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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 44 of 2019

- Assistant Commissioner of Income Tax 1(2), Raipur Chhattisgarh.

---- Petitioner

Versus

- Maruti Clean Coal And Power Ltd. Flat No. 301 - 302, Ram Residency, Shankar Nagar, Raipur Chhattisgarh.

---- Respondent

TAXC No. 61 of 2019

- Deputy Commissioner Of Income Tax 1(1), Raipur, District - Raipur Chhattisgarh.

---- Petitioner

Versus

- Late Shri Vijay Pal Singh, Through L/ H Smt. Vimlesh Kumari Singh, prop. M/s Manohar Engineering And M/s Sharda Engineering, Baikunth District - Raipur Chhattisgarh.

---- Respondent

For Appellant : Shri Amit Chaudhari, Shri Ajay Kumrani and Ms. Naushina Afrin Ali, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, P.R. Ramachandra Menon, Chief Justice

25/11/2019

1. These appeals have been filed by the Department under Section 260A of the Income Tax Act, 1961 suggesting some questions as involving in 'substantial questions of law'.

2. When the matters came up for consideration earlier, it was doubted whether it will come within the purview of Circular No. 17 of 2019 dated 08.08.2019, whereby some riders have been placed with regard to filing of appeal before the Apex Court, this Court and also the Tribunal; stipulating a monetary limit, below which, no appeal could be filed or pursued. Time was sought for to get instructions and on 11.11.2019, it was submitted that a memorandum was issued by the Principal Chief Commissioner of Income Tax, Bhopal with reference to a Circular bearing No. 23 of 2019 dated 06.09.2019 issued by the

Board, so as to cause all the matters already disposed off / withdrawn or dismissed technically, to have them brought back by filing necessary proceedings and to have the question examined. This made this Court to pass a detailed order on 11.11.2019 in the following terms:

> "These matters were adjourned on the last occasion i.e. on 23.09.2019 to ascertain whether these appeals were maintainable in view of the monetary limits prescribed as per the circulars issued by the Central Board of Direct Taxes and in particular 17 of 2019 dated 08.08.2019 to the effect that no such appeal could be filed by the Department where the monetary limit is less than Rs. 1 Crore before the High Court.
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> Today, when the matters are taken up for consideration, the learned Standing counsel submits that a fresh Circular has been issued as 23 of 2019 dated 06.09.2019, paragraph 3 of which reads as follows:
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> > "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."
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> The learned counsel submits that, based on the above Circular, an order dated 11.09.2019 has been issued from the office of the Principal Chief Commissioner of Income Tax, Bhopal, the relevant portion of which, as contained in paragraph 4 is to the following effect:
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> > "4. In view of aforesaid CBDT instruction dt. 06/09/2019, I am directed to request the CCITs/DGIT/PCITs to identify all such cases where appeals have been withdrawn/dismissed technically by the Appellate Authority in all LTCG in penny stock cases. Thereafter all such cases on their merits, petitions be filed for restoration of appeals. As far as other pending cases are concerned the CCITs/DGIT/PCITs are requested to comply to the Instruction of CBDT dt. 06/09/2019. Copy of the said instructions is enclosed."
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> After going through the contents of the Circular 23 of 2019 issued by the Board and the crux of instructions given by the Principal Chief Commissioner of Income Tax, Bhopal to the other authorities of the Department, we find it difficult to sustain the version as put forth in paragraph 4 of the instructions issued by the Principal Chief Commissioner, virtually for causing to file

> petitions for restoration of all the appeals which have been disposed off with reference to the Circular issued earlier Circular No. 17 of 2019 in relation to the monetary limit.
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> As per the New Circular dated 06.09.2019 issued by the Board, notwithstanding the monetary limit prescribed by the Board earlier, appeal could be filed by the Department on merit, as an 'exception' to the said Circular, <u>where the Board, by way of special order direct filing of appeal on merit in cases involving organised tax evasion activity</u>. This means, considering the merit of each case, a <u>'special order' has to be passed by the Board</u> and on such event, it is possible for the Department to pursue the appeal, based on such orders passed by the Board. The scope of the Circular apparently has been misunderstood by the Principal Chief Commissioner of Income Tax, Bhopal, while issuing the directions/instructions on 11.09.2019, as aforesaid.
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> In the said circumstance, we direct the Appellants to produce <u>'special orders' passed by the Board</u>, if any, to file/pursue the appeals, which shall be done within 10 days."

3. This Court observed that, as per paragraph 3 of the Circular No. 23 of 2019 dated 06.09.2019, the Board observed that appeals could be filed, notwithstanding the pecuniary limits as mentioned in the earlier Circulars, <u>where the Board, by way of Special Order</u> directed filing of appeal on merit, in cases involving organized Tax Evasion Activity. It was with reference to the said specific rider, that we made an observation, that the way in which matter was sought to be pursued as instructed by the Principal Chief Commissioner of Income Tax, Bhopal as per order dated 11.09.2019 *prima facie* appeared to be incorrect and hence we required the Appellants to produce the 'Special Order' from the Board, as per which direction, if any, was given to file appeal on merit, holding that the present cases were of such nature as involving organized Tax Evasion Activity, notwithstanding the pecuniary limit.

4. Today, when the matters are taken up for further consideration, an Office Memorandum bearing No.F.No.279/Misc./M-93/2018-ITJ(Pt.) dated 16.09.2019 is placed before this Court, which reads as given below:

> **"Subject: -Special order of Board exempting cases involving bogus Long Term Capital Gains(LTCG)/Short Terms Capital Loss(STCL) through penny stocks from monetary limits specified in any Circular issued under Section 268A of the Income-tax Act, 1961-reg**
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> The undersigned is directed to refer to Circular No. 23 of 2019 dated 16th 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."

5. The above OM is only with reference to the decision already taken by the Board and notified as well by Circular No. 23 of 2019 (paragraph 3 of which has already been extracted in the order dated 11.11.2019). After hearing the learned Standing Counsel for the Appellants, we are of the view that as per the decision taken by the Board and the instructions given thereby, which forms the crux of the Circular No. 23 of 2019 dated 06.09.2019; that in order to pursue an appeal notwithstanding pecuniary limit mentioned in the earlier Circulars, it has to be an as exception, where the Board by way of 'Special Order' directs to file appeal on merit, in cases involving organized Tax Evasion Activity.

6. Insofar as no such 'Special Order' passed by the Board has been produced before this Court, we find it difficult to entertain these appeals; in view of the contents of the relevant Circulars issued as above. Accordingly, the appeals are dismissed, however, without prejudice to rights and liberties of the Appellants to approach this Court afresh in appropriate cases wherever 'Special Orders' have been issued by the Board, as an exception to the Circular Nos. 17 of 2019 and 23 of 2019, where organized Tax Evasion Activity is noted.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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