

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14178 OF 2023

M/s. OM Siddhakala Associates through its
Partner Mr. Mayur D. Walhekar ...Petitioner
Versus
Deputy Commissioner of Income Tax, CPC
through Jurisdictional Assessing Officer
(Respondent No. 2) & Ors. ...Respondents

Mr. Sanket Bora a/w Ms. Vidhi Punmiya i/b SPCM Legal for Petitioner.
Mr. Suresh Kumar for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DATED: DR. NEELA GOKHALE, JJ.
DATED: 28th March 2024

PC:-

1. Petitioner is impugning an order dated 28th March 2023 passed by Respondent No. 3 rejecting Petitioner's application filed under Section 264 of the Income Tax Act, 1961 ("the Act").
2. The reason, Respondent No. 3 has rejected the application on merit, can be found in paragraph no. 6.2 of the impugned order and it reads as under :

“6.2 Regarding the merits of the assessee’s contentions. Firstly, the assessee has himself accepted that the tolerance limit of 5% between the declared sales consideration and the stamp duty valuation was inserted by the Finance Act, 2018 with effect from 01.04.2019. This was subsequently enhanced to 10% by the Finance Act, 2020 with effect from 01.04.2021. When the act itself lays down that these amendments would come into effect prospectively from 01.04.2019/01.04.2021, there

is no question of holding that these amendments were retrospective in nature. The assessee has not produced any judgements of the High Court/Supreme Court holding that these amendments were to be applied retrospectively. The Hon'ble ITAT judgements relied upon by the assessee have not been accepted by the Department and are therefore of no help to the assessee."

3. The Apex Court in *Union of India and Others v. Kamlakshi Finance Corporation Ltd.*,¹ has held that in disposing the *quasi-judicial* issues before them, the Revenue Officers are bound by the decisions of Appellate Authorities. The order of Appellate Collector is binding on the Assistant Collectors working within his jurisdiction etc. The Apex Court in paragraph no. 6 has criticized the conduct of Revenue Authorities. Paragraph no. 6 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 mala fides but with the fact that the officers, in reaching 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 hierarchy. 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

1. 1992 Supp(1) Supreme Court Cases 443.
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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 assessee and chaos in administration of tax laws.”

4. Therefore, Respondent No. 3 should have realized that the order of Income Tax Appellate Tribunal (“ITAT”), Pune was binding upon him and the principles of judicial discipline required that orders of the highest Appellate Authorities should be followed unreservedly by the subordinate Authorities. The mere fact that the order is not acceptable to the department, in itself an objectionable phrase, can furnish no ground for not following it, unless its operation has been suspended by the Competent Court. If this healthy rule is not followed, the result would only be undue harassment to Assessee and chaos in administration of tax laws.

5. In the circumstances, we hereby quash and set aside the order dated 28th March 2023 impugned in the petition and remand the matter to Respondent No. 3 for *de-novo* consideration. Respondent No. 3 shall follow the law as laid down by the ITAT. Before passing an order, Respondent No. 3 shall give a personal hearing to Petitioner,

notice whereof shall be communicated atleast five working days in advance. After the personal hearing, if Assessee wishes to file written submissions, Assessee may do so within three working days of the personal hearing. The order to be passed shall be a reasoned order dealing with all submissions of Petitioner. The order shall be passed on or before 30th June 2024.

6. Petition disposed. No order as to costs.

(DR. NEELA GOKHALE, J.)

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(K. R. SHRIRAM, J.)