

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
UNDER ARTICLE 32 OF CONSTITUTION OF INDIA, 1950
PUBLIC INTEREST LITIGATION
WRIT PETITION (Civil) NO. 851 OF 2018

IN THE MATTER OF

Ashish Gopal Garg

E-mail address : aggarg77@yahoo.com

..... Petitioner

Versus

1. Union of India
Through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110001.

2. Central Board of Direct Taxes
Through its Chairman
Ministry of Finance,
Department of Revenue ,
North Block,
New Delhi - 110001.

3. Central Board of Indirect Taxes & Customs

Through its Chairman

Ministry of Finance,

Department of Revenue ,

North Block,

New Delhi - 110001.

..... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA, IN THE NATURE OF A PUBLIC
INTEREST LITIGATION, SEEKING AN APPROPRIATE
WRIT IN THE NATURE OF MANDAMUS, ORDER,
DIRECTION OR ANY OTHER APPROPRIATE WRIT(S)**

TO

THE HON'BLE CHIEF JUSTICE AND

THE OTHER COMPANION JUDGES OF

THE HONBLE SUPREME COURT OF INDIA

HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is an Advocate practising before this Hon'ble Court, is public spirited citizen, it a taxpayer and is always ready to contribute towards the cause of his fellow citizens and humanity at large. The e-mail address of Petitioner Ashish Gopal Garg is aggarg77@yahoo.com.

2. That the Respondent No. 2 and Respondent No. 3, who have issued the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, respectively, are the attached and subordinate offices under Department of Revenue of the Respondent No. 1.

3. That the Petitioner states that the present Writ Petition has been filed before his Hon'ble Court for writ in the nature of mandamus or other appropriate writ/writs order or direction to quash / set aside the said Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018.

4. That the Petitioner challenges the Circular No. 3/2018 dated 11.07.2018 issued by the Respondent No. 2 (Central Board of Direct Taxes) and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by the Respondent No. 3 (Central Board of Indirect Taxes & Customs), whereby the Respondents have increased / revised the threshold monetary limits for filing Departmental Appeals before ITAT/CESTAT and High Courts and Appeal / SLPs before Supreme Court.

5. That the Respondents have, by the said Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, also proposed to withdraw the cases already

pending before the ITAT/CESTAT, High Courts and the Supreme Court prior to 11.07.2018, based on the revised monetary limit, thereby give effect to the said Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, retrospectively.

6. That by opting to withdraw the cases pending before the ITAT / CESTAT, High Courts and Supreme Court filed before 11.07.2018, on the basis of revised threshold monetary limits for filing Departmental Appeals at various levels / fora, which has been increased / revised through the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, the Respondents have made the Circular dated 11.07.2018 and Instruction dated 11.07.2018 effective with retrospective effect and have also thereby done away with their liability to recover the legally recoverable amount which is due and payable by the defaulting assesses prior to the date of issue of the Circular and Instruction dated 11.07.2018.

7. That there is no drastic change in the economic condition in the country since 10.12.2015 (i.e. the date on which the Circular No. 21/ 2015 dated 10.12.2015, by which the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court was increased / revised immediately prior to

11.07.2018, was issued) so that the threshold monetary limits can be increased by 400 % (four times) for filing appeal before Supreme Court, by 250 % (two and half times) for filing appeal before High Courts and by 200 % (two times) for filing appeal before Appellate Tribunals, within a span of two and half years from 10.12.2015 i.e. the date on which the last circular was issued.

8. That there is an immediate need for stay of the said Circular No. 3/2018 dated 11.07.2018 issued by the Respondent No. 2 (Central Board of Direct Taxes) and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by the Respondent no. 3 (Central Board of Indirect Taxes & Customs).

9. That pursuant to the issuance of the said Circular No. 3/2018 dated 11.07.2018 issued by the Respondent No. 2 (Central Board of Direct Taxes) and the Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by the Respondent No. 3 (Central Board of Indirect Taxes & Customs), the Respondents would now withdraw the cases pending before the ITAT / CESTAT, High Courts and Supreme Court, which have been filed before 11.07.2018, on the basis of revised / increased threshold monetary limits for filing Departmental Appeals at various levels / fora as per the Circular and Instruction dated 11.07.2018, thereby giving effect to the said Circular and Instruction dated 11.07.2018, retrospectively.

10. That if the Respondents are permitted to give effect to the the said Circular and Instruction dated 11.07.2018 retrospectively, there will be a huge loss of revenue, as the actions proposed to be taken and the cases proposed to be withdrawn, cannot be undone and the status quo ante cannot be restored.

11. That the Respondent No. 3 (Central Board of Indirect Taxes & Customs, known as Central Board of Excise & Customs as on 17.08.2011) herein issued the Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011 whereby the monetary limit to file appeal before CESTAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised. A true typed copy of the Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011 issued by Central Board of Indirect Taxes & Customs is annexed herewith as **Annexure P-1** (Page 21 to 25).

12. That the Respondents No. 3 have, by the said Circular dated 17.08.2011, not proposed to withdraw the cases already pending before CESTAT, High Courts and Supreme Court prior to 17.08.2011, based on the increased / revised monetary limit, through the said Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011.

13. That the monetary limit increased / revised as per said Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011 has not been made effective retrospectively.

14. That the Respondent No. 2 (Central Board of Direct Taxes) herein issued the Instruction No. 5/2014 dated 10.07.2014 whereby the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised. A true typed copy of the Instruction No. 5/2014 dated 10.07.2014 issued by Central Board of Direct Taxes is annexed herewith as **Annexure P-2** (Page 26 to 32).

15. That the Respondents No. 2 have, in the said Instruction dated 10.07.2014, specifically mentioned that all pending cases filed before 10.07.2014 will be governed by the instructions on the subject, operative at the time when such appeal was filed. i.e. as per Instruction No. 3/2011 dated 09.02.2011 for appeal filed between 09.02.2011 to 10.07.2014.

16. That the monetary limit increased / revised as per said Instruction No. 5/2014 dated 10.07.2014 has not been made effective retrospectively rather it specifically mentions that the instructions (monetary limit) relevant on the date of filing of the

appeal will be continue to apply in such cases pending prior to 10.07.2014.

17. That the Respondent No. 2 (Central Board of Direct Taxes) herein issued the Circular No. 21/2015 dated 10.12.2015 whereby the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised. A true typed copy of the Circular No. 21/2015 dated 10.12.2015 issued by Central Board of Direct Taxes is annexed herewith as **Annexure P-3** (Page 33 to 39).

18. That the Respondents No. 2 have, by the said Circular dated 10.12.2015, also proposed to withdraw the cases already pending before the court of law or quasi judicial bodies prior to 10.12.2015, based on the increased / revised monetary limit, thereby give effect to the said Circular No. 21/2015 dated 10.12.2015, retrospectively.

19. That the Respondent No. 2 (Central Board of Direct Taxes) issued the Circular No. 3/2018 dated 11.07.2018, whereby the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised. A true typed copy of the Circular No. 3/2018 dated 11.07.2018 issued by Central Board of Direct Taxes is annexed herewith as **Annexure P-4** (Page 40 to 48).

20. That the Respondents No. 2 have, by the said Circular dated 11.07.2018, also proposed to withdraw the cases already pending before the court of law or quasis judicial bodies prior to 11.07.2018, based on the increased / revised monetary limit, thereby give effect to the said Circular No. 3/2018 dated 11.07.2018, retrospectively.

21. That the Respondent No. 3 (Central Board of Indirect Taxes & Customs) herein issued the Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 whereby the monetary limit to file appeal before CESTAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised. A true typed copy of the Instruction no. F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by Central Board of Indirect Taxes & Customs is annexed herewith as **Annexure P-5** (Page 49 to 51).

22. That the Respondent No. 3 have, by the said Circular dated 11.07.2018, also proposed to withdraw the cases already pending before the court of law or quasis judicial bodies prior to 11.07.2018, based on the increased / revised monetary limit, thereby give effect to the said Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, retrospectively.

23. That harping on the expected benefits of the above move, an official press release issued by Respondent No. 1 through Press Information Bureau, Government of India, Ministry of Finance, on 11th July, 2018 under the heading Major Steps taken for Reducing Tax Litigations, states that, “This is a major step in the direction of litigation management of both direct and indirect taxes as it will effectively reduce minor litigations and help the Department to focus on high value litigations.” A true typed copy of the official press release dated 11.07. 2018 issued by Respondent No. 1 through Press Information Bureau, Government of India, Ministry of Finance is annexed herewith as **Annexure P-6** (Page 52 to 53).

24. That in the said official press release dated 11.07. 2018, it was further stated that “In case of CBDT, out of total cases filed by the Department in ITAT, 34% of cases will be withdrawn. In case of High Courts, 48% of cases will be withdrawn and in case of Supreme Court 54% of cases will be withdrawn. The total percentage of reduction of litigation from Department’s side will get reduced by 41%.”

25. That in the said official press release dated 11.07. 2018, it was further stated that “Similarly, in case of CBIC, out of total cases filed by the Department in CESTAT, 16% of cases will be withdrawn. In case of High Courts, 22% of cases will be withdrawn

and in case of Supreme Court 21% of cases will be withdrawn. The total percentage of reduction of litigation from Department's side will get reduced by 18%.”

CAUSE OF ACTION:

26. That the Petitioner states that cause of action arose on 11.07.2018 when the Respondent No. 2 and Respondent No. 3, have issued the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, respectively, proposing therein to withdraw the cases already pending before the ITAT/CESTAT, High Courts and the Supreme Court prior to 11.07.2018, based on the revised monetary limit, thereby give effect to the said Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, retrospectively, resulting in huge loss of revenue and in turn affecting general welfare of public at large.

27. That the Petitioner states that cause of action continues till today in the entire country and it will be in the interest of the country that the said Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 is quashed / set aside.

28. That the Petitioner has not filed any other petition before any other court/tribunal/judicial forum pertaining to this issue. The Petitioner does not have any personal interest in the matter and the Petitioner is not involved in any civil, criminal or revenue litigation which has or could

have a legal nexus with the issue involved in this Public Interest Petition. The Petitioner has not moved to the concerned Government Authority for any relief(s) sought in the present petition.

29. GROUNDS:

That the Petitioner has approaches this Hon'ble Court under Article 32 of the Constitution of India, for the reliefs prayed for herein, on the following grounds, which are without prejudice to one another :

A. Because through the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 issued by the Respondent No. 2 and Respondent No. 3, respectively, is violative of fundamental rights enshrined under Article 14, 19 and 21 of the Constitution of India.

B. Because by opting to withdraw the cases pending before the ITAT / CESTAT, High Courts and Supreme Court filed before 11.07.2018, on the basis of revised threshold monetary limits for filing Departmental Appeals at various levels / fora, which has been increased / revised through the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018, the Respondents have made the Circular dated 11.07.2018 and Instruction dated 11.07.2018 effective with retrospective effect and have also thereby done away with their liability to recover the legally recoverable amount which is due and payable by the defaulting assesses prior to the date of issue of the Circular and Instruction dated 11.07.2018.

C. Because the Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011 issued by the Respondent No. 3 (Central Board of Indirect Taxes & Customs, known as Central Board of Excise & Customs as on 17.08.2011) herein, whereby the monetary limit to file appeal before CESTAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised, has not proposed to withdraw the cases already pending before CESTAT, High Courts and Supreme Court prior to 17.08.2011, based on the increased / revised monetary limit, through the said Instruction No. F.No.390/Misc./163/2010-JC dated 17.08.2011.

D. Because the Instruction No. 5/2014 dated 10.07.2014 issued by the Respondent No. 2 (Central Board of Direct Taxes) herein, whereby the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court has been increased / revised , has specifically mentioned that all pending cases filed before 10.07.2014 will be governed by the instructions on the subject, operative at the time when such appeal was filed. i.e. as per Instruction No. 3/2011 dated 09.02.2011 for appeal filed between 09.02.2011 to 10.07.2014. The monetary limit increased / revised as per said Instruction No. 5/2014 dated 10.07.2014 has not been made effective retrospectively rather it specifically mentions that the instructions (monetary limit) relevant on the date of filing of the appeal will be continue to apply in such cases pending prior to 10.07.2014.

E. Because the Respondents cannot burden the tax payers with additional burden by not recovering the money due and recoverable from defaulting assesses for the dates prior to 11.07.2018 and which the Respondents are duty bound to recover.

F. Because if the said Circular and Instruction dated 11.07.2018 is made effective from retrospective effect, there will be discrimination between defaulting taxpayers. The set of defaulting taxpayers whose cases have already been disposed against them (defaulting taxpayers) prior to issuance of Circular and Instruction dated 11.07.2018 will be discriminated as compared to the defaulting taxpayers whose cases are still pending and which will be withdrawn by the Respondents due to increase in the threshold monetary limits for filing Departmental Appeals at various levels / fora as per Circular and Instruction dated 11.07.2018.

G. Because there is no drastic change in the economic condition in the country since 10.12.2015 (i.e. the date on which the Circular No. 21/ 2015 dated 10.12.2015, by which the monetary limit to file appeal before ITAT and High Courts and appeal / SLPs before Supreme Court was increased / revised immediately prior to 11.07.2018, was issued) so that the threshold monetary limits can be increased by 400 % (four times) for filing appeal before Supreme Court, by 250 % (two and half times) for filing appeal before High Courts and by 200 %

(two times) for filing appeal before Appellate Tribunals, within a span of two and half years from 10.12.2015 i.e. the date on which the last circular was issued.

H. Because the drastic exorbitant increase in the threshold monetary limits for filing Departmental Appeals at various levels, that too different percent of change / increase at different fora, is not correlated to any justified criteria since economic condition will have same effect on threshold monetary limits for filing Departmental Appeals at different judicial fora.

I. Because Rs. One Crore threshold monetary limit to withdraw a case or not to recover the amount due and payable by the defaulting taxpayers is still a very huge amount in Indian scenario and should not be enhanced to such high limit when the Respondent No.1 itself admits that there are less than 10 Lakh taxpayers in India who declare their income to be more than Rs. Twenty five Lakh, leave alone the tax liability.

J. Because there should be some germane rational reason to ascertain the threshold monetary limits for filing Departmental Appeals at various levels / fora and the said threshold monetary limits should not be increased in drastic exorbitant manner.

K. Because in the same span of time (i.e. from 10.12.2015 to 11.07.2018), the slab of Income Tax payable by the taxpayers have remained almost the same and inflation is at a very high rate thereby, in effect, making the tax liability of the assesses very high.

L. Because there is no reason for drastic exorbitant increase in the threshold monetary limits for filing Departmental Appeals at various levels / fora, as the said cases can be defended in the court of law at a reasonable cost in comparison to the revenue sought to be ignored by Respondents.

M. Because the said increase in the threshold monetary limits for filing Departmental Appeals at various levels / fora is, in effect, much more than the monetary limits mentioned in the Circular and Instruction dated 11.07.2018 since the monetary limits mentioned therein is specifically excluding the interest portion and when the case reaches the court of law or quai judicial body, the effective liability/ amount of money to be recovered increases substantially if the interest portion is added to the amount of money to be recovered (sometimes interest portion comes to more than the liability itself).

N. Because when a policy decision is taken to withdraw a case beyond a certain threshold monetary limits or not to file Appeals beyond the said threshold monetary limits, it will discriminatory, qua

the assesses who have filed appeals against revenue on the same threshold monetary limits of tax effect, to defended the cases filed against the Respondents.

O. Because such drastic increase in the threshold monetary limits for filing Appeals at various levels / fora will result in loss of revenue and will be a premium to tax evaders.

PRAYER

In view of the above submissions it is most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

(I) Issue writ in the nature of mandamus or other appropriate writ / writs order or direction and quash the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018; and /or,

(II) Issue writ in the nature of mandamus or other appropriate writ / writs order or direction to the Respondents No. 1 to 3 that the Circular No. 3/2018 dated 11.07.2018 and Instruction No. F.No.390/Misc./116/2017-JC dated 11.07.2018 should not made effective with retrospective effect and the cases pending before the ITAT / CESTAT, High Courts and Supreme Court, which have been filed before 11.07.2018, should not be withdraw on the basis of revised / increased threshold monetary limits for filing

Departmental Appeals at various levels / fora as per the Circular and Instruction dated 11.07.2018; and / or,

(III) Issue writ in the nature of mandamus or other appropriate writ / writs order or direction to the Respondents No. 1 to 3 that they should ascertain and modify the threshold monetary limits for filing Departmental Appeals at various levels / fora, on the basis of some germane rational reason and there should not be drastic exorbitant increase in the said threshold monetary limits.

(IV) Pass such order and orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS DUTY BOUND SHALL EVER PRAY.

Drawn By
Rakesh Garg
Advocate

Filed By

Shweta Garg
Advocate for Petitioner

Drawn on : 16.07.2018
Filed on : 18.07.2018