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

INCOME TAX APPEAL NO. 603 OF 2013
WITH
INCOME TAX APPEAL NO. 1094 OF 2013

The Commissioner of Income Tax-21	**}**	**Appellant**
versus		
Shri Ramesh Haridas Ashar	**}**	**Respondent**

Mr. A. R. Malhotra with Mr. N. A. Kazi and Ms. Padma Divakar for the Appellant.

Mr. K. Gopal i/b. Mr. Jitendra Singh for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- MARCH 30, 2015

P.C. :-

We have heard Mr. Malhotra appearing for the Revenue in support of this Appeal.

2) The Revenue has challenged the order passed by the Tribunal dated 5th September, 2012 in Income Tax Appeal Nos. 5974 and 5975/Mum/2009. The assessment years are 1999-2000 and 2001-02. The two Appeals which have been allowed by the Tribunal were directed against the common order of the Commissioner of Income Tax (Appeals) dated 14th August, 2009.

3) Mr. Malhotra would submit that the Tribunal took upon itself the task of finding out as to whether the Assessing Officer has obtained prior approval for issuance of notice under section 148 of the Income Tax Act, 1961, the legality and validity of which was challenged. Mr. Malhotra would submit that the substantial question of law is that when the issue of prior approval was not even raised before the first appellate authority also even before the Tribunal, then, was the Tribunal justified in going into the same and quashing the notice on that count.

4) However, when we invited the attention of Mr. Malhotra to the findings in the Tribunal's order and which are fairly extensive, it is clear that they pertain to two assessment years, namely, 1999-2000 and 2001-02. The notice for reopening the assessment for the said assessment years is dated 2nd April, 2004. The Tribunal has, after scanning the reasons for reopening of the assessment, found that the proceedings which had been initiated at the instance of the Special Director of Enforcement, Ministry of Finance, Department of Revenue, that department itself could not succeed when its conclusions were set aside and demolished by the Customs, Excise and Gold Control Appellate Tribunal, Zonal Bench at Mumbai, which is the order in the case of M/s. Mahavir Exports and observations and findings in which have been referred by the Tribunal. Thus when the adjudication order

under that distinct Act of the Special Director was set aside, then, the basis on which the Revenue proceeded in this matter did not survive. In the light of such extensive findings and on merits of the notice, the Tribunal allowed the Assessee's Appeals.

5) Therefore, the questions of law framed in these Appeals at the instance of the Revenue really do not survive. Keeping them open for being raised and decided in an appropriate case but finding that on merits the Tribunal's conclusion cannot be questioned, we dismiss these Appeals. No costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**