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

WRIT PETITION NO.224 OF 2021

Karanja Terminal & Logistic Pvt. Ltd. ….Petitioner

V/s.

Principal Commissioner of Income Tax & Ors. ….Respondents

Mr. R. V. Easwar, Senior Advocate a/w. Mr. Mihir Naniwadekar and Ms. Rubal Maini i/b. Mr. Ruturaj H. Gurjar for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ.
DATED : 31st JANUARY 2022

P.C. :

1 Petitioner is impugning an order dated 16th January 2020 passed by respondent no.1 under Section 264 read with Section 260 of the Income Tax Act, 1961 (the said Act). Paragraph 11 of the impugned order reads as under :-

> *11. In the present case, the appellant had itself shown the interest earned on fixed deposits as revenue receipt in the ROI filed by it for A.Y. 2011-12 as well as 2012-13. In subsequent assessment years, the assessee has changed its stand and has claimed the interest income as capital receipt which was not accepted by the AO and addition to the income was made treating the same as revenue receipt. This addition has been confirmed by the CIT (A) for the relevant A. Yrs. Even though the ITAT has deleted the addition made by AO for A.Y. 2012-13 to 2015-16 the Department has not accepted the decision of ITAT and has preferred appeal before Hon'ble High Court. Various Courts have held that interest earned on the circumstances similar to the facts and circumstances of the cased of present assessee, as discussed above, to be revenue in nature chargeable to tax. In view of these facts, I am of the considered opinion that the assessee does not have a case u/s. 264 of I.T. Act and accordingly, on merits, the petition of assessee cannot be entertained and the same is rejected.*

2 The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department and is the subject matter of an appeal cannot be a ground for not following it unless its operation has been suspended by a competent Court. Paragraph 6 of the judgment of the Apex Court in ***Union of India and Ors. V/s. Kamlakshi Finance Corporation Limited*** [1] reads as under :

> *6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion,by-passed two appellate orders in regard to the same issue which were placed before them,one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view,rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate heirarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.*

1. 1992 Supp. (1) SCC 443

3 It is not respondents' case that the order of ITAT or the operation of the said order has been suspended by any Court. In the circumstances, we set aside the order dated 16th January 2020 impugned in the petition and remand the matter for *denovo* consideration.

4 Unless there is a stay by a competent Court of the operation of the order of ITAT, respondent no.1 shall give effect to the same and pass an order in accordance with law.

5 Respondent shall grant personal hearing to petitioner and communicate the date of personal hearing atleast one week in advance. If respondent wishes to rely on any judgments or order passed by any Court or Tribunal, he shall provide a copy thereof to petitioner and give them an opportunity to deal with those judgments or distinguish those judgments and those submissions of petitioner shall also be dealt with in the assessment order.

6 Petition disposed accordingly.

(N.J. JAMADAR, J.) (K.R. SHRIRAM, J.)