JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 298 OF 2017

The Commissioner of Income Tax … Appellant.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. Anil Singh, ASG a/w. P.A. Narayanan & Geetika Gandhi for the Appellant.
Ms. M.M. Deshmukh, APP for the Respondent – State.
Mr. I.J. Nankani & Ms. Deepa Shetty I/b. M/s. Nankani & Associates for Respondent No.2.
Mr. Nikhil Sakhardande, Amicus Curiae for the Respondents.

CORAM : S.S. Shinde and
A.S. Gadkari, JJ.

DATE : 12th October 2018.

***P.C.* :-**

This appeal is filed with following substantive prayer, which reads as under :-

> "(a) This Hon'ble Court be pleased to call for the records and proceedings of MPID SPL. Case No. 7 of 2016 @ 13 of 2016 from the Bombay City Civil & Sessions Court, Mumbai and on perusal of the same and on further hearing the Appellant, this Hon'ble Court be pleased to quash and set aside the impugned order and direction dated 30.01.2017."

2. The learned Additional Solicitor General appearing for the Appellant submits that the impugned order is passed without hearing the Appellant – Department. The impugned order is drastic in nature and would affect upon similar cases.

3. We have heard the learned Additional Solicitor General appearing for the Appellant, Mr. Nankarni, learned Counsel appearing for Respondent No.2 and Mr. Sakhardande, as Amicus Curiae.

4. In our opinion, since the Appellant – Department has been directed to deposit the amount of TDS of Rs. 10,58,065/- so deposited by National Plastic Industries Ltd. - Respondent No.2 as deduction of tax at source at the rate of 10%, within 60 days in fixed deposit in the Bank of Maharashtra with auto renewal option. The impugned order drastically affects upon the Appellant – Department. In our opinion, the Special Court ought to have asked the Respondent No.1 to implead the Appellant – Department as party Respondent and thereafter, after affording reasonable opportunity of filing reply/put forth the contentions, ought to have proceeded to consider the prayer of the Respondent No.1.

5. In the light of above, without entering upon merits of the contentions raised, the appropriate course would be to quash

and set aside the impugned order. Accordingly, the impugned order is quashed and set aside. The MPID Special Case No.7 of 2016 @ 13 of 2016 below Exhibit 29 is restored to its original file.

6. The concerned Court to issue notice to the Appellant – Department and other affected parties and dispose of the said proceedings as expeditiously as possible.

7. With the above observations, the Appeal stands disposed of.

8. We appreciate the able assistance rendered by Mr. Nikhil Sakhardande during the course of hearing of this Appeal.

(A.S. Gadkari, J.) ***(S.S. Shinde, J.)***