

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

WRIT PETITION NO. 237 OF 2020

Systematix Shares and Stocks
(India) Limited

....Petitioner

V/s.

Deputy Commissioner of Income
Tax 4(2)(1), Mumbai and Ors.

...Respondents

Mr. Jeet Kamdar i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

**CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 23rd FEBRUARY, 2022**

P.C. :

1. Petitioner is impugning the assessment order dated 30th December, 2019 passed under Section 143(3) read with Section 263 of the Income Tax Act, 1961 (the Act) and the notice dated 16th September, 2019 issued by Respondent No.1 under Section 142 (1) read with Section 263 of the Act for completing the assessment for A.Y. 2010-11.

2. Petitioner had filed return of income on 15th September, 2010. Initially the same was processed under Section 143(1) of the Act and later after the case was selected for scrutiny, the assessment order under Section 143(3) of the Act came to be passed. Subsequently, the Principal Commissioner of Income Tax – 4, Mumbai vide order under Section 263 of the Act dated 26th March, 2019 directed the Assessing Officer to make

proper and specific enquiries in respect of certain action by petitioner. Aggrieved by the order under Section 263 of the Act passed by the Principal CIT-4 petitioner preferred an appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT by an order dated 13th September, 2019 set aside the order passed by the Principal CIT-4 under Section 263 of the Act. Notwithstanding the ITAT setting aside the order of the Principal CIT-4 under Section 263 of the Act, the Assessing Officer has gone ahead and passed the impugned order dated 30th December, 2019 because the decision of the ITAT passed on 13th September, 2019 has not been accepted and reference under Section 260A of the Act is recommended.

3. It is immaterial whether the decision of the ITAT is accepted or a reference is recommended. The fact is the order under Section 263 of the Act passed by the Principal CIT-4 on 26th March, 2019 has been quashed and set aside. When the said order under Section 263 of the Act has been set aside, the question of the Assessing Officer following the said order to pass the assessment order cannot and does not arise. We ask ourselves how can the Assessing Officer pass the assessment order relying on a non-existent order.

4. In the circumstances, the impugned assessment order dated 30th December, 2019 is quashed and set aside.

5. Moreover, it will also be apposite to quote paragraph no.6 of the judgment of the Hon'ble Apex Court in ***Union of India & Others vs. Kamlakshi Finance Corporation Ltd.***¹ which reads as under :

6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

(emphasis supplied)

6. Petition disposed.

(N. J. JAMADAR, J.)

(K.R. SHRIRAM, J.)

¹ 1992 Supp (1) Supreme Court Cases 443