

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.215/NAG/2017
(ASSESSMENT YEAR 2014-15)

Income Tax Officer, Ward-4(2), Nagpur (APPELLANT)	Vs.	Sh. Suresh Rochaldas Kewalramani, 73, Whole Sale Cloth Market Gandhibagh, Nagpur PAN:AASPK 5750F (RESPONDENT)
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ITA No.149/NAG/2018
(ASSESSMENT YEAR 2013-14)

Asst. CIT, Central Circle-1(1), Nagpur-440 001 (APPELLANT)	Vs.	Sh. Sureshchand M. Agrawal 150, Agrawal Building, Ravi Nagar Chowk, Nagpur-440 001 PAN:ABFPA 6839D (RESPONDENT)
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Cross Objection No.10/NAG/2018
(Arising out of ITA No.149/Nag/2018)
(ASSESSMENT YEAR 2013-14)

Sh. Sureshchand M. Agrawal 150, Agrawal Building, Ravi Nagar Chowk, Nagpur-440 001 PAN:ABFPA 6839D (APPELLANT)	Vs.	Asst. CIT, Central Circle-1(1), Nagpur-440 002 (RESPONDENT)
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ITA No.209/NAG/2017
(ASSESSMENT YEAR 2014-15)

Income Tax Officer, Ward-4(3), Nagpur -440 001 (APPELLANT)	Vs.	Smt. MangalaUdapure Cotton Market Subhash Road, Shaniwari Nagpur-440 018 PAN:AAEPU 3996K (RESPONDENT)
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ITA No.143/NAG/2018
(ASSESSMENT YEAR 2013-14)

Asst. CIT Central Circle-1(1), Nagpur-440 001 (APPELLANT)	Vs.	Sh. Jitendra S. Agrawal 150, Agrawal Building Ravi Nagar Chowk Nagpur-440 001 PAN:ABLPA 5696G (RESPONDENT)
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Cross Objection No.11/NAG/2018
(Arising out of ITA No.143/Nag/2018)
(ASSESSMENT YEAR 2013-14)

Asst. CIT Central Circle-1(1), Nagpur--440 001 (APPELLANT)	Vs.	Sh. Jitendra S. Agrawal 150, Agrawal Building Ravi Nagar Chowk Nagpur-440 001 PAN:ABLPA 5696G (RESPONDENT)
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ITA No.144/NAG/2018
(ASSESSMENT YEAR 2015-16)

Asst. CIT Central Circle-1(1), Nagpur-440 001 (APPELLANT)	Vs.	Sh. Jitendra S. Agrawal 150, Agrawal Building Ravi Nagar Chowk Nagpur-440 001 PAN:ABLPA 5696G (RESPONDENT)
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MA No.04/NAG/2020
(Arising out of ITA No.89/Nag/2018)
(ASSESSMENT YEAR 2014-15)

Income Tax Officer, Ward-1(2), Nagpur--440 001 (APPELLANT)	Vs.	Sh. Gopal Gaurishankar Agrawal (HUF) Kachangiri Apartment Buty Road Sitabuildi, Nagpur-440 012 PAN:AACHG 3189G (RESPONDENT)
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Appellant by	Sh. Kapil Hirani, CA
Respondent by	Sh. Vitthal M. Bhosale, Jt. CIT

Date of Hearing	07.06.2022
Date of Pronouncement	09.06.2022

ORDER

PER BENCH:

In the above Appeals, the common issue arises for consideration is that, in view of the Circular No.23/2017 dated 06.09.2019 issued by CBDT, whether CBDT Circular No.17/2019 dated 08/08/2019 fixing the monetary limit for filing appeal before the Tribunal by the Department is applicable to the pending Appeals filed by the Revenue (filed prior to 06/09/2019), wherein the subject matter of the addition made under section 68 of the Income tax Act treating the shares as Penny Stocks. Since, the common question arises for consideration in all the above appeals and Miscellaneous Application, same are heard together.

2. In all the appeals, the Department has challenged the order of the CIT (A), wherein the Ld. CIT (A) has deleted the addition made by the Ld. AO on account of unexplained cash credit u/s 68 of the Act of the realized sale of shares as Penny Stocks. All the above appeal are filed prior to 06/09/2019 and the tax effect in all the Appeals are below 50,00,000/-. The details of the respective appeal are here under:

Sr. No	Respondent	ITA No.	AY	ITA filed on	Relief Granted	Tax Effect including interest
1.	Suresh R. Kewalramani	ITA 215/NAG/2017	2014-15	16.06.2017	57,78,803	30,75,980
2.	Sureshchand M. Agrawal	ITA 149/NAG/2018	2013-14	31.05.2018	73,84,607	34,44,680
3.	Smt. Mangala Udapure Cotton Market	ITA 209/Nag/2017	2014-15	14.06.2017		35,89,820
4.	Jitendra S. Agrawal	ITA 143/NAG/2018	2013-14	31.5.2018	80,64,004	39,12,860
5.	Jitendra S. Agrawal	ITA 144/NAG/2018	2015-16	04.06.2018	88,46,984	41,77,400
6.	Sh. Gopal G. Agrawal (HUF)	MA 4/NAG/2020 (ITA 89/NAG/2018)	2014-15	13.04.2018	89,73,448	36,62,750

3. The Ld. Counsel for the Assessee submitted that, in all the above appeals filed by the Revenue, the tax effect is less than 50,00,000/-, by following CBDT Circular No.17/2019 dated 08.08.2019, the above appeals deserves to be dismissed. Further, submitted that, the Circular No.23/2019 dated 06/09/2019, wherein the CBDT has issued a memorandum for exception to the monetary limits for filing appeal specified in any circular issued under section 268A of the Act is having prospective effect, therefore the present Appeals filed by the Revenue deserves to be dismissed.

4. Per contra, the Ld. Departmental Representative ("Ld. DR" for short) submitted that, the Circular No.23/2017 dated 06.09.2019 issued by CBDT has categorically excluded Penny stock cases, which is applicable even to the pending Appeals and the same is having retrospective effect. The said circular

No. 23/2017 has been issued since the organised tax evasion came was noticed through bogus STCG/STCG from Penny Stock. Therefore, the monetary limit mentioned in the CBDT Circular No.17/2019 dated 08/08/2019 issued u/s 268A of the Act is not applicable to the present Appeals and submitted that, the Appeals may be heard and decided on the merit.

5. We have heard the Ld. Counsel for the Assessee and also the Ld. DR at length, perused the material on record and gave our thoughtful consideration. It is not in dispute that in all the above appeals are emanating from the action of the AO treating the shares as 'Penny Stock' and making the addition, which have been deleted by the Ld. CIT (A). Aggrieved by the orders of the CIT (A), the Revenue has filed the respective above Appeals between 06/06/2017 to 13/04/2018. The tax effect including interest in all the above appeals are below Rs.50,00,000/-.

6. As per the CBDT Circular No.17/2019 dated 08/08/2019, the monetary limit for filing the appeal before the Tribunal has been enhanced from Rs.20,00,000/- to Rs.50,00,000/- and further the CBDT has clarified vide letter dated 20.08.2019 that said Circular No.17/2019 is applicable to the pending the appeals. Further the another Circular No.23/2019 dated 06/09/2019 has been issued by the CBDT, wherein CBDT has made certain exclusion by giving exception to the monetary limit for filing appeals specified in any Circular issued u/s 268A of the Act. As per the circular No. 23/2019, 'the Appeal may be filed on merit as an exception to the said circular, where Board, by way of

special order direct filing appeal on merit in cases involved in organised tax evasion activity'. Thus, it is clear from the said Circular is that from the date of issuance of said circular, the Department has to file the appeal irrespective of monetary limit for filing appeals specified in any Circular issued u/s 268A of the Act after obtaining the special order directing to file the appeal by the Board. In other words, the said Circular No.23/2019 shall have prospective effect and the Appeal shall be filed only after obtaining the special order from the Board. In the present Appeals, all the Appeals were filed prior to issuance of the Circular No.23/2019 and therefore the question of Board issuing Special Order for filing Appeal doesn't arise.

7. The issue in hand has come up before the Tribunal for consideration the case of DCIT vs. Surendra Kumar Patni in MA No.68/JP/2019 (Arising out of ITA No.535.JP/2019), wherein the Jaipur Bench vide order dated 02-09-2019 held that, the CBDT Circular No.23/2019 should be read along with special order of CBDT dated 16.09.2019 in respect of appeal filed pursuant to such special order and thus the CBDT Circular No.23/2019 apply to all the appeals filed on or after 16/09/2019 by the Revenue wherein the tax effect may be low but the appeal can still be filed by the Revenue on merits.

8. The similar issue has also been dealt and decided by the Hon'ble Gujrat High Court in the case of Anand Natwar Lal Sharda in R/Special Civil Application No.7520 of 2021 vide order dated 24.06.2021, the Hon'ble High Court held that, the Circular No.23/2019 dated 06.09.2019 shall have

prospective effect and upheld the order of the Tribunal in dismissing the M.A. filed by the revenue. The relevant portions are as under:

"7. From the bare reading of the Circular dated 06.09.2019, it appears that the CBDT had decided that notwithstanding anything contained in any Circular issued under Section 268A specifying C/SCA/7520/2021 CAV JUDGMENT DATED: 24/06/2021 monetary limits for filing of departmental appeals before the Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/ Appeals before the Supreme Court, appeals may be filed on merits as the exception to the said Circular, where the Board by way of special order direct filing of appeals on merits in cases involved in organized tax evasion activity. The Office Memorandum dated 16.09.2019 was issued pursuant to the said circular dated 06.09.2019 stating inter alia that by virtue of the powers of CBDT under Section 268A of the Income Tax Act, the monetary limits fixed for filing appeals before ITAT/High Court and SLPs/Appeals before Supreme Court shall not lie in case of assessees claiming bogus LTCG/STCL through penny stocks and appeals/ SLPs in such cases appeals shall be filed on merits. There is nothing to suggest in the said Circular/ Office Memorandum that they shall have retrospective effect. On the contrary, from the language employed in the said Circular dated 06.09.2019, it clearly transpires that the appeals may be filed on merits as an exception to the other Circulars issued earlier, where the Board by way of special order direct filing of Appeals on merits in the cases involved in organized tax evasion activity. Therefore, by virtue of the said Circular dated 06.09.2019, the appeals could be filed on merits, irrespective of the monetary limits fixed in earlier cases, if the Board passes special order for filing appeals in cases involving tax evasion activity. The said Circular speaks about the Appeals that may be filed with the special order of the Board in future, and hence could not be C/SCA/7520/2021 CAV JUDGMENT DATED: 24/06/2021 construed to have retrospective effect. The Tribunal interpreting the said Circular/ Office Memorandum in the impugned order has rightly observed that in respect of each case or category of cases whether an appeal should be filed in view of the Circular dated 06.09.2019 or not shall be decided by the Board by way of special order, and thus a specific requirement of issuance of special order by CBDT is a must. The Tribunal

therefore has rightly held that the CBDT Circular No. 23/2019 dated 06.09.2019 should be read along with the Office Memorandum dated 16.09.2019, in respect of the appeals to be filed pursuant to such special orders of CBDT and shall apply to all the appeals filed on or after 16.09.2019 by the revenue, where the tax effect may be low but the appeal could still be filed by the revenue on merits.

8. *The appeals including the appeal in case of the respondent, which were disposed of by the Tribunal vide the common order dated 14.08.2019 could not be said to have been filed pursuant to the special order of the CBDT in view of the Circular dated 06.09.2019 read with the Office Memorandum dated 16.09.2019, and therefore it could not be said that the Tribunal had committed any mistake apparent from the record, which would require rectification as envisaged in Section 254(2) of the said Act. C/SCA/7520/2021 CAV JUDGMENT DATED: 24/06/2021."*

9. In view of the above said binding decisions, we are of the opinion that the CBDT Circular No.23/2019 dated 06/09/2019 issued by CBDT shall have prospective effect and the same is not applicable to the present appeals filed by the Revenue prior to 06.09.2019. Accordingly applying the CBDT Circular No.17/2019 dated 08/08/2019 for fixing the monetary limit for filing appeal before the Tribunal by the Department, we dismiss the Appeal in ITA No. 215/Nag/2017, ITA No. 149/Nag/2018, ITA No.209/Nag/2017, 143 & ITA No. 144/Nag/2018, for having low tax effect.

10. In view of dismissal of the Appeals, the C.O. No.10/Nag/2018 (arising out of ITA No. 149/Nag/2018)and C.O. No.11/Nag/2018 (arising out of ITA No. 143/Nag/2018) are also dismissed for having become in-fructuous.

11. In view of the above findings and the decision made, the Miscellaneous Application No. 04/Nag/2020 filed by the Revenue in ITA No. 89/Nag/2018 is also dismissed.

Order pronounced in the Open Court on this 9th Day of June, 2022.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Dated: 09/06/2022

PK/Sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
6. Guard File

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Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur