

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7520 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE BELA M. TRIVEDI

and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) AHMEDABAD
 Versus
 ANAND NATWARLAL SHARDA

Appearance:
 MR M.R. BHATT, SENIOR ADVOCATE FOR MRS MAUNA M BHATT(174)
 for the Petitioner(s) No. 1
 for the Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI
and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

Date : 24/06/2021

CAV JUDGMENT
(PER : HONOURABLE MS. JUSTICE BELA M. TRIVEDI)

1. The petitioner- The Principal Commissioner of Income Tax

(Central) Ahmedabad, has filed the present petition under Article 226/227 of the Constitution of India challenging the order dated 09.09.2020 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as “the Tribunal”) in M.A. No. 77/AHD/2020 in ITA No. 1274/AHD/2019 (Annexure A) filed by the petitioner under Sections 254(2) of the Income Tax Act, 1961 (hereinafter referred to as “the said Act”), seeking prayer to recall the order dated 14.08.2019 passed by the Tribunal in ITA No. 1274 of 2019 and others. The Tribunal vide the impugned order dated 09.09.2020 has dismissed the said M.A. No. 77 of 2020 filed in ITA No. 1274 of 2019 along with the other Miscellaneous Applications filed by the petitioner (original applicant) holding that there was no mistake apparent on the face of record which could be rectified within the narrow compass of Sections 254(2) of the said Act.

2. The petitioner had filed the appeal being ITA No. 1274 of 2019 challenging the order dated 01.05.2019 passed by the CIT (Appeals), by which the CIT (Appeals) had allowed the Appeal filed by the respondent -assessee challenging the assessment order dated 24.12.2018 passed by the Assessing Officer. The Tribunal vide the order dated 14.08.2019 dismissed the said Appeal along with other 627 Appeals on the ground that the Tax Effect involved in all the said appeals did not exceed Rs.50,00,000/- in each of the

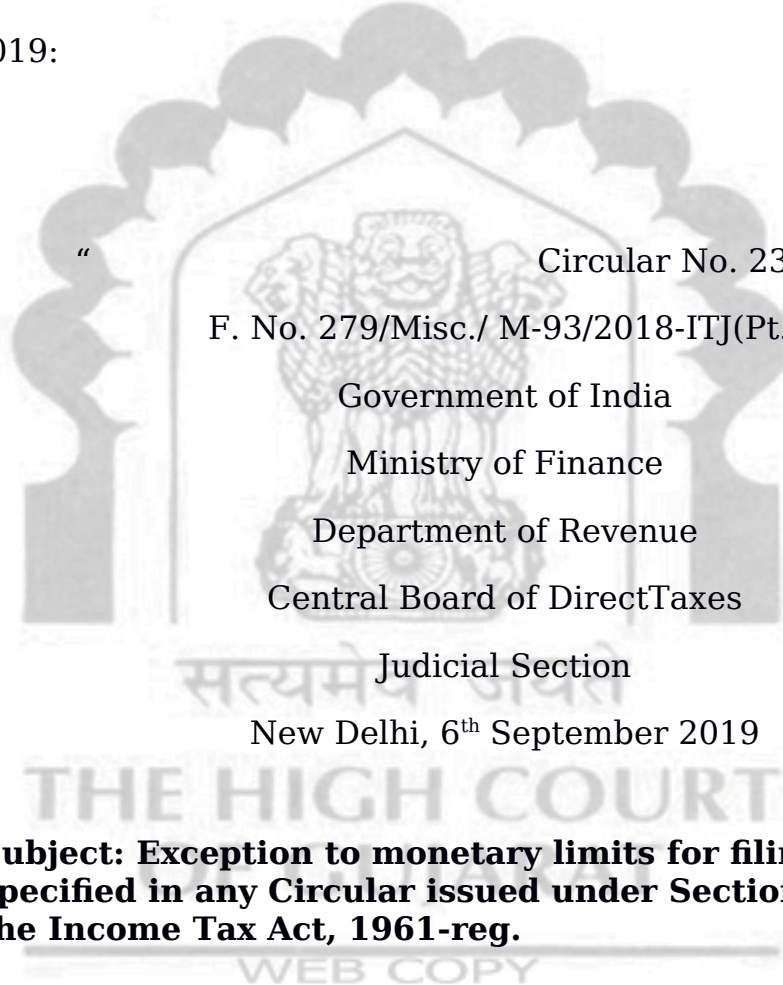
Appeals, in view of the circular issued by the CBDT on 08.08.2019, with clarification that the appellant (i.e. the petitioner herein) shall be at liberty to point out the cases which were wrongly included in the Appeals so summarily dismissed, either owing to wrong computation of tax effect or owing to such cases being covered by the permissible exceptions or for any other reason. The petitioner filed Miscellaneous Applications including M.A. No. 77 of 2020 in case of the respondent, under Section 254(2) of the said Act, on the ground that the case was covered under the exception carved out under the CBDT Circular No. 23 of 2019 dated 06.09.2019. The Tribunal vide the impugned order dated 09.09.2019 dismissed the said Miscellaneous application alongwith the other Miscellaneous Applications.

3. The learned Senior Advocate Mr. M.R.Bhatt appearing for the petitioner vehemently submitted that the Tribunal had committed gross error by not entertaining the Miscellaneous Application filed by the petitioner under Section 254(2) of the said Act in view of the subsequent circular No. 23/2019 dated 06.09.2019 as well as the Office Memorandum No. 279 dated 16.09.2019. According to Mr. Bhatt, the CBDT had in supercession of the earlier circular dated 11.07.2018 prescribed minimum monetary limit at Rs. 20,00,000/- for filing Appeal before the Appellate Tribunal, providing certain exceptions. The said Circular was made retrospectively applicable

to all the pending appeals. The said circular dated 11.07.2018 came to be modified by Circular No. 17/2019 dated 08.08.2019, whereby the monetary limit for filing the appeal before the Appellate Tribunal was revised to Rs. 50,00,000/-. Thereafter the CBDT issued the Circular No. 23/2019 dated 06.09.2019 under Section 268A of the said Act which provided that the cases involving organized tax evasion scam through bogus long term capital gain/ short term capital loss on penny stocks were not made subject to the monetary limits prescribed for filing the Appeals. Thus, according to Mr. Bhatt, the said circular dated 06.09.2019 being clarificatory in nature would relate back to the circular dated 11.07.2018 as modified by the circular dated 08.08.2019. He further drew the attention of the Court to the Office Memorandum No. 279 dated 16.09.2019 issued by the CBDT and submitted that the monetary limits fixed for filing appeals before the Tribunals/ High Court/ Supreme Court would not apply in case of assessee claiming LTCG/STCL through penny stocks. The said Office Memorandum also being clarificatory in nature would apply retrospectively to all the pending appeals and hence the petitioner had filed Miscellaneous Application in case of the respondent and others, falling under the exception carved out in Circular dated 06.09.2019 and Office Memorandum dated 16.09.2019 seeking recall of the common order passed by the Tribunal on 14.08.2019. According to him, the Tribunal without appreciating the submissions made on behalf of the petitioner-Department in the

right perspective has dismissed the Miscellaneous Application.

4. In order to appreciate the submissions made by the learned Senior Advocate Mr. M.R.Bhatt it would be beneficial to reproduce the circular dated 06.09.2019 and Office Memorandum dated 16.09.2019:



Subject: Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income Tax Act, 1961-reg.

Reference is invited to the Circulars issued from time to time by Central Board of Direct Taxes (the Board) under Section 268A of the Income Tax Act, 1961(the Act), for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court.

2. Several references have been received by the Board

that in large number of cases where organised tax evasion scam is noticed through bogus Long Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial fora on account of enhanced monetary limits. It has been reported that in large number of cases, ITATs and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate fora have not given due considerations to position of law or facts investigated by the department there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.

3. In this context, Board has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

(Neetika Bansal)
Director (ITJ)
CBDT, New Delhi.

OFFICE MEMORANDUM

F.No. 279/Misc./M-93/ 2018-ITJ(Pt.)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi, Dated:101' September, 2019

OFFICE MEMORANDUM

Subject:- Special order of Board exempting cases involving bogus Long Term Capital Gains (LTCG)/ Short Term Capital Loss (STCL) through penny stocks

from monetary limits specified in any Circular issued under Section 268A of the Income Tax Act, 1961-reg.

The undersigned is directed to refer to Circular No. 23 of 2019 dated 6th September, 2019 and to say that by virtue of powers of the Central Board of Direct Taxes u/s. 268A of Income Tax Act, 1961, the monetary limits fixed for filing appeals before ITAT/HC and SLPs/ appeals before Supreme Court shall not apply in case of assesses claiming bogus LTCG/STCL through penny stocks and appeals/ SLPs in such cases shall be filed on merits.

(Abhishek Gautam)
DCIT(OSD)(ITJ-1),
CBDT, New Delhi. “

5. The petitioner-original applicant having filed the Miscellaneous Application before the Tribunal under Section 254(2) of the said Act for rectifying the mistake apparent from the record, it would be also beneficial to reproduce the relevant part of Section 254(2) of the said Act:

“254. Orders of Appellate Tribunal

(1) ***

(2) The Appellate Tribunal may, at any time within six years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer”

6. So far as the facts of the case are concerned, the Appeal filed by the petitioner before the Tribunal against the order passed by the CIT(Appeals) was dismissed by the Appellate Tribunal by a

common order passed on 14.08.2019, in view of the CBDT circular dated 08.08.2019. Admittedly, at the relevant time when the Tribunal passed the order dated 14.08.2019, neither the Circular No. 23 of 2019 dated 06.09.2019 nor the Office Memorandum No. 279 dated 16.09.2019 was in existence. Apart from the fact that the said circular and the Office Memorandum being not in existence and therefore not taken into consideration by the Tribunal while disposing all the Appeals could not be said to be a mistake apparent from the record as contemplated under sub-section (2) of Section 254 of the said Act, the Court also does not find any substance in the submission of Mr. Bhatt that the Tribunal should have recalled the order dated 14.08.2019 in view of the said Circular dated 06.09.2019 and the Office Memorandum dated 16.09.2019, which had retrospective effect. The Court at this juncture does not think it appropriate to deal with the facts of the case, as the main issue that falls for consideration before this Court in the present petition would be, as to whether the Circular dated 06.09.2019 and the Office Memorandum dated 16.09.2019 had any retrospective effect as sought to be submitted by learned Advocate Mr. Bhatt.

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

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 assessee 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

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.

9. In that view of the matter, the Court does not find any illegality or infirmity in the impugned order dated 09.09.2020 passed by the Tribunal dismissing the Miscellaneous Application filed by the petitioner. The petition being devoid of merits is dismissed in limine.

