

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1142 OF 2015

Principal Commissioner of Income
Tax, Mumbai 13 Appellant
Vs.
M/s Nawany Construction Co. Pvt Ltd Respondent

Mr. Arvind Pinto for the Appellant.
Mr. Sameer Dalal with Ms Namrata Kasale i/by
Mr. Vipul Joshi for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : SEPTEMBER 10, 2018

P.C:

1. When this appeal was called out, Mr. Arvind Pinto, appearing on behalf of the Revenue in support of this appeal, made a very strange request. He said that this appeal raises questions of law which are indeed substantial questions of law. These questions are proposed on page 5 of the paper-book {questions 6.1 to 6.3}.

2. He would submit that such questions are already

admitted by this Court and in that regard he would refer to an order passed by this Court in Income Tax Appeal No.254 of 2013. That Income Tax Appeal No.254 of 2013 has been erroneously withdrawn.

3. A notice of motion (No.531 of 2018) has been filed in that appeal for the following two reliefs:-

“A. That this Hon'ble Court be pleased to allow the Applicant, the successor-in-office, consequent to the reorganization of Charges to the Original Appellant to amend the Appeal if required without reverification.

B. That this Hon'ble Court be pleased to restore the Appeal that was admitted vide Order dated 22nd January 2013, but wrongly withdrawn on the grounds that this tax effect was below the threshold as per CBDT Circular No.21 of 2015 dated December 2015; since the Revenue was not aware that there was another order of the Tribunal dated the 26.11.2014 for the same assessment year.”

4. Thus now, that appeal is to be restored to the file of this Court and if that happens, even this appeal would have to be admitted, is the submission.

5. We note a basic fallacy in this submission. Firstly, this Court has not restored Income Tax Appeal No.254 of 2013

to its file. It is only a request to restore that appeal which is pending but that will be subject to the orders of this Court. Secondly, though the tax effect in terms of the CBDT Circular No.21 of 2015, dated 10-12-2015, is Rs.20,00,000/-, now there is Revenue's another Circular dated 11-7-2018. That enhances the figure to Rs.50,00,000/-.

6. However, the latter Circular dated 11-7-2018 contains para 10. The para 10 of this Circular reads as under:-

*“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 the addition relates to undisclosed foreign assets/bank accounts.”

7. Mr. Pinto would submit that this is a conditional withdrawal permitted. The Revenue's Circular, therefore, cannot

be read *de hors* or by omitting this condition. One of the conditions in Clause 10(c) of this Circular is, where the Revenue Audit Objection in the case has been accepted by the Department.

8. It is conceded that while seeking to restore Income Tax Appeal No.254 of 2013 on the file of this Court, neither the Revenue's Circular dated 11-7-2018 is referred nor any condition therein. If the condition now relied upon is with regard to the Revenue Audit Objection, then, mere raising of this objection in terms of this Circular is not enough. The Revenue will have to point out that this audit objection has been accepted by the Department. We have no such record before us.

9. In the circumstances, we find that this is an attempt to get over the binding Circulars and in any case we shall not allow the Revenue to get over them in this manner. The Circulars continue to bind the Revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by the Revenue. Once there is

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no such record before us, we do not countenance the oral request of Mr. Pinto. Consequently, we do not see any reason to entertain this appeal. It is dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)