**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.226 OF 2015**

**M/S.B.S.INTERNATIONAL (BOMBAY) )...APPELLANT**

**V/s.**

**ASSISTANT COMMISSIONER OF INCOME )**
**TAX – 17(3) AND ANR. )...RESPONDENTS**

Mr.K.Gopal a/w. Mr.J.Singh, Advocate for the Appellant.

Mr.A.R.Malhotra, Advocate for the Respondent.

**CORAM : S.V.GANGAPURWALA &**
**A. M. BADAR, JJ.**

**DATE : 10th JULY 2017**

**P.C. :**

1 The present appeal pertains to the Assessment Year 2000-2001. This is a second round of litigation before this court. Initially against the order of the Tribunal, the Revenue had approached this court by filing Income Tax Appeal No.3019 of 2010. This court, under order dated 25th October 2010, passed the following order in the second appeal :

> "Both parties agree that issues involved in this appeal are covered by the judgment of this Court in the case of C.I.T. v. Kalpataru Colours & Chemicals, (2010) 192 Taxman 435 (Bom.). In this view of the matter, proceedings are remitted back to the Assessing Officer with direction to dispose it of in accordance with law in the light of the judgment of this Court in the case of Kalpataru Colours & Chemicals (supra).
>
> 2. Appeal is disposed of in terms of this order with no order as to costs."

2 In view of that, the matter was remitted to the Assessing Officer. The Assessing Officer relied on the judgment in the case of **C.I.T. v. Kalpataru Colours & Chemicals, (2010) 192 Taxman 435 (Bom.)** and decided the matter. The matter went before the Commissioner (Appeals) and thereafter before the Tribunal at the behest of the assessee. The Tribunal accepted that the case of the assessee is legally and factually acceptable on merits, in view of the judgment of the Apex Court in the case of **Topman Exports vs. Commissioner of Income Tax** reported in **[2012] 342 ITR 49 (SC)**. However, only on the ground that this

court under order dated 25th October 2010 had directed the matter to be decided in view of the judgment of this court in case of **C.I.T. v. Kalpataru Colours & Chemicals** referred to supra, has dismissed the appeal holding that the Tribunal has no authority to direct the Assessing Officer to follow the decision of the Supreme Court in contravention of the directions of this court.

3 We have heard the learned counsel for the assessee and the learned counsel for the Revenue.

4 When the directions were issued by this court on 25th October 2010, the said judgment in case of **C.I.T. v. Kalpataru Colours & Chemicals** referred to supra, was holding the field. However, subsequently, the Apex Court in case of **Topman Exports** referred to supra, has decided the issue in a different manner. The Assessing Officer appears to have passed the order pursuant to the directions of this court on 18th November 2010. However, when the matter was before the Tribunal, the judgment in case of **Topman Exports** referred to supra was holding the

field. The Tribunal was certainly required to consider the decision of the Apex Court in case of **Topman Exports** referred to supra and ought to have applied the said decision. Even under Article 141 of the Constitution of India, the said judgment is binding.

5 In light of the above, we pass the following order :

i) The impugned order passed by the Tribunal is quashed and set aside.

ii) The parties are relegated before the Tribunal.

iii) The Tribunal shall consider the decision of the Apex Court in **Topman Exports** referred to supra and pass further orders in tune with the said judgment expeditiously.

iv) Parties may appear before the Tribunal on **1st August 2017.**

v) The appeal is accordingly allowed. No costs.

**(A. M. BADAR, J.)** **(S.V.GANGAPURWALA), J.)**