

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.432/Ind/2023**  
**(Assessment Year: 2013-14)**

ACIT Bhopal	vs.	Mapaex Remedies Pvt. Ltd. Room No.213, Aayakar Bhawan Arera Hills, Hoshangabad Road, Bhopal
(Appellant / Revenue)		(Respondent/ Assessee)
<b>PAN: AALPU0989K</b>		
Assessee by	Shri Ram Kumar Yadav, CIT-DR	
Revenue by	Shri Sumit Nema, Sr. Adv. With Shri Gagan Tiwari Adv.	
Date of Hearing	05.09.2024	
Date of Pronouncement	05.09.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by Revenue is directed against the order dated 08.09.2023 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2013-14. The revenue has raised the following grounds of appeal:

*“1. Whether on the facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the addition amounting to Rs. 1,06,56,551/- as*

*disallowance of deduction u/s 80IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 07.12.2018 merely relying upon the judgement of ITAT in assessee's own case for A.Y. 2014-15 bearing ITA No. 214/Ind/2019 dated 26.12.2022 and not even discussing the facts of the case?"*

*2."Whether on the facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the addition amounting to Rs. 1,06,56,551/- as disallowance of deduction u/s 80IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 07.12.2018 merely relying upon the judgement of ITAT in assessee's own case for A.Y. 2014-15 bearing ITA No. 214/Ind/2019 dated 26.12.2022, however, i the ITAT held in the captioned order that the AO has disallowed deduction for the first time during the A.Y. 2014-15 even without pointing out any change in the activity of assessee or the applicable law and it is matter of fact that the AO had comprehensively recorded the reasoning for disallowance of deduction u/s 801C of the Act by establishing that the assessee is a service provider and not a manufacturer.?"*

*3. "Whether on the facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the addition amounting to Rs. 1,06,56,551/- as disallowance of deduction u/s 80IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 07.12.2018 and circumvented the provisions of section 801C of the Act by allowing the deduction u/s 80IC of the Act to a service provider, however, it is matter of fact that deduction u/s 80IC is not applicable to service providers as the deduction is aimed at businesses engaged in manufacturing or production activities and Service providers, whose primary business activity involves rendering services, do not fall within the scope of Section 80IC of the Act?"*

*4. "Whether on facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the addition amounting to Rs. 1,06,56,551/- as disallowance of deduction u/s 80IC of the Act made in the order u/s 143(3)*

*r.w.s. 147 of the Act dated 07.12.2018 and circumvented Golden Rule of Interpretation, which is widely adopted as Rules for interpretation of the documents in India by the Apex Court in many cases, some of the examples are Ramji Missar v. State of Bihar and U. P. Bhoodan Yagna Samiti v. Brij Kishore, by misinterpreting the plain and lucid meaning of section 80IC of the Act and allowing deduction u/s 80IC to a service provider, however the same is available only for taxpayers involving in manufacturing activities.?"*

5. *"Whether on facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the addition amounting to Rs. 1,06,56,551/- as disallowance of deduction u/s 80IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 07.12.2018 and circumvented the intention of legislature towards deduction u/s 80IC of the Act, by misinterpreting the plain and lucid meaning of section 80IC of the Act and allowing deduction u/s 80IC to a service provider, however the same is available only for taxpayers involving in manufacturing activities and Service providers, whose primary business activity involves rendering services, do not fall within the scope of Section 80IC.?"*

6. *"Whether on the facts & circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has deleted the captioned addition by relying upon the judgement of ITAT in ITA No. 214/Ind/2019 dated 26.12.2022, which is ipso facto established to be perverse in so much so as the ITAT has circumvented the circumvents the judgement passed by the Apex Court in the case of BRITISH PAINTS INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX, wherein it is held by the Apex Court that all the income offered and expenditure/deduction booked by the taxpayer in that assessment year shall be carefully examined by the AO in order to ascertain that the books of the assessee discloses the correct income and the AO is not bound to allow a deduction which is unwarranted in the case of the assessee merely on the basis of the claim of the assessee that the same deduction was allowed in earlier assessment year?"*

2. The total tax effect in the present appeal of the revenue is stated by the AO in form no.36 is Rs.34,57,517/-. The Ld. Sr. counsel for the assessee has objected to the maintainability of this appeal in view of the monetary limit for filing the appeal before the Tribunal as per CBDT, Circular no.3/2018 as well as circular no.5 of 2024 dated 15.03.2024. Ld. Sr. counsel has submitted that though the revenue has not stated in the grounds of appeal that this case falls in the exception however, an audit objection is mentioned in the authorization letter as well as copy of the audit objection is filed. He has relied upon the decision of this Tribunal in case of ITO vs. M.P. Police Sakh Sahakari Sanstha Maryadit 164 taxmann.com 412 and submitted that this tribunal has considered the latest circular of the CBDT Circular no.5 of 2024 dated 15.03.2024 and held that there is no exception in the said circular on account of revenue audit objection and therefore, the appeal filed by the department is not maintainable.

3. On the other hand, Ld. DR has submitted that since the case falls in the exceptions as per CBDT Circular no.3/2018 and therefore, at the time of filing the present appeal it was maintainable because of the exception provided in para 10(c) of the said circular. The subsequent circular no.5 of 2024 dated 15.03.2024 is not applicable retrospectively but only prospectively.

4. We have considered the rival submissions as well as relevant material on record. There is no dispute that tax effect in the appeal of the revenue is below monetary limit prescribed under CBDT

Circular no.3 of 2018 as well as subsequent circulars revising the monetary limit to Rs.50 lakhs for filing the appeal by department before Tribunal. The revenue has stated that this case falls in the exception as per para 10(c) of the CBDT circular and therefore, this appeal is required to be decided on merits instead of monetary limits. The AO has submitted vide letter dated 03.11.2023 that though the monetary limit for filing the appeal is Rs.50 lakhs as per CBDT circular no.17 of 2019 dated 08.08.2019 however, the department has accepted the revenue audit objection at the time of reopening of the assessment and therefore, this case falls in the exception clause as per para 10(c) of the CBDT Circular no.3/2018, dated 11.07.2018. It is pertinent to note that prior to circular no.5 of 2024 dated 15.03.2024 the revenue audit objection was one of the exceptions provided in para 10 of the circular no.3/2018 however, the CBDT has modified the exception clause vide circular no.5 of 2024 wherein there is no exception to the monetary limit on account of revenue audit objection. This Tribunal in case of ITO vs. M.P. Police Sakh Sahakari Sanstha Maryadit (supra) has considered this aspect in para 4 to 6 as under:

*“4. We have considered rival submissions as well as relevant material on records. The Assessing Officer has not disputed the fact that the tax effect for these two appeals are only Rs.3,23,712/- and Rs.3,13,567/- for the Assessment Year 2014-15 and 2015-16 respectively. Thus the tax effect in these two appeals are below the monetary limit prescribed in the Circular No.3/2018 as well as Circular No.17/2019 which is Rs.50 lakh for filing appeal before the Tribunal. The A.O in the report dated 02.07.2024 has taken a stand that though the tax effect is below the prescribed monetary limit provided in the above said circulars of CBDT but these cases fall under exception provided in para no.10(c) of Circular No.3/2018 being case of audit objections. It is pertinent to note that the CBDT has issued*

*the latest circular No.5/2024 dated 15.03.2024 and para 2 & 3 of the above circular reads as under:*

*“2. In supersession of the above referred communications issued by CBDT, the following may be noted in respect of departmental appeals to be filed before ITATs and HCs and SLPs/ appeals before SC:*

*3.1 Monetary limits given in paragraph 4 with regard to filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:*

- a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or*
- b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or*
- c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or*
- d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or*
- e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or*
- f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.*
- g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or*
- h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or*
- i. Where mandated by a Court's directions, or*
- j. Writ matters, or*
- k. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or*
- l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-*

- i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or
- ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise
- m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

3.2 Attention is drawn to Circular No. 8/2023 issued vide F.No. 279/Misc./M-93/2018-ITJ(Pt.) dated 31.05.2023 in respect of deferral of appeals u/s 158AB of the Act. Exceptions in such cases operate as follows:

- a. When judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' is contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.
- b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality".

5. Therefore, in this latest CBDT Circular there is no exception to the monetary limit regarding any audit objection. It is settled position that the CBDT circulars prescribing monetary limits for filing the appeals by the Department before the Tribunal/Hon'ble High Court/Hon'ble Supreme Court are also applicable on the pending appeals on the date of circular. The **Hon'ble Bombay High Court in the case of CIT V/s Madhukar K Inamdar HUF 318 ITR 149** has held in para 10 to 13 as under:

**“10.** At this juncture, it will be relevant to note that the CBDT has also issued a Circular on 5-6-2007 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.

**11.** 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 15-5-2008 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.

**12.** At this juncture, it will also be relevant to mention that it was necessary for the CBDT to put a caveat, while issuing instructions vide its Circular dated 5-6-2007, that the Appeals involving substantial question of

*law of recurring nature should not be withdrawn since provision like section 268A of the Income-tax Act was absent. Now, in view of insertion of the provision of section 268A by the Finance Act, 2008 with effect from 1-4-1999 in the Income-tax Act, 1961, no prejudice could be caused to the revenue even if the cases involving legal issues of recurring nature are withdrawn, since the newly inserted provision takes care of the adverse eventuality which could have been put against the revenue. The section 268A of the Act, reads as under :—*

*"268A. Filing of appeal or application for reference by income-tax authority.—*

*(1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.*

*(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—*

*(a) the same assessee for any other assessment year; or*

*(b) any other assessee for the same or any other assessment year.*

*(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.*

*(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.*

*(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly."*

**13.** *In the aforesaid backdrop, we are of the considered view that the Circular dated 15-5-2008 would be applicable to the cases pending before this Court either for admission or for final disposal and that it is binding on*

revenue. In this view of the matter, all these Appeals, having tax effect less than Rs. 4 lakhs, are dismissed with no order as to costs”.

6. Accordingly in view of the judgment of Hon’ble Bombay High Court in case of **CIT V/s Madhukar K Inamdar HUF (supra)**, the **CBDT Circular No.5/2024** is applicable in the present appeals filed on 27.2.2024 and consequently due to low tax effect the appeals of the revenue are not maintainable and liable to be dismissed. We order accordingly. Since the appeals of the department are dismissed due to low tax effect therefore, we do not proposed to go into the merits of the issue of allowability of deduction u/s 80P(2)(a)(i) of the Act”

5. Accordingly following earlier order of this Tribunal we hold that the appeal of the revenue is not maintainable due to low tax effect and liable to be dismissed. We order accordingly.

6. In the result, the appeal of the revenue is dismissed due to low tax effect.

Order pronounced in the open court on 05 .09.2024 immediately after conclusion of hearing.

**(B.M. BIYANI)**  
Accountant Member

**(VIJAY PAL RAO)**  
Judicial Member

**Indore, \_ 05 .09.2024**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary

ITANo.432/Ind/2023  
Mapaex Remedies Pvt. Ltd.

*Income Tax Appellate Tribunal  
Indore Bench, Indore*