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

INCOME TAX APPEAL NO. 478 OF 2014

The Commissioner of Income Tax-IV
Pune .. Appellant
v/s.

Smt. Karajgi Vanita Nagesh .. Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 25th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 30th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment for block period 1991-92 to 2000-01 and 2001-02(part).

2. The question urged by the Revenue before us for our consideration is as under :-

> *"Whether the Tribunal erred in law in ignoring the second provision to Section 158BFA of the Act?"*

3. The impugned order of the Tribunal allowed the respondent assessee's appeal by following its order in the case of ***Super Metal Industries Vs. Deputy Commissioner of Income Tax, 119 ITD 153***.

4. On 19th September, 2016 when this appeal came up for admission, we found that the impugned order has merely followed the order of the Tribunal in Super Metal Industries (supra). We noticed that the Revenue has neither in the appeal nor by way of affidavit filed by the Assessing Officer made any attempt to point out whether or not the earlier order in Super Metal (supra) was accepted by the Revenue. Nor any distinguishing features which would warrant filing of this appeal were indicated. In fact, in our order dated 19th September, 2016, we recorded as under :-

> *"We have in numerous cases, including where Mr. Tejveer Singh, learned Counsel for the Appellant Revenue has appeared in Director of Income Tax (International Taxation) vs. Credit Agricole Indosuez 2015 (377) ITR 102, had observed as under :"*
>
> > *In matters of tax, justice requires that there must be certainty of law which presupposes equal application of law. Thus, where the issue in controversy stands settled by the decisions of this court or the Tribunal in any other case and the Revenue has accepted that decision then in that event the Revenue ought not to agitate the issue further unless there is some cogent justification such as change in law or some later decision of an higher forum,*

> *etc, then in such cases appropriately the appeal memo itself must specify the reasons for preferring an appeal failing which at least before admission the officer concerned should file an affidavit pointing out the reasons for filing the appeal. It is only when the court is satisfied with the reasons given, that the merits of the issue need be examined of purposes for admission (please see I.T.A. No.37 of 2013 CIT v. Proctor and Gamble Home Products Ltd. dated January 19, 2015 [2015] 377 ITR 66 (Bom); I.T.A.No.269 of 2013 CIT v. SBI dated February 4, 2015 [2015] 375 ITR 20 (Bom); I.T.A. No. 330 of 2013 DIT v. Citibank N.A. dated March 11, 2015 – [2015] 377 ITR 69 (Bom)).”*
>
> *In spite of the above and some more orders to the above effect the Officers of the Revenue appear to be unmindful of the above and only seek adjournment at the time of the hearing to put in an affidavit before this Court.”*

5. In the above view, the appeal was adjourned to enable Mr. Tejveer Singh, learned Counsel appearing for the Revenue to take instructions and file an affidavit, if necessary. This adjournment was on payment of costs of Rs.10,000/- to be paid personally by the Commissioner of Income Tax-IV, Pune to the Maharashtra State Legal Services Authority on or before 3rd October, 2016.

6. The appellant has filed an affidavit dated 22nd October, 2016 of one Mr. M.P. Ramteke, Assistant Commissioner of Income Tax. The affidavit states that the amount of Rs.10,000/- as directed has been paid to the Maharashtra State Legal Services Authority. It further states

that they are unable to locate the papers and proceedings with regard to the decision of the Tribunal in the case of Super Metal Industries (supra). Therefore, Revenue is not able to put any facts on record in respect of the order of the Tribunal in Super Metal Industries (supra) particularly whether it was accepted or not.

7. In the above view, it must be inferred that the same has been accepted as no evidence of it being challenged in Court or even any distinguishing features on facts are pointed out to us. Therefore, the question as raised does not give rise to any substantial question of law and is not entertained. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**