

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT**  
**AND**  
**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.269/PUN/2024**  
**निर्धारण वर्ष / Assessment Year : 2016-17**

The Assistant Commissioner of Income Tax, Circle -1, Jalgaon	<b>Vs.</b>	Shri Sunil Ramnarayan Mantri, 173, Navi Peth, 2 <sup>nd</sup> Floor, Saraswati Bhavan, M.G. Road, Jalgaon – 425001  PAN : AAQPM9214J
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

**CO No.15/PUN/2024**  
**निर्धारण वर्ष / Assessment Year : 2016-17**

Shri Sunil Ramnarayan Mantri, 173, Navi Peth, 2 <sup>nd</sup> Floor, Saraswati Bhavan, M.G. Road, Jalgaon – 425001  PAN : AAQPM9214J	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle -1, Jalgaon
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Shri Sanket M. Joshi
Department by :	Shri Arvind Desai
Date of hearing :	24-10-2024
Date of Pronouncement :	29-11-2024

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the Revenue and Cross Objection filed by the assessee arise out of order dated 20.12.2023 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [**"CIT(A)/NFAC"**] pertaining to Assessment Year (**"AY"**) 2016-17.

2. The Revenue has raised the following grounds of appeal:-

"1. On facts and in circumstances of the case, the Ld. CIT-A erred in allowing the penalty of Rs.48,64,586/- u/s 271E of the Income Tax Act, 1961, levied on account of the assessee had contravened the provision of

section 269T by repaying of loan other than the account payee or demand draft. Therefore, assessee was liable to pay penalty under section 271E of IT Act 1961.

2. It is submitted that monetary limit of CBDT Circulars no. 17/2019 will not apply as penalty has been levied on observation of Audit Objection, which falls under exception 10(c) as laid down by the Board in Circular No. 3/2018 dated 11.07.2018 as amended by Board's letter dated 20.08.2019.

3. The appellant craves leave to add, alter, modify, delete amend any of the grounds with prior permission of the Hon'ble CIT, as per the circumstances of the case.

4. The appellant prays to file any of the addition evidence, with the permission of Ld. Pr. CIT-1, Nashik appropriate to the grounds taken in appeal.”

3. The assessee has raised the following grounds of appeal in cross objection :-

“1. The penalty order u/s 271E dated 12.03.2022 may be declared as null and void in law, in as much as, in the asst. order passed u/s 143(3) for A.Y.2016-17, the A.O. had not recorded any satisfaction regarding initiation of penalty proceedings u/s 271E and therefore, the penalty order u/s 271E in the instant case is not sustainable in view of the law laid down by Hon'ble Supreme Court in case of Jai Laxmi Rice Mills [379 ITR 521].

2. The penalty order u/s 271E dated 12.03.2022 may be declared as null and void in law, in as much as, the penalty proceedings u/s 271E were initiated much after completion of the asst. proceedings u/s 143(3) for A.Y.2016 17 and the said penalty proceedings were not initiated in the course of any proceedings before the A.O. and therefore, the penalty order u/s 271E in the instant case is not sustainable in view of the law consistently laid down by Hon'ble ITAT, Pune in various decisions.

3. The penalty order u/s 271E dated 12.03.2022 may be declared as null and void in law, in as much as, the penalty proceedings u/s 271E were initiated vide notice dated 17.08.2021 after substantial time lapse of 31 months after completion of the asst. proceedings u/s 143(3) vide order dated 26.12.2018 and therefore, the said penalty proceedings initiated after reasonable time limit were not maintainable in law.

4. The penalty order u/s 271E dated 12.03.2022 may be declared as illegal, in as much as, the penalty proceedings u/s 271E were initiated vide notice dated 17.08.2021 and thus, the time limit for passing penalty order u/s 275(1)(c) expired on 29.02.2022 and hence, the penalty order u/s 271E passed on 12.03.2022 is barred by limitation.”

4. The assessee has filed the cross objection with a delay of 03 days. After hearing both the sides, we condone the said delay.

5. Briefly stated the assessee is an individual. For the AY 2016-17, he filed his return of income on 16.10.2016 declaring total income of Rs.1,57,63,230/-. The case was selected for complete scrutiny under

CASS and the Ld. Assessing Officer (**“AO”**) completed the assessment u/s 143(3) of the Act on 26.12.2018 assessing the total income at Rs.2,15,53,035/- by making addition of Rs.52,83,945/- on account of income from house property and addition of Rs.5,05,860/- on account of low household withdrawals, to the income returned by the assessee. The assessee carried the matter in appeal before the Ld. CIT(A) who vide his order dated 20.12.2023 confirmed the above additions made by the Ld. AO.

6. In the meanwhile, the assessee's case was selected for Revenue audit. The Audit party observed that the assessee had contravened the provisions of section 269T of the Income Tax Act, 1961 (**the “Act”**) on account of repayment of loan other than account payee cheque or demand draft amounting to Rs.46,65,980/- on 29.07.2019. The Audit objection was accepted by the Ld. AO who after analyzing the audit report submitted by the assessee levied penalty of Rs.48,64,586/- u/s 271E of the Act on 12.03.2022 on account of violation of provisions of section 269T of the Act.

7. On appeal, the Ld. CIT(A) after considering the evidences / documents available on record, submissions of the assessee, judicial precedents on the issue and factual matrix of the case, deleted the penalty imposed u/s 271E of the Act observing that there is no contravention of section 269T of the Act as no loan has been repaid otherwise than by an account payee cheque.

8. Dissatisfied the Revenue is in appeal before the Tribunal and all the grounds of appeal relate thereto.

9. At the outset, the Ld. AR submitted that the appeal is not maintainable on account of low tax effect, however, the Ld. DR opposed the same submitting that the monetary limit of CBDT Circular No. 17 of 2019 will not apply as the penalty has been levied on observation of audit objection, which falls under the exception in para 10(c) as laid down by the CBDT in Circular No. 3/2018 dated 11.07.2018 as amended by Board's letter dated 20.08.2019. The Ld. DR argued that para 5 of Circular No. 09/2024 is given retrospective effect only to the enhanced monetary limit and not to the exceptions contained in para 3.1 and 3.2 of Circular No. 5 of 2024 and therefore, the appeal filed by the Revenue is maintainable.

10. The Ld. AR opposed the above contention of the Ld. DR and submitted that after issuance of Circular No. 9 of 2024 dated 17.09.2024 whereby the monetary limits for filing of the appeals by the Department before the ITAT, High Court and SLPs/appeals before the Supreme Court has been further enhanced, the exception of Circular No. 3 of 2018 dated 11.07.2018 are not applicable to pending appeals before the respective forum. He submitted that the CBDT Circular No. 5/2024 dated 15.03.2024 which has been issued in supersession to all the circulars of tax effect for filing the appeals by the Department does not contain an exception where the Revenue's audit objections has been accepted by the Department. He further submitted that Circular No. 09/2024 dated 17.09.2024 is applicable to all the pending appeals and appeals to be filed and there is no distinction drawn between the appeals to be filed and pending appeals. He drew our attention to the relevant para of the CBDT Circular No. 5/2024 dated 15.03.2024 which is reproduced below :

*"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.”*

11. He further drew our attention to para 5 of Circular No. 9/2024 dated 17.09.2024 which reads as *“The modifications shall come into effect from the date of issue of this Circular. This Circular will apply to SLPs/appeals to be filed henceforth in SC/HCs/Tribunal. It shall also apply to the SLPs/appeals pending before Supreme Court/High Courts/Tribunal, which may accordingly be withdrawn”.*

12. The Ld. AR relied on the decision of the Hon'ble Rajasthan High Court in bunch of cases; lead case being CIT Vs. Satish Kumar Agarwal and Others in D.B. Income Tax Appeal No. 8/2021 and Other connected matters dated 29.09.2024 and the decision of Indore Bench of Tribunal in the case of Income Tax Officer Vs. M.P. Police Sakh Sahakari Sanstha Maryadit (2024) 164 taxmann.com 412 (Indore-Trib.) in support of his claim.

13. We have heard the Ld. Representatives of the parties and perused the material on record. Tax effect of the appeal is Rs.48,64,586/- which is below the monetary limit prescribed in the Circular No. 17/2019 (Rs.50,00,000/-) as well as Circular No. 9/2024 (Rs.60,00,000/-) for filing the appeals before the Tribunal by the Department. It is the case of the Department that the penalty u/s 271E of the Act has been levied pursuant to the audit objections accepted by the Department and therefore the appeal falls within the exceptions carved out in Circular No. 3/2018 dated 11.07.2018 read with para 5 of Circular No. 9/2024 and para 3.1 and 3.2 of Circular No. 5/2024. On the other hand, the assessee's case is that Circular No. 3/2018 has been superseded by Circular No. 5/2024 and the exceptions contained in Circular No. 5/2024 and the enhanced monetary limit in Circular No. 9/2024 are applicable to the pending appeals before the Tribunal, wherein the exception clause on audit objection has been removed. The audit objection clause as an exception is not applicable to the present appeal by virtue of the revised exceptions provided in the latest Circular No. 5/2024 dated 15.03.2024 read with Circular No. 9/2024 dated 17.09.2024.

14. We have perused the decision of the Hon'ble Rajasthan High Court (supra) wherein the appeals filed by the Revenue are dismissed as not maintainable in view of the Circular No. 9/2024 under the similar set of facts and are inclined to agree with the assessee's contention. In this case the Hon'ble High Court considered the issue as to "*whether after issuance of Circular No. 9 of 2024 dated 17.09.2024, the exceptions of Circular 3 of 2018 are applicable to pending appeals*" and observed as under :

*"9. For dealing the issue, it would be pertinent to look into the language of the previous circulars. In Instruction No. 5 of 2008 dated 15.05.2008, Instructions No. 3 of 2011 dated 09.02.2011 and No. 5 of 2014 dated 10.07.2014, Para 11 in all three instructions was that these shall apply to the appeals to be filed on or after the date of issuance and the appeals filed earlier shall be governed by the instructions operating at the relevant time. Circular No. 21 of 2015 dated 10.12.2015 was issued in supersession of Instruction No. 5 of 2014. The monetary limit for filing the appeals was enhanced and para 8 stipulated exceptions for filing the appeal inspite of the low tax effect. Para 10 stated that the Circular will apply retrospectively and the pending appeals below specified monetary limit may be withdrawn/not pressed. Further that the appeals before the Supreme Court shall be governed by the instructions operative at the time of filing of these appeals.*

*10. Circular No.3 of 2018 dated 11.07.2018 superseded Circular No. 21 of 2015 dated 10.12.2015. The monetary limits were enhanced. In Para 10 four exceptions for filing appeals in case having tax effect less than specified*

monetary limits were set out. The exception in clause (c) of Para 10 is being relied upon by the department in this case.

11. Para 10(c) and 13 of circular 3 of 2018 are reproduced:-

Para 10(c)

“Where Revenue Audit objection in the case has been accepted by the Department”.

Para 13 :-

“This Circular will apply to SLPs/appeals/cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/ references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.”

12. From para 13, it is evident that the Circular had retrospective application and the appeals below specified monetary limits were to be withdrawn or not pressed.

13. Circular 3 of 2018 was modified by Circular 17 of 2019 dated 08.08.2019. The monetary limits were further enhanced and para 5 of the Circular was substituted. Para 4 of this Circular clarified that the modification shall apply with effect from the date of issue of the Circular.

14. Circular 3 of 2018 and Circular 17 of 2019 were superseded by Circular 5 of 2024 dated 15.03.2024. The monetary limits were enhanced and the exceptions for filing appeals inspite of low tax effect were in Para 3.1 & 3.2. The exception of audit objection having been accepted by department was no longer there. The Circular was made applicable to the appeals to be filed from the date of issue of the Circular.

Para 10 of the Circular is quoted below:-

“This issues under section 268A of the Act and shall come into effect from the date of issue of this Circular. This Circular will apply to SLPs/appeals to be filed henceforth before the SC/HCs/Tribunals.”

15. By Circular 9 of 2024 dated 17.09.2024, monetary limits specified in Circular 5 of 2024 were enhanced. The exceptions in Para 3.1 & 3.2 of Circular No.5 of 2024 were retained.

16. Para 5 of Circular 9 of 2024 is reproduced:- “The modifications shall come into effect from the date of issue of this Circular. This Circular will apply to SLPs/appeals to be filed henceforth in SC/HCs/Tribunal. It shall also apply to the SLPs/appeals pending before Supreme Court/High Courts/Tribunal, which may accordingly be withdrawn.”

Para 5 made this circular applicable to the appeals to be filed thereafter and also to the appeals pending before the Supreme Court, High Court and the Tribunal.

17. Circular 9 of 2024 albeit, enhanced the monetary limits but retained the exceptions in Para 3.1 & 3.2 of Circular 5 of 2024. From perusal of Para 5 of Circular 9 of 2024, it is evident that the circular shall apply to the appeals to be filed henceforth and also to the appeals pending before the Supreme Court, High Court and the Tribunal. Thereby making monetary limit specified in it and exceptions in Para 3.1 & 3.2 of Circular 5 of 2024 applicable to all the pending appeals. In other words, Circular 5 of 2024 was applicable

*prospectively but Circular 9 of 2024 while enhancing the monetary limit, retaining the exceptions of Circular 5 of 2024 made it applicable to the pending appeals also.*

*18. The contention of learned counsel for the appellant that the Circular give retro respective effect only to the monetary limit lacks merit. In case the argument is accepted, the result would be of adding words to the clear and plain language of Para 5 of Circular 9 of 2024.*

*19. The reliance of the counsel for the appellant on the exceptions carved out in Circular 3 of 2018 cannot be sustained. Circular 3 of 2018 was superseded by Circular 5 and the exceptions of Circular 5 with the enhanced monetary limits in Circular 9 of 2024 were made applicable to pending appeals.”*

15. The case of the assessee also finds support by the decision of Indore Bench of Tribunal (supra). The relevant observations and findings of the Tribunal reads as under :

*“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 ITA Nos.173&174/Ind/2024 M.P. Police Sakh Sahakari Sanstha Mardiyadit 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."*

16. In light of the above discussion and respectfully following the decision of the Hon'ble Rajasthan High Court (supra) and Indore Bench of Tribunal (supra) and in the absence of any contrary material and judicial precedent brought on record by the Revenue, we dismiss the appeal of the Revenue as not maintainable on account of low tax effect.

17. In the result, the appeal of the Revenue is dismissed.

18. Since the Revenue's appeal is dismissed as not maintainable on account of low tax effect vide our order of even date, the Cross Objections filed by the assessee becomes infructuous and are dismissed as such.

19. To sum up, the appeal of the Revenue in ITA No. 269/PUN/2024 and Cross Objection of the assessee in CO No. 15/PUN/2024 are dismissed.

**Order pronounced in the open court on 29<sup>th</sup> November, 2024.**

Sd/-  
(R.K. Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> November, 2024.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune