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

INCOME TAX APPEAL NO.1871 OF 2014

WITH
INCOME TAX APPEAL NO.1881 OF 2014

WITH
INCOME TAX APPEAL NOS.23, 53, 64, 68 OF 2015

The Commissioner of Income-tax-V, Pune .... Appellant
Vs.
Ms Bilkis K. Shaikh .... Respondent

WITH

CHAMBER ORDER NO.711 OF 2017
IN
INCOME TAX APPEAL [L] NO.1555 OF 2014

Pr. Commissioner of Income Tax-5, Pune .... Appellant
Vs.
Bilkis Kadir Shaikh .... Respondent

Mr. Sham V. Walve for the Appellant in the Appeals & the Applicant in CHOL-711/2017.

Mr. Vimal Gupta, Senior Advocate i/by Mr. Arjun Gupta for the Respondent in all matters.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

**DATE : ** SEPTEMBER 19, 2017

P.C:

1. This Court on 7-4-2017 and 8-6-2017 made the following two orders:-

"Order dated 7-4-2017

These Appeals arises from the common impugned order dated 21st March, 2014, relating to Assessment Years 2002-03 to 2008-09. The Appeal before us are in respect of Assessment Years 2002-03, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. No appeal for Assessment Year 2003-04 is pending for admission.

2 Mr. Tejveer Singh, learned Counsel appearing for the Appellant/Revenue states that the tax effect in all these appeals as indicated in the appeal memo is less than the threshold limit of Rs.20 lakhs as the minimum tax effect prescribed by the CBDT Circular No. 21 of 2015 dated 10th December, 2015 for the Revenue to agitate the appeals before this Court. However, he points out that the impugned order is a common order for Assessment Years 2002-03 to 2008-09 and, therefore, governed by para 5 of the CBDT Circular No.21 of 2015 as the tax effect involved for the Assessment Year 2003-04, is more than Rs.20 lakhs. However, the appeal filed by the Revenue for Assessment Year 2003-04 being Income Tax Appeal (L) No.1555 of 2014 was rejected on 15th January, 2015 by the

Prothonotary and Senior Master under Rule 986 of the Bombay High Court (Original Side) Rules. Mr. Singh also informs us that Revenue has not taken any steps thereafter to restore the appeal, rejected on 15th January, 2015. In the circumstances, Revenue is deemed to have accepted the order dated 15th January, 2015 rejecting its appeal for the Assessment Year 2003-04, arising from the common impugned order.

3 All the Appeals on board today indicate that tax effect involved in these Appeals is less than threshold limit of Rs.20 lakhs. However, Mr. Singh states that he has no instructions to withdraw these appeals.

4 In the circumstances, it would be appropriate for the Officer of the Revenue to examine the CBDT Circular No.21 of 2015 dated 10th December, 2015 and give appropriate instructions to its Counsel.

5 In the above circumstances, all these ***Appeals*** *are adjourned to* ***13th April, 2017*** *to enable Mr. Singh to obtain instructions from the Officer of the Revenue."*

"Order dated 8-6-2017

1. We have perused the order dated 7th April, 2017. This Court had observed that in each of these appeals, the tax effect is less than Rs.20 lakhs and in an appeal where the tax liability was more than Rs.20 lakhs, the same has been dismissed on 15th January, 2015. The Court observed that the learned Counsel for the appellant does not have instructions to withdraw the appeals. The Court further observed that it would be appropriate for the Officers of the Revenue to examine the C.B.D.T. Circular No.21 of 2015 dated 10th December, 2015 and give appropriate instructions to its counsel. The matter was adjourned to enable Mr. Singh, the learned Counsel to obtain instructions from the

> *Officers of the Revenue.*
>
> *2. It appears that the said order is not complied with. We adjourn the matter for one week for obtaining necessary instructions in writing, failing which this Court would be constrained to proceed further for disposal of these appeals in view of CBDT Circular No.21 of 2015.”*

2. On the earlier occasion and at a detailed hearing, we impressed upon the Revenue as to whether in the light of the steps taken by it and noted in the order of 29-8-2017, does it propose to press the appeals on merits or abide by its statement recorded in the earlier orders, reproduced above.

3. Our attention was invited to a very disturbing trend and emerging from the action of the Revenue of moving an application styled as Chamber Order No.711 of 2017 in one of the Income Tax Appeals, namely, Income Tax Appeal (Lodging) No.1555 of 2014.

4. That Chamber Order requested the Prothonotary & Senior Master to recall the earlier direction issued under Rule 986 of the Bombay High Court (Original Side) Rules, 1980 and

restore the appeal of the Revenue to the file of this Court.

5. From the record it appears that this Chamber Order was opposed and the respondent/assessee filed an affidavit to that effect. In the affidavit in reply, the assessee pointed out as to how in terms of the order dated 7-4-2017 of this Court the Revenue is deemed to have accepted the rejection of its appeal for the Assessment Year 2003-04 vide order dated 15-1-2015, passed by the Registry of this Court. That was because of the failure of the Revenue to comply with the procedural rules and remove the office objections/deficiencies and defects in the appeal.

6. Despite the order of 7-4-2017, the Chamber Order/application for restoration has been moved. Surprisingly, the Prothonotary & Senior Master, despite such opposition from the assessee on record and a further explanation of the Revenue seeking to point out as to why the delay has occurred, did not deem it fit and appropriate to place the Chamber Order/application for restoration before the Court. He

considered the request for restoration himself and, we are sorry to say, in granting that request he has tried to get-over the order of this Court dated 7-4-2017, or assisted the Revenue in that endeavour. While a Larger Bench decision of this Court has held that if Rule 986 permits the Registry and particularly the Prothonotary & Senior Master to reject the appeal for non-removal of office objections or failure to comply with the Rules and he is further empowered to entertain an application for restoration and in appropriate cases grant it, in the peculiar facts and circumstances of this case, the Prothonotary & Senior Master should not have exercised that power. Aware as he was of the judicial order dated 7-4-2017, he could not have over-reached it or by-passed it in this manner. We do not approve of this exercise and the conduct of the Prothonotary & Senior Master. We remind him that in the event such orders, as are passed by this Court and dated 7-4-2017, are attempted to be over-reached, by-passed or brushed aside, the Division Benches or the Hon'ble Judges exercising judicial powers would be constrained to direct initiation of disciplinary proceedings against him. We caution him and hope that hereafter he will not assist the parties as he has done in the instant case.

7. Yesterday, these matters were placed before us and to our queries raised to Mr. Walve, put him in an embarrassing position, he was unable to explain as to why the Revenue approached the Prothonotary & Senior Master and sought restoration of the appeal when in ordinary and normal circumstances it has been moving restoration applications before the Court on the judicial side. Since Mr. Walve sought time to take instructions, and particularly because the order dated 7-4-2017 being brought to his notice, Mr. Walve was still instructed to move the restoration application and which he indeed moved. After seeking instructions, and to avoid further embarrassment, Mr. Walve seeks leave to withdraw all the above appeals which are on our board.

8. He states, on instructions, that the Revenue has accepted the order dated 7-4-2017 of the Division Bench of this Court and equally rejection of the appeal for the Assessment

Year 2003-04 by the Registry on 15-1-2015. Since the Tribunal has merely followed and applied its order for this assessment year to the subsequent years, and the issue being decided purely on facts that the Revenue has now changed its mind. It has instructed Mr. Walve to make a statement that the Chamber Order/restoration application and the consequent restoration of the appeal would not survive. The Chamber Order also would stand disposed of as withdrawn. In such circumstances, the order of the Prothonotary & Senior Master dated 28-7-2017 does not survive and is set aside.

9. Each of the above appeals on our Board today stand disposed of as withdrawn. There would be no order as to costs.

10. Before parting, we hope and trust that the Revenue does not adopt or if adopted, does not chart the course as deprecated above. We equally hope that the Registry of this Court would not hereafter try to over-reach, get-over and by-pass the orders of this Court. This caution has to be administered because the Registry on the Original Side seems to

be unaware of the traditions & practices prevailing in this Court for decades together. They are indeed healthy. The Registry on the Appellate Side which has a Registrar (Judl.), a person from the District Judicial Services, would have refused to pass any such orders as is passed in the instant case on the civil application for restoration when it is hotly contested. He always places the matters before the Court and directs the parties to appear before the Court. No applications of the nature made in the instant case are ever entertained by him. If the dismissal in default is by the Court, restoration is but by the Court. If the application or proceedings are dismissed for non-removal of office objections or failure to comply with the Bombay High Court Appellate Side Rules, 1960, the restoration is not automatic and the Registrar (Judl.) applies his mind on a case to case basis. If the restoration is sought belatedly or there is a contest, then, he does not entertain the request on the administrative side but requests the Court to pass necessary orders. We do not see why such a healthy trend is lacking on the Original Side.

11. This is possibly because the Prothonotary & Senior Master of this Court is not a legally trained and experienced judicial officer. The Larger Bench decision of this Court in **Prem Siddha Co-op. Housing Society & Ors. vs. High Power Committee-II & Ors.**, reported in 2016 (5) Bom.C.R. 539 has held that it would be wise to appoint a Judicial Officer as the Prothonotary & Senior Master of this Court. We do not see why steps have not been taken till date to comply with this direction or recommendation from the Larger Bench. We hope and trust that such examples being brought to the notice of the Senior Officials in the Registry, they would make the necessary move and replace the existing/current Prothonotary & Senior Master with an experienced judicial officer.

12. Let a copy of this order be placed before the Registrar General for information and necessary action.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)