13-ITL-45-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO. 45/2025

PR. COMMISSIONER OF INCOME TAX -1, NAGPUR
VS
M/S ABHISHEK ENGINEERING AND CHEMICAL LTD., AMRAVATI

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. B.N. Mohta, Advocate for the Appellate (s).
Mr. Vaiman Chatap h/f. Mr. R.D. Heda, Advocate for Respondent (s).

CORAM : ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.
DATE : NOVEMBER 02, 2026.

1. Heard.

2. The issue involved is covered by the order dated 27.03.2026 passed by this Court in ***Income Tax Appeal No. 23/2023 (The Pr. Commissioner of Income Tax-1, Nagpur v. Siddhesh Mahendra Khara)***, which reads thus ;

> *"The question that falls for consideration is whether the Income Tax Appellate Tribunal was correct in holding that tax effect under question is below permissible limit and, therefore, the appeal ought not to have been filed by the Revenue.*
>
> *2. Undisputedly, tax effect in issue is Rs.2,32,129/-, which is below permissible limit of Rs.2,00,00,000/-. The argument, however, is that the appeal is maintainable in terms of clause 10(e) of the Circular dated 20.08.2018. Clause 10(e) of circular provides that adverse judgments relating to the issues enumerated in the said clause should be contested on merits notwithstanding the tax effect entailed is less than the monetary limits. Clause 10(c) was inserted by way of amendment. It reads thus:*
>
> > *"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 para 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 addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.*

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(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court."

3. Learned counsel for the revenue submits that the present case falls under clause (e), which provides that where information is received from external source in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI), the Revenue should file appeal.

4. Thus, additional information should be received from the external sources in the nature of law enforcement agency.

5. In the present matter, additional information is received from Sales Tax Department, which admittedly is not law enforcement agency and, therefore, in our view, it will be impermissible to the Revenue to rely on the said clause to contend that the appeal could have been filed.

*6. We also find that the issue involved has been considered by the High Court of Chhattisgarh, Bilaspur in the case of **Deputy Commissioner of Income Tax 1, Bhilai, Dist. Durg, Chhattisgarh .Vs. Bhojraj Lal Chand Nawani [MCC No. 621/2019 decided on 16.09.2019]**, wherein in identical situation the petition was dismissed assessing following reasons.*

"3. Having heard learned counsel for revenue and having seen the subject clause 10(e), it appears the same would apply where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI). In the case at hand the information on the basis of which this MCC has been filed was received from the Department of Sales Tax of the State of Maharashtra. Thus, the said information having not emanated from the CBI/ED/DRI/SFIO/DGGI, clause 10(e) would have no application."

7. As could be seen, in the said appeal also information was received from Department of Sales Tax of the State of Maharashtra. Similar is the situation here and, therefore, information is not covered by clause 10(e) of the Circular dated 20.08.2018. The Income Tax Appellate Tribunal was thus right in holding that the revenue ought not to have filed the appeal.

8. That being so, we do not find any substantial question of law is involved. The issue is already settled. The appeal is accordingly dismissed."

3. The tax effect in the said case was Rs. 2,32,129/-, whereas in the present case, it is Rs. 7,11,920/-, which is below permissible limit of Rs. 2,00,00,000/-. This aspect, however, is not important inasmuch as the case of the Revenue in ***Siddhesh Khara's case*** (supra) was that notwithstanding the tax effect is less than the monetary limits, clause 10(e) of the circular dated 20.08.2018 would support the Revenue's stand to file an appeal.

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4. In context with the said argument, we had referred to the said clause of circular dated 20.08.2018 and held that the Sales Tax Department is not a law enforcement agency and, therefore, the Income Tax Appellate Tribunal (***"ITAT"***) was right in holding that the Revenue ought not to have filed the appeal. Accordingly, we held that there is no substantial question of law involved.

5. Having said so, we called upon the Revenue to justify pursuing the present appeal. In response, the Deputy Commissioner of Income Tax, Amravati Circle, filed an additional affidavit saying that the instant matter is covered by the aforesaid judgment. He then states that the appellant therein, who is the appellant herein as well, had proposed to challenge the order passed by this Court before the Supreme Court. However, the CBDT did not approve, saying that the case on merit is weak. The appellant then refers to the circular issued by the CBDT, being Circular Number 5 of 2024. According to the appellant, the clauses in the said circular indicate that the Sales Tax Department is a law enforcement agency.

6. There is no dispute that the subsequent circular is not applicable to the present case. It was not applicable to the earlier case as well. The reason being, the ITAT had delivered its verdict on 04.10.2022, i.e., much prior to the issuance of the said circular. The circular then prevailing was dated 20.08.2018, which did not include in the list of law enforcement agency, the Sales Tax Department. It is

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for this reason that the appellant admits that the instant matter is covered by the order passed by this Court in ***Siddhesh Khara's case*** (supra). Despite, the appellant submits that the appeal cannot be withdrawn as it has right to challenge the judgment that will be passed by this Court.

7. We are surprised by the stand taken by the appellant. Once a finding has been rendered by this Court, in an identical set of facts, that too based on the circular issued by the CBDT, that the Sales Tax Department is not a law enforcement agency, and since the appellant has accepted the said finding, the order so passed will be binding upon the respondents. Further, the reliance placed on Circular No. 5 of 2024 was known to the Deputy Commissioner of Income Tax, to be not applicable and therefore, was uncalled for. We deprecate the said conduct.

8. The appeal is accordingly dismissed with costs of Rs. 25,000/-, to be deducted from the salary of Mr. Suresh G. Kamble, Deputy Commissioner of Income Tax, Amravati Circle, who has taken a stand contrary to law laid down by this Court. The cost shall be deposited with the 'High Court Legal Services Sub-Committee, Nagpur', within four weeks from today.

(JUDGE) (JUDGE)

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