

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

INCOME TAX APPEAL NO. 19 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Surendra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 29 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Namrata Ravindra Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 45 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Varsha Surendra Peety,
Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 37 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Ravindra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 32 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Surendra Shantilal Peety (HUF),
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 35 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Ravindra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 34 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Ravindra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 49 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Jitendra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 28 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Namrata Ravindra Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 41 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Shantilal Govardhan Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 47 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Jitendra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 26 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Rachana Jitendra Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 31 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Namrata Ravindra Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH

INCOME TAX APPEAL NO. 27 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Rachana Jitendra Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH

INCOME TAX APPEAL NO. 56 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Jitendra Shantilal Peety (HUF),
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

...Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 40 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Shantilal Vovardhan Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 55 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Shri Jitendra Shantilal Peety (HUF),
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.

....Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 43 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.

...Appellant.

Versus

Smt. Varsha Surendra Peety, Jalna.Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 21 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.Appellant.

Versus

Shri Surendra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

WITH
INCOME TAX APPEAL NO. 36 OF 2013

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad.Appellant.

Versus

Shri Ravindra Shantilal Peety,
Sharda Kutir, Shani Mandir Road,
Old Jalna, Jalna.Respondent.

...

Mr. Alok Sharka, Advocate for appellant.

Mr. R.S. Padvekar with Mr. V.A. Bagdiya, Advocates for respondent.

...

**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATED : 22/04/2022

JUDGMENT : [PER R.D. DHANUKA, J.]

1) By these appeals filed under section 260A of the Income Tax Act, 1961, (hereinafter referred to as 'IT Act' for short), the appellants have impugned the orders passed by the Income Tax Appellant Tribunal, Pune, Bench 'B' in this bunch of appeals for various assessment years.

2) By consent of parties, all these bunch of appeals were heard together and are being disposed of by common order. The learned counsel for the parties jointly stated that the order that would be passed in ITA No.19/2013 would apply to the rest of the appeals which were heard together. The statement is accepted. We are, thus, dealing with the facts and submissions made by the parties in ITA No.19/2013.

3) It is the case of the appellant that on 17th March 2006 the search action in case of Peety Group of Jalna was conducted by the Income Tax Department. The respondent-assessee is one of the family member of the said group. It is the case of the appellant that during the search action, certain statements of the share brokers were recorded by the investigation wing of the department at Mumbai wherein they had admitted that they had issued bogus 'broker notes' and bills to the

number of persons to ante-date purchases including the members of Petty Group of Jalna to generate bogus Long term Capital Gain and Short Term Capital Loss. It is the case of the appellant that the respondent-assessee voluntarily declared the amount shown as long term capital gain and short term capital loss as bogus and had voluntarily stated that they will pay the taxes on the admitted amount on 17th March 2006. However, while filing the return, they retracted from the statement made under section 132 (4) of the IT Act. On 31st December 2007 the Assessing Officer held that the claim of long term capital gain and short term capital loss are bogus and made addition of the amounts to the taxable income of the respondent-assessee.

4) The respondent-assessee preferred appeal before the Commissioner of Income Tax (Appeals), Aurangabad (hereinafter referred to as 'CIT (A) Aurangabad' for short). By order dated 24th June 2008 the CIT (A) allowed the said appeal filed by the respondent-assessee. Being aggrieved by the order passed by the CIT (A), the appellant preferred appeal before the Income Tax Appellate Tribunal, Pune Bench 'B' (hereinafter referred to as 'ITAT' for short) for the assessment year 2005-06. By judgment and order dated 28th September 2012, ITAT dismissed the said appeal preferred by the appellant. Being aggrieved by the said order, the appellant preferred this Income Tax

Appeal under section 260-A of the IT Act.

5) By order dated 10th March 2014 passed by this Court, ITA No. 19/2013 was admitted on the following substantial questions of law.

- (i) Whether the additions made by the AO u/s. 69A to the taxable income of assessee, is just and proper ?
- (ii) Whether the sale proceeds from the transaction of shares amounts to LTGC and STGC when the assessee himself had voluntarily admitted to pay the taxes on the additional income ?

6) Mr. R.S. Padvekar, learned counsel for respondent-assessee in this bunch of appeals raised the issue of maintainability of these appeals on the ground that the tax effect in these appeals is less than the monetary limit of Rs. 50 lakh prescribed under the Circular No. 3/2018 dated 11th July 2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board Direct Taxes (hereinafter referred as 'CBDT' for short) insofar as appeals before the High Court is concerned.

7) The learned counsel for respondent-assessee placed reliance on the said Circular No.3/2018 issued by the CBDT in supersession of the Board Circular dated 21/2015 dated 10th December 2015 and would

submit that since the tax effect in these appeals did not exceed monetary limit of Rs.50 lakh, the appellant cannot proceed with this bunch of appeals and is required to withdraw these appeals in compliance with the said Circular. He submits that the said Circular has been issued by CBDT under section 268 of IT Act to control the unwarranted litigation and to save public money. He submits that if in the case of assessee, the disputed issues arise in more than one assessment year, appeals can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3 of the said Circular No. 3/2018.

8) It is submitted by the respondent-assessee that in para 7 of the Circular No. 3/2018 it is further clarified that in a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified in the said circular, the Pr. Commissioner of Income Tax shall specifically record that 'even though the decision is not acceptable appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in the said circular. Further, in such cases, there will be no presumption that the Income Tax Department has acquiesced in the decision on the disputed issues.

9) The learned counsel for respondent-assessee invited our attention to Clause 10 and 11 of the Circular No.3/2018 and would submit that the said circular provides for an exception in which the Income Tax Department is permitted to contest the proceedings on merits where adverse judgments relating to the issues specifically set out therein in these two clauses notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 of the said Circular or there is no tax effect. He submits that in view of clause 13 of the said Circular, the said Circular will apply to the pending special leave petitions/appeals before the Supreme Court/High Courts or the Tribunals including the cross objections and such pending appeals below the specified tax limit need to be withdrawn or are not required to be pressed.

10) The learned counsel for respondent-assessee placed reliance on the Circular No. 17/2019 issued by CBDT, thereby enhancing the monetary limits for filing of the appeals by the department before the Appellate Tribunal, High Court and the Supreme Court prescribed in Circular No. 3/2018. He submits that monetary limits insofar as High Court is concerned is increased to Rs. one crore from Rs. 50 lakh prescribed in the Circular No. 3/2018. He relied upon clause 3 of the said Circular No. 17/2019 and would submit that in view of the said Circular, the Income Tax Department is directed not to file appeal in respect of

assessment year or years in which the tax effect is less than the monetary limit prescribed in para 3 of the said Circular. Even in a case of composite order of any High Court or appellate authority which involve more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3 of the said Circular.

11) The learned counsel for respondent-assessee invited our attention to the Circular No. 23/2019 issued by CBDT. He submits that by the said circular No. 23/2019 two exceptions were provided that notwithstanding anything contained in any circular issued under section 268A of the IT Act, specifying monetary limits for filing of departmental appeals before the ITAT, High Courts and Supreme Court, appeals may be filed on merits as an exception to the said circular where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity. He submits that in view of the said Circular No. 23/2019, the CBDT has been given discretion to decide as to whether to file an appeal or not.

12) The learned counsel for respondent-assessee invited our attention to the Office Memorandum dated 16th September 2019 issued

by CBDT, clarifying that the monetary limits fixed for filing appeals before ITAT, High Court and Supreme Court shall not apply in case assessee claiming bogus long term capital gain/short term capital loss through penny stocks and appeals/SLPs in such cases shall be filed on merits and monetary limits fixed for filing such appeals before ITAT, High Courts and Supreme Court shall not apply in such cases. He submits that the said circular No. 23/2019 dated 6th September 2019 and the said office memorandum dated 16th September 2019 would not apply to the pending appeals before ITAT/High Courts and SLPs/appeals before Supreme Court.

13) The learned counsel for respondent-assessee submits that even otherwise such memorandum issued on 16th September 2019 could not have been issued so as to take away the effect of the earlier Circulars or could not have been issued contrary to the earlier circulars prescribing the monetary limits.

14) The learned counsel for respondent-assessee placed reliance on the judgment of the Supreme Court in the case of **Deputy Commissioner of Income-tax 1(1), Raipur Vs. Vijay Pal Singh (2021) 130 taxmann.com 292 (SC)**, dismissing the appeal filed by the Revenue before the Supreme Court on the ground that tax effect involved in the

said matter was less than the prescribed monetary limit in terms of the Circular No. 17/2019 dated 8th August 2019 issued by CBDT. The learned counsel for respondent-assessee also placed reliance on the judgment of the Chattisgarh High Court in the case of **Deputy Commissioner of Income Tax Vs. Vijay Pal Singh (2021) 130 taxmann.com 291 (Chattisgarh)** and particularly paragraph No. 6 and would submit that the Chattisgarh High Court after considering the Circular No. 23/2019 dated 6th September 2019 and office memorandum dated 16th September 2019 held that since the CBDT has not passed any special order in order to pursue an appeal notwithstanding pecuniary limit mentioned in the earlier Circulars, the Supreme Court did not entertain the said appeal filed by the revenue and dismissed the same without prejudice to rights and liberties of the revenue to approach the Supreme Court afresh in appropriate cases wherever special orders have been issued by the Board, as an exception to the Circular Nos. 17/2019 and 23/2019 where organized activity was noted.

15) The learned counsel invited our attention to the order passed by the Supreme Court, dismissing the Special Leave Petition filed by the revenue against the said judgment of Chattisgarh High Court **on 2nd August 2021 in case of Deputy Commissioner of Income-tax, 1(1), Raipur Vs. Vijay Pal Singh (supra).**

16) The learned counsel for the respondent-assessee submits that in view of circulars in question, the revenue has already withdrawn several appeals before this Court having tax effect less than the monetary limits prescribed in the above referred circulars. Some of those orders are annexed to the compilation submitted by the respondent-assessee. He also submitted a statement showing the status of 37 appeals and would submit that in view of the tax effect having less than the specified monetary limit, 13 appeals filed by the revenue are already dismissed on that ground.

17) Mr. Alok Sharma, learned standing counsel for appellant-revenue also invited our attention to the circulars already referred to above by the learned counsel for respondent-assessee and would submit that the appellant revenue had noticed organised tax evasion through bogus long term capital gain or short term capital loss on penny stocks. In view of the Circular No. 23/2019 dated 6th September 2019 and Office Memorandum dated 16th September 2016, the appellant revenue is entitled to pursue the pending appeals before this Court in view of the exception carved out by the said circular No. 23/2019 and clarified by the Officer Memorandum dated 16th September 2019. The learned counsel for the appellant-revenue states that the said Circular No.

23/2019 and the said Office Memorandum dated 16th September 2019 would apply with retrospective effect.

18) The learned counsel for appellant-revenue invited our attention to the judgment of the Gujarat High Court in the case of **Principal Commissioner of Income-tax, (Central), Ahmedabad Vs. Anand Natwarlal Sharda (2021) 128 taxmann.com 376 (Gujarat)** and would submit that the Gujarat High Court in the said judgment did not accept the contention raised by the revenue that the said Circular No. 23/2019 dated 6th September 2019 and Office Memorandum dated 16th September 2019 were applicable with retrospective effect.

19) The learned counsel for the appellant-revenue also relied upon the judgment of the Gujarat High Court in the case of **Principal Commissioner of Income-tax Vs. Denisha Rajendra Keshwani (2022) 134 taxmann.com 249 (Gujarat)** and would submit that the Gujarat High Court in the said judgment also did not accept the submission of the revenue that the said Circular No. 23/2019 dated 6th September 2019 and Office Memorandum dated 16th September 2019 were applicable with retrospective effect.

REASONS AND CONCLUSIONS

20) The questions that arise for consideration of this Court are as

under :-

(i) Whether the Circular No. 23/2019 dated 6th September 2019 issued by CBDT and the office memorandum dated 16th September 2019 would apply to the pending appeals before the ITAT/High Court/SLPs/appeals before the Hon'ble Supreme Court on the date of the said circular ?

(ii) Whether pending appeals having tax effect less than the monetary limit prescribed in Circular No. 3/2018 dated 11th July 2018 modified by Circular No. 17/2019 dated 8th August 2019 having organized tax evasion activity, could be pursued without obtaining special order from CBDT or not ?

21) Some of the relevant provisions of the Circulars relied upon by both the parties are reproduced below. **Para Nos. 2, 3, 5, 7, 10, 11 and 13 of the Circular No. 3/2018 dated 11th July 2018 are extracted as under :-**

“2. In **supersession** of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder :

S. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limits prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that “even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular.” Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

10. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in parer 3 above or there is no tax effect :

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board’s order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/bank accounts.

11. The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than Income tax. Filing of appeals in other Direct

tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under Section 12A/12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken **on merits** of a particular case.

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.”**

22) **Para Nos. 1 to 3 of the Circular dated 17/2019 dated 8th**

August 2019 are extracted as under :-

“Reference is invited to the Circular No. 3 of 2018 dated 11.07.2018 (one Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August, 2018 vide which monetary limits of filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows :

S. No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

3. Further with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment year is passed, para 5 of the circular is substituted by the following para :

“5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately”.

23) Para Nos. 1 to 3 of the Circular No. 23/2019 dated 6th September 2019 are extracted as under :-

“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 judgments in favour of the revenue. However, in cases where some appellate for a have not given due consideration 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 merits in cases involved in organised tax evasion activity.”

24) **Office Memorandum dated 16th September 2019 is extracted as under :-**

“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 under Section 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 assessees claiming bogus LTCG/STCL through penny stocks and appeals/SLPs in such cases shall be filed on merits.”

25) Section 268A of the IT Act, 1961 reads thus :-

Filing of appeal or application for reference by income-tax authority.—

268A. (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."

26) A perusal of the section 268A of the IT Act 1961 clearly provides that the CBDT is empowered to issue orders, instructions or directions to the income tax authorities thereby fixing such monetary limits as it may deem fit for the purpose of filing of appeal or application for reference by any income tax authority under the provisions of Chapter XX. By exercising the powers under the said provisions, the CBDT has already issued various circulars referred to above.

27) The Division Bench of this Court in the case of **Commissioner of Income-tax Vs. Polycott Corpn. (2009) 178 Taxman 255 (Bombay)** has held that the instructions cannot be interpreted as a statute though it is pursuant to the power conferred under section 268A of the IT Act. What the Court has to consider is the plain language of the paragraph and the object behind the said provisions. The object appears to be not to burden Courts and Tribunals in respect of the matters where the tax effect is less than the limit prescribed. Even before issuing the Circular No. 5/2008 dated 15th May 2008 which was under consideration of this Court, the

CBDT had been issuing instructions whereby the monetary limit had been fixed. It is held by this Court that the duty is cast upon Assessing Officer that even if disputed questions arise for more than one assessment year, then an appeal should be filed only in respect of that year where the monetary limit as specified in para 3 of the said circular would have exceeded.

28) A perusal of the Circular No. 3/2018 indicate that by the said circular, in supersession of the CBDT's Circular No. 21/2015 dated 10.12.2015, the CBDT decided that the departmental appeals may be filed on merits before ITAT and High Courts and special leave petitions/appeals before Supreme Court keeping in view the monetary limits and conditions specified therein. Insofar as those proceedings before the High Courts are concerned, the monetary limit is prescribed as Rs.50 lakh.

29) In clause 7 of the said circular, it was made clear that in a case where appeal before the Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified therein, the Pr. Commissioner of Income Tax/Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the

tax effect is less than the monetary limit specified in the said Circular.” A safeguard has been provided that there shall be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. It was further clarified in the said circular that the Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

30) However, in the said Circular dated 3/2018 dated 11th July 2018 and more particularly in para Nos. 10 and 11 various exceptions were provided and if adverse judgments were filed in respect of those exceptions, the revenue has been directed to contest those judgments on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 of the said Circular No. 3/2018. In para 13 of the said Circular, it is further clarified that the said Circular was applicable to the special leave petitions/appeals/cross objections/references to be filed after the date of the said Circular before Supreme Court/High Courts/Tribunals and it shall apply retrospectively to pending Special Leave Petitions/appeals/cross objections/references. It was directed that the pending appeals below the specified tax limits in para 3 of the said Circular may be withdrawn or not pressed.

31) However, by the Circular No. 17/2019 dated 8th August 2019, the CBDT enhanced the monetary limit from Rs.50 lakh to Rs.one Crore insofar as the appeals before the High Courts are concerned as step towards further management of the litigation.

32) In the Circular No. 23/2019 dated 6th September 2019, the CBDT noticed that several references had been received by the Board in large number of cases where organised tax evasion came through bogus long term capital gain and short term capital loss on penny stocks and the department was unable to pursue the cases in higher judicial fora on account of enhanced monetary limits. The Board further noticed that in large number of cases ITATs and High Court have recognized the unique *modus operandi* involved in such scam and had passed judgments in favour of the revenue. However, in cases where some appellate fora had not given due consideration to position of law or facts investigated by the department, there was no remedy available with the department for filing further appeal in view of the prescribed monetary limits.

33) The CBDT accordingly clarified that notwithstanding anything contained in Circular issued under section 268A specifying monetary limits for filing of departmental appeals before ITAT and High

Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to the said Circular where the Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity. The said Circular No. 23/2019 was clarified by the Office Memorandum No. F.No. 279/MISC./M-93/2018-ITJ (PT.) dated 16th September 2019 that by virtue of powers of the CBDT under section 268A of the IT Act 1961, the monetary limits fixed for filing appeals before ITAT/High Court and SLPs/appeal before Supreme Court shall not apply in cases of assessee claiming bogus long term capital gain/short term capital loss through penny stocks and appeals/SLPs in such cases shall be filed on merits. It is, thus, clear beyond reasonable doubt that the exception is carved out by the Circular No. 23/2019 to file appeal on merits in cases involved in organized tax evasion activity notwithstanding anything contained in any circular issued under section 268A of IT Act, specifying monetary limits for filing of departmental appeals.

34) However, on plain reading of the said Circular No. 23/2019 read with Office Memorandum dated 16th September 2019, it is clear that the appeals are directed to be filed on merits as exception to the earlier Circulars issued under section 268A of the IT Act in cases involved in organized tax evasion activity from the date of the said Circular No.

23/2019 dated 6th September 2019 and not to the appeals already filed and were pending involved in organized tax evasion activity on the part of assessee prior to the date of the said Circular dated 16th September, 2019.

35) In our view, the said Circular No. 23/2019 read with Office Memorandum dated 16th September 2019 would not apply to the pending appeals though involving an organized tax evasion activity on the date of the said Circular. The said Circular No. 23/2019 does not provide that the said Circular would apply even to the pending cases lodged on the date of the Circular. In our view, those pending appeals on the date of the said Circular No. 23/2019 thus would not be covered by the said Circular No. 23/2019 even with the special order of the CBDT.

36) In our view, the said Circular No. 23/2019 dated 6th September 2019 read with Office Memorandum dated 16th September 2019 do not empower the CBDT to pass any special order directing the income tax department to file an appeal on merits in pending cases even if alleging organized tax evasion activity on the part of the assessee.

37) At this stage, it would be appropriate to refer to the Circular No. 3/2018 dated 11th July 2018 and more particularly, para No. 13

thereof, specifically prescribing that the said Circular would apply to the SLPs/appeals/cross objections/references to be filed from the date of the said Circular in Supreme Court/High Courts/Tribunals and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. The Income Tax Department was directed to withdraw/not press the pending appeals below the specified tax limits set out in para 3 of the said Circular. However, no such specific direction was given in the said Circular No. 23/2019 dated 6th September 2019, thereby to apply the said conditions set out therein to pending SLPs/appeals/cross objections/references before the Supreme Court/High Courts/Tribunal involving organized tax evasion activity. In our view, the said Circular No. 3/2018 dated 11th July 2018 cannot be read with the Circular No. 23/2019 dated 6th September 2019 read with Office Memorandum dated 16th September 2019. The legislative intent is thus clear that the said Circular dated 6th September 2019 would not apply with retrospective effect.

38) Chhattisgarh High Court in the case of **Deputy Commissioner of Income-tax Vs. Vijay Pal Singh (2021) 130 taxman.com 291 (Chhattisgarh)** (Supra) has considered the said Circular No. 23/2019 dated 6th September 2019 and also the Office Memorandum dated 16th September 2019 and has held that the said Office Memorandum was only

with reference to the decision taken by the Board and notified as well by Circular No. 23/2019. Since no 'Special Order' was passed by CBDT, such appeals could not be entertained. However, without prejudice to the rights and liberties of the revenue to approach this Court afresh in appropriate cases wherever 'Special Order' has been issued by the Court as an exception to the Circular No. 17/2019 and 23/2019 where organized activity was noted. The Hon'ble Supreme Court has dismissed the Special Leave Petition against the aforesaid order passed by the Chhatisgarh High Court on 2nd August 2021 in the case reported as **(2021) 130 taxmann.com 292 (SC)** (supra).

39) Gujarat High Court in the case of **Principal Commissioner of Income-tax (Central), Ahmedabad Vs. Anand Natwarlal Sharda** (supra) has considered the issue as to whether the CBDT Circular No. 23/2019 dated 6th September 2019 and Office Memorandum dated 16th September 2019 had any retrospective effect. The Gujarat High Court in the said judgment held that the said Circular No. 23/2019 dated 6th September 2019 speaks about the appeals that may be filed with the special order of the Board in future, irrespective of the monetary limits fixed in earlier cases on merits in cases involved in organized tax evasion activity and the same, thus, could not be construed to have retrospective effect. The Gujarat High Court held that the Tribunal interpreting the said Circular/

Office Memorandum in the impugned order which was subject matter of the said appeal has rightly observed that in respect of each case or category of cases where an appeal should be filed in view of the Circular dated 6th September 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 must. In our view, the principles laid down by the Gujarat High Court in case of **Principal Commissioner of Income-tax, (Central), Ahmedabad Vs. Anand Natwarlal Sharda** (supra) would apply to the facts of this case. We are in respectful agreement with the view expressed by the Gujarat High Court.

40) In our view, in the appeals preferred after the date of the Circular dated 23/2019 dated 6th September 2019 involved in organized tax evasion activity can be filed on merits before the ITAT/High Courts/Supreme Court including the cross objections only if the CBDT passes a special order in those SLPs/appeals/cross objections before the Supreme Court/High Courts/Tribunals if the tax limit is less than the specified monetary reliefs prescribed in the Circulars issued by the CBDT under section 268A of the IT Act, 1961.

41) These circulars under section 268A of the IT Act 1961 by the CBDT are issued with an object to not to burden the Courts and Tribunals

in respect of the matters where the tax effect is less than the limit prescribed, subject to the exceptions carved out in these Circulars.

42) It is not in dispute that the appeals filed by the appellant-revenue in this bunch of appeals allege the voluntary declaration of the amounts shown as long term capital gain and short term capital loss by the respondents-assesseees during the search action under section 132 (4) of the IT Act, 1961. However, in view of the fact that the said Circular No. 23/2019 dated 6th September 2019 read with Office Memorandum dated 16th September 2019 not applicable with retrospective effect, though appellant-revenue has alleged organized tax evasion activity on the part of the respondent-assessee in those pending appeals as on the date of the said Circular No. 23/2019, the appellant-revenue cannot be allowed to pursue these appeals. In our view, since the tax effect involved in this bunch of appeals is less than the monetary limit prescribed in the earlier circulars referred to aforesaid issued by the Department of Revenue, CBDT, Ministry of Finance, Government of India, the appellant- revenue cannot be allowed to proceed with these appeals on merits.

43) The aforesaid appeals are accordingly dismissed, however, without prejudice to rights and liberties of the appellant to approach this Court afresh in appropriate case wherever special orders have been

issued by the Board as an exception to the Circular No. 17/2019 and 23/2019 where organized tax evasion activity of the assessee is noted in future i.e. after the date of the said Circular.

44) In view of the dismissal of these appeals and in view of the tax effect not having exceeded the monetary limits as prescribed in CBDT circulars, this Court is not required to answer the substantial questions of law formulated by this Court by order dated 10th March 2018. There shall be no order as to costs.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

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