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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1133 OF 2014

Madhukar B. Thakoor

..Petitioner.

V/s.

The Income Tax Appellate Tribunal, Mumbai & Ors.

..Respondents.

WITH

WRIT PETITION NO.1134 OF 2014

Mrs. Sunita Samir Sao LR of

Balchandra B.Thakoor

..Petitioner.

V/s.

The Income Tax Appellate Tribunal, Mumbai & Ors.

..Respondents.

WITH

WRIT PETITION NO.1162 OF 2014

Mohan B. Thakoor

..Petitioner.

V/s.

The Income Tax Appellate Tribunal, Mumbai & Ors.

..Respondents.

Mr.Sanjiv M.Shah for the petitioner in all petitions.

Mrs.S.V.Bharucha for respondent Nos. 2 & 3 in all petitions.

**CORAM : S.C.DHARMADHIKARI AND
A.K. MENON, JJ.**

DATED : 22ND APRIL, 2015

P.C. :-

1. Having heard both sides and finding that now a substantive appeal has been filed against the initial order of

the Tribunal in the appeal, we are of the view that no useful purpose would be served by testing and scrutinizing the legality and validity of the order passed in the miscellaneous application seeking to correct the mistakes in the initial order of the Tribunal.

2. However, Mr.Sanjiv Shah was at pains to point out that in para 17 passed by the Tribunal on 13th December, 2013 on a miscellaneous application 234 to 237 of 2013 there are certain adverse remarks not only against the assessee but against the representative of the assessee. The representative of the assessee is a Chartered Accountant and was only performing his professional duties. That he had argued at length and the Tribunal was required to pass a detailed order even on a Miscellaneous Application does not justify passing critical remarks. He would, therefore, submit that the following observations and the remarks from the Tribunal's order, particularly in paragraph 17 thereof be deleted, including the direction to pay costs by the assessee, which reads as under:-

“At the time of hearing, this position clearly manifest from the applications of the assessee was confronted to the learned counsel for the assessee. He, however, still

proceeded to make stale and sterile submissions in an attempt to somehow support and justify the miscellaneous applications filed by the assessee. This attempt, in our opinion, clearly amounts to misuse of process of Law. The filing of these frivolous miscellaneous applications by the assessee seeking rectification of the order of the Tribunal which is clearly beyond the scope of section 254(2) and the stale and sterile submissions made by the learned counsel for the assessee in support thereof thus have resulted in wastage of the precious time of the Tribunal which, in our opinion, justify imposition of cost on the assessee. We, therefore, dismiss these miscellaneous applications filed by the assessee being devoid of any merit and impose a cost of ₹5,000/- on each of the assessee."

3. It is on this limited point, we have heard both counsel. Repeatedly, the Hon'ble Supreme Court cautioned the Presiding Officer of the Courts and Tribunals from adversely commenting and remarking on the conduct of parties or their representatives or pleaders. If these comments and remarks, adversely affecting them are not required for the decision of a case and it could be justly and fairly reached on the basis of material produced and the arguments canvassed, then, the Courts and Tribunals should refrain from passing any adverse remarks or making harsh comments on the conduct

of the parties. Sobriety and restraint in judicial conduct is of paramount importance. Even if the Presiding Officer, members of the Tribunal are agitated by prolong arguments and often needless, still they must not lose patience and to a extent as to comment upon the conduct of the Advocates or representatives. That must be avoided as it would be a reflection on the working of the Tribunal as a whole. While not making any further reference to the judgments of the Hon'ble Supreme Court, we would only invite attention of the members of the Income Tax Appellate Tribunal to the following observations in the judgment of the Hon'ble Supreme Court in the case of **The State of Uttar Pradesh V/s. Mohammad Naim** reported in **A.I.R. 1964 Supreme Court, 703**. These read as under:-

“If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this court. At the same time it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not

infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks ; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. “

In the case of 'K' a Judicial Officer reported in **A.I.R. 2001 Supreme Court, 972**, the Hon'ble Supreme Court has held as under :-

9. The courts do have power to express opinion, make observations and even offer criticism on the conduct of anyone coming within their gaze of judicial review but the question is one of impelling need, justification and propriety. The following observation by Sulaiman, J. in Panchanan Banerji Vs. Upendra Nath Bhattacharji was cited with approval before this Court in Niranjana Patnaik

Vs. Sashibhusan Kar and Anr. 1986 (2) SCR 569:

"The High Court, as the Supreme Court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it."

This Court went on to add :-

"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Court of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for."

Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of Courts to observe sobriety, moderation and reserve. We need only

remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be."

12. It was so said by a Special Bench of three-Judges presided over by Tek Chand, J. in Philip William Ravanshawe Hardless Vs. Gladys Isabel Hardless and Ors. AIR 1940 Lahore 82 :

"A passage which is not necessary to the conclusion of the Judge nor even necessary to his argument and is likely to militate seriously against party's earning a living in his profession should be expunged from the judgment."

13. In A.M. Mathur Vs. Pramod Kumar Gupta, 1990 (2) SCC 533 : (AIR 1990 SC 1737) this Court sounded a note of caution emphasising a general principle of highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct and said (at P.1741 OF AIR):

"Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as

to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive, and legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

4. In the light of above, we delete and expunge all the remarks which have been made against the representative and the parties. Thus, the above reproduced passage or lines from the order particularly para 17 above shall stand expunged and deleted. This would also include deletion of the direction to pay costs. The imposition thereof is accordingly set aside. Barring this interference and for the limited purpose and by clarifying that all contentions on merits of the application and of the controversy or subject matter thereof are kept open for being considered in the pending appeals, we dispose of this writ petition. No order as to costs.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)