inamdar* (HUF) (2009) 318 ITR 149 (Bom)	*"One fails to understand how the Revenue, on the face of the above clear instructions of the CBDT, can contend that the Circular dated 15th May, 2008, issued by the CBDT is applicable to the cases filed after 15th May, 2008, and in compliance thereof, they do not file appeals if the tax effect is less than Rs.4 lakh; but the said circular is not applicable to the cases filed prior to 15th May, 2008 i.e. to the pending appeals; even if the tax effect is less than Rs.4 lakh. In our view, there is no logic behind this belief entertained by the Revenue.....* *It would be in the public interest if the Revenue concentrates on the cases wherein tax effect is substantially high rather than running after the assessees wherein the tax impact is less than Rs.4 lakh considering the cost of litigation and other administrative cost which may be much more than the tax recovery.* *At this juncture, it will be relevant to note that the CBDT has also issued a Circular on 5th June, 2007 directing the Department to examine all appeals pending before this Court on case to case basis with further direction to withdraw cases wherein the criteria of monetary limits as per the prevailing instruction is not satisfied unless the question of law involved or raised in appeal or referred to the High Court for opinion is of a recurring nature required to be settled by the Higher Court.* *The aforesaid Circular makes it clear that on the date of issuance of Circular, prevailing instructions fixing monetary limit will hold good even for pending cases. Adopting the same approach, we are of the considered view that the CBDT Circular dated 15th May, 2008 would be very much applicable to the pending cases requiring department to withdraw cases wherein the tax effect is less than the prescribed monetary limits."*

A perusal of the above judgments makes it clear that regarding the retrospective/prospective applicability of the departmental instructions prescribing the monetary limits for filing departmental appeals, the view adopted by the High Courts of Bombay, MP and Delhi can be summarised as under:

- The Circulars prescribing monetary limits for filing departmental appeals are retrospective in nature i.e. they also apply to cases pending on the date of the issuance of the instruction.
- It is the duty of the department to analyse and, if found unsuitable, to withdraw all such pending cases if they do not conform to the revised monetary limits for filing departmental appeals irrespective of the fact that such appeals had validly satisfied the monetary limits applicable on the date when such appeals were filed.

6. Ranka & Ranka Judgment

6.1. The High Court of Karnataka, in the abovementioned case of Ranka & Ranka, considered the conflicting views expressed by all

the High Courts as discussed above. Apart from this, it also analysed the NLP of the Government wherein it was specifically mentioned that the goal in the National Legal Mission was to reduce the average pendency time from 15 years to 3 years.

6.2. The High Court of Karnataka also had the privilege to explore the issue that when the Instruction expressly states that 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 regard, the Court relied upon the judgments of the Supreme Court in the cases of *CCE, Bangalore vs. Mysore Electrical Industries Ltd 2006 (204) ELT 517 SC* and *Suchitra Components Ltd vs. CCE, Guntur 2007 (208) ELT 321 SC* wherein the 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, the assessee has the right to claim enforcement of the same prospectively. Applying the same principle laid down by the Apex Court, the High Court held that the Instruction No.3 dated 09-02-2011 should be applied retrospectively for the following reasons:

6.2.1. The Instruction No. 3 is beneficial to the assessee.

6.2.2. The precious time of the Courts would be saved so that they can concentrate more on those cases which have higher tax effect and not on cases involving meager tax effects.

6.2.3. Since a lot of departmental appeals would end up being withdrawn from the Courts due to the retrospective application of the Instruction No.3, the Courts will have additional time at their disposal for adjudication of pending appeals, and this would result in faster disposal of pending cases and thus, ensuring that the purpose of the National Litigation Policy to reduce the average pendency time from 15 years to 3 years would be achieved.

6.3. Appreciation for the Appellate Tribunal and criticism for the Departmental Officers

One more thing to note from the judgment of the High Court is the recognition expressed towards the good quality work being performed by the Appellate Tribunals across the country coupled with the disparagement and the condemnation towards the "let the court decide" approach being adopted by the Departmental officers. The relevant Para 30 from this judgment is reproduced herein for the sake of reference:

"It is our experience that in most of the cases, the levy of tax is made by placing such interpretation on the provision of the Act, so as to defeat the very object of those provisions. The Parliament with the best of intention, as incentive to trade and industry, has extended several benefits under the Act. Without properly appreciating the context and the object with which those provisions are enacted, the department has interpreted those provisions preventing those benefits reaching the persons to whom it was intended. In most of the cases, the Tribunal has come to the rescue of those assessee, has interpreted those provisions in proper perspective and have extended the benefit to the assessee. It is against those orders, most of the appeals are filed mechanically as compulsive litigation without any sense of responsibility. It is our experience that most of the appeals which are filed by the Revenue are frivolous and vexatious. The majority of the appeals are filed with the sole object of leaving it to the Courts for ultimate decision. The approach is 'let the Court decide'. The authority who decides to prefer the appeal is not prepared to take the responsibility. There is an attempt to save their skin, so that tomorrow they are not held responsible in any manner. It is this approach, which is to be eschewed and condemned, as stated in the National Litigation Policy. It is yet another ground for us to make this circular applicable to the pending proceedings."

6.4. After analysing all the aspects involved in this case, the High Court of Karnataka ordered that the Instruction No.3/2011 is also applicable to the pending appeals. Consequently, in the instant case, the departmental appeal was dismissed on the ground of monetary limit, without expressing any opinion on the merits of the claim.

7. Conclusion

7.1. None of the above judgments of the various High Courts including the *'Ranka & Ranka'* judgment is yet decided by the Apex Court. Thus, at present, there are two equally opposing views available in respect of the retrospective/ prospective applicability of the departmental instructions prescribing monetary limits for filing of departmental appeals.

7.2. As far as the question regarding the compulsive litigant image of the Government is concerned, it is obvious that the Government will have to do a lot of hard work to get rid of this stain of compulsive litigant which has been attached to it due to its past actions. ■