

Bombay High Court *Cit vs Camco Colour Co.* on 26 November, 2001 Equivalent citations: (2002) 173 CTR Bom 255 Author: V C Daga JUDGMENT V. C. Daga, J. This appeal is filed under section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), raising a question with respect to the claim for deduction under sections 80HH and 80-I of the Act which was allowed by the Income Tax Appellate Tribunal (hereinafter referred to as “the Tribunal”) vide its judgment dated 28-12-1999, for the assessment year 1990-91. 2. At the outset Shri Jasani, learned counsel for the respondent (assessee), contended that considering the tax effect, this is not a fit case wherein the court should entertain appeal for consideration. Mr. Jasani, learned counsel for the respondent relied upon the judgment of this court in the case of *CWT v. Executors of Late D.T Udeshi* (1991) 189 ITR 319 (Bom) wherein the appeal was disposed of on this count alone. He pointed out that the tax effect, if at all the revenue succeeds, is going to be in the sum of Rs. 46,410 for the assessment year 1990-91. He took us through the Instruction No. 1979 issued by the Central Board of Direct Taxes (hereinafter referred to as the “Board”) vide Circular F. No. 279/126/98-ITJ dated 27-3-2000, which reads as under: 2. At the outset Shri Jasani, learned counsel for the respondent (assessee), contended that considering the tax effect, this is not a fit case wherein the court should entertain appeal for consideration. Mr. Jasani, learned counsel for the respondent relied upon the judgment of this court in the case of *CWT v. Executors of Late D.T Udeshi* (1991) 189 ITR 319 (Bom) wherein the appeal was disposed of on this count alone. He pointed out that the tax effect, if at all the revenue succeeds, is going to be in the sum of Rs. 46,410 for the assessment year 1990-91. He took us through the Instruction No. 1979 issued by the Central Board of Direct Taxes (hereinafter referred to as the “Board”) vide Circular F. No. 279/126/98-ITJ dated 27-3-2000, which reads as under: “INSTRUCTION NO. 1979 F. No. 279/126/98-ITJ Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes New Delhi dated 27-3-2000 To All Chief Commissioners of Income Tax/Directors General of Income Tax. Sir, Sub : Revising Monetary limits for filing departmental appeals/references before Income Tax Appellate Tribunal, High Courts and Supreme Court Measures for reducing litigation-regarding Reference is invited to Board’s Instructions No. 1903, dated 28-8-1992, and Instruction No. 1777, dated 4-11-1987, wherein monetary limits of Rs. 25,000 for departmental appeals (in income-tax matters) before the Appellate Tribunal, Rs. 50,000 for filing reference to the High Court and Rs. 1,50,000 for filing appeal to the Supreme Court were laid down. 2. In supersession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder : 2. In supersession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder : (Tax effect) (Tax effect) Rs. Rs. Rs. (i) (i) Appeal before the Appellate Tribunal (in income-tax matters) 1,00,000 1,00,000 (ii) (ii) Appeal under section 260A/reference under section 256(2) before the High court Appeal under section 260A/reference under section 256(2) before the High court 2,00,000 2,00,000 (iii) (iii) Appeal in the

Supreme Court Appeal in the Supreme Court 5,00,000 5,00,000 The new monetary limits would apply with reference to each case taken singly. In other words, in group cases, each case should individually satisfy the new monetary limits. The working out of monetary limits will, therefore, not take into consideration the cumulative revenue effect as envisaged in Board's earlier instruction referred to above. 3. Adverse judgments relating to the following should be contested irrespective of revenue effect : (i) Where revenue audit objection in the case has been accepted by the department. (ii) Where Board's order, notification, instruction or circular is the subject-matter of an adverse order. (iii) Where prosecution proceedings are contemplated against the assessee. (iv) Where the constitutional validity of the provisions of the Act are under challenge. 4. Special Leave Petitions under article 136 of the Constitution are filed before the Supreme Court only in consultation with Ministry of Law. Therefore, where the Chief Commissioner decides to contest an adverse judgment by filing special leave petition before the Supreme Court, they should send the proposal to the Board for further processing. 5. These instructions will apply to litigation under other direct taxes also e.g., wealth-tax, gift-tax, estate duty, etc. 6. These monetary limits will not apply to writ matters. 7. This instruction will come into effect from 1-4-2000. Sd/ (Anuradha Goyal) Dy. Secretary to the Government of India" 3. The issue in the present case being one of some potential general significance in relation to the policy decision taken by the Board not to raise questions of law where the effect is less than the amount prescribed in the instructions issued by the Board with a view to reduce litigations before the High Courts and the Supreme Court, we propose to dispose of this appeal on this short contention canvassed by the learned counsel for the respondent without examining the merits of the question of law sought to be raised in this appeal. 3. The issue in the present case being one of some potential general significance in relation to the policy decision taken by the Board not to raise questions of law where the effect is less than the amount prescribed in the instructions issued by the Board with a view to reduce litigations before the High Courts and the Supreme Court, we propose to dispose of this appeal on this short contention canvassed by the learned counsel for the respondent without examining the merits of the question of law sought to be raised in this appeal. 4. The learned counsel for the respondent-assessee also relied upon decision in *Navnit Lal C. Javen v. K.K. Sen*, AAC (1965) 56 ITR 198 (SC), *Ellerman Lines v. CIT* (1971) 82 ITR 913 (SC) and *K.P. Varghese v. ITO* (1981) 131 ITR 597 (SC) to contend that the circular issued by the Board is binding on all the officers and Commissioners and in terms of which he sought to examine the question of necessity of filing of present appeal. 4. The learned counsel for the respondent-assessee also relied upon decision in *Navnit Lal C. Javen v. K.K. Sen*, AAC (1965) 56 ITR 198 (SC), *Ellerman Lines v. CIT* (1971) 82 ITR 913 (SC) and *K.P. Varghese v. ITO* (1981) 131 ITR 597 (SC) to contend that the circular issued by the Board is binding on all the officers and Commissioners and in terms of which he sought to examine the question of necessity of filing of present appeal. 5. It appears that despite about circular, the revenue has chosen to file present appeal knowing fully well that the corridors of the courts

are flooded with pending litigations. The presentation of this appeal is quite contrary to the instruction issued in the circular which is binding on the revenue. 5. It appears that despite about circular, the revenue has chosen to file present appeal knowing fully well that the corridors of the courts are flooded with pending litigations. The presentation of this appeal is quite contrary to the instruction issued in the circular which is binding on the revenue. 6. In the above view of the matter, considering the instructions issued by the Board, we are satisfied that the Board has taken policy decision not to file appeal in a type of case in hand and the same is binding on revenue. In the result, we dismiss this appeal on this count in limine with no order as to costs. 6. In the above view of the matter, considering the instructions issued by the Board, we are satisfied that the Board has taken policy decision not to file appeal in a type of case in hand and the same is binding on revenue. In the result, we dismiss this appeal on this count in limine with no order as to costs. OPEN