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

WRIT PETITION NO. 974 OF 2022

The J.K. Trust Bombay ….Petitioner

V/s.

Assistant Commissioner of Income Tax (Exemption) Circle – 2, Mumbai & Ors. …Respondents

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Mr. Nitesh Joshi i/b Mr. Sameer Dalal for Petitioner.
Mr. Akhileshwar Sharma for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 3rd MARCH, 2022

P.C. :

1. Respondents have proposed to re-open the assessment for A.Y. 2015-16 for reasons as quoted below :

> *Reason for re-opening*
>
> *The assesssee M/s. J.K. Trust has filed its return of income for the A.Y. 2015-16 on 27.08.2015 declaring income of Rs. Nil/-. The return was processed u/s. 143(1).*
>
> *Further, in this case assessee filed its return of income for A.Y. 2016-17 on 30.09.16 declaring Nil income after claiming exemption u/s 11 of the Act. The case was selected for complete scrutiny under CASS and notice u/s 143(2) was issued to the assessee. The department completed the scrutiny assessment u/s 143(3) on 15.11.18 wherein the exemption u/s 11 was denied and the surplus amount of Rs.69,93,190 was taxed under normal provisions.*
>
> *Scrutiny of the assessment folder revealed that the department had made similar disallowance for AY 2012-13, 2013-14 and 2014-15. The case for AY 2012-13 was reopened u/s 143(3) rws 263 in October 2017, for AY 2013-14 u/s 143(3) rws 147 in March 2018 whereas scrutiny u/s 143(3) was done for AY 2014-15 in December 2016.*

> *In AY 2015-16, the return was filed on 27.08.15 which was summarily assessed u/s 143(1) on 16.08.16 at Nil Income. However this case was not selected for scrutiny either under CASS or manually by the department.*
>
> *XXXXX*

2. In the order rejecting objections passed on 7th January, 2022 which is also impugned in the petition alongwith notice for re-opening dated 19th March, 2021, respondent admit that the Assessment Order for A.Y. 2012-13, 2013-14 and 2014-15 on which reliance has been placed for issuance of notice under Section 148 of the Income Tax Act, 1961 (the Act) is held unjustified by the Hon'ble Income Tax Appellate Tribunal (ITAT). But according to respondent since the department has not accepted the decision of the appellate authority and has filed appeal against these appellate orders before the Bombay High Court and the matter is still subjudice and has not reached finality, there is no bar on the Assessing Officer re-opening the assessment.

3. We have repeatedly held that this approach of respondent is certainly not acceptable and is an objectionable phrase. The Hon'ble Apex Court in ***Union of India And Others vs. Kamlakshi Finance Corporation Ltd.***[1] in paragraph no.6 observes 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*

1 1992 Supp (1) Supreme Court Cases 443

> *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 in 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 heirarchy. 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 assessees and chaos in administration of tax laws.*

4. Admittedly, there is no stay on the operation of the order of the ITAT. Moreover, reliance on the assessment order of the previous years for re-opening itself is ill founded because these assessment orders have been set aside by the ITAT. For A.Y. 2012-13 and 2014-15, the ITAT confirm the order of Commissioner of Appeals setting aside the assessment orders and for A.Y. 2013-14 and 2016-17 the Commissioner of Appeals has set aside the assessment orders. We wonder how can the Assessing Officer rely on assessment orders which are, in fact, non existing because these orders have been held unjustified by the ITAT.

5. In the circumstances, petition is allowed in terms of prayer clause – (a) which reads as under :

> *(a) that this Hon'ble Court may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and, after examining the legality and validity of the impugned notice dated 19.03.2021 issued under section 148 of the Act (being Exhibit – R hereto) and the impugned order dated 07.01.2022 (being Exhibit – V hereto) quash and set aside the same*

6. Petition disposed.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**