IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1153 OF 2021

GIA Laboratory Private Limited ….Petitioner

V/s.

The Income Tax Officer (International Taxation) IT Ward-2(3)(2) Mumbai …Respondent

WITH
WRIT PETITION NO.1430 OF 2021
WITH
WRIT PETITION (l) NO.10778 OF 2021

Mr. J. D. Mistri, Senior Advocate a/w Mr. Niraj Sheth i/b Mr. Atul K. Jasani for Petitioner in Writ Petition No.1430 of 2021 and Writ Petition No.1153 of 2021
Mr. P. J. Pardiwalla, Senior Advocate i/b Mr. Paras S. Savla for Petitioner in Writ Petition (l) No.10778 of 2021
Mr. Parag Vyas a/w Mr. P. A. Narayanan and Ms Karuna Yadav for Respondents-Revenue

----

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 2nd FEBRUARY 2022

P.C. :

<u>WRIT PETITION NO.1153 OF 2021</u>

1 Prayer clause (a) of the petition reads as under:

> *(a) 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 petitioner's case and after examining the legality and validity thereof, quash and set aside the impugned notices dated 28th August 2015 issued by respondent no.1 (Exhibit C) and consequent proceedings including the notice dated 8th March 2021 (Exhibit F) issued by respondent no.2 under section 201 of the Act for the assessment year 2014-15 and the consequent order dated 31st March 2021 (Exhibit M) passed under section 201 or the Act by respondent no.2 for the assessment year 2014-15."*

2 Admittedly, as stated in the sur-rejoinder filed by one Mr. Nitish Kumar affirmed on 23rd August 2021, the impugned order under Section 201 for A.Y.-2014-2015 was passed following the orders of DRP and of the Assessing Officer for A.Y.-2010-2011. Admittedly, ITAT has passed the final order holding that the Assessing Officer views for A.Y.-2010-2011 were erroneous. Even order for A.Y.-2014-2015, which is subject matter of this petition has been set aside by the ITAT in its order pronounced on 30th April 2021. The order against the GIA US company of the Assessing Officer has been reversed by ITAT which has held that amount paid to GIA US was not taxable.

3 It is submitted by respondents and as stated in the impugned order that the decision of ITAT for A.Y.-2010-2011 has not been accepted by the department and the appeal has been filed before the Hon'ble High Court. The Apex Court in ***Union of India Vs. Kamlakshi Finance Corporation Ltd***.[1] has held that quasi-judicial authorities like 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 and the mere fact that the order of the appellate

1. 1992 Supp(1) Supreme Court Cases 443

authority is not "acceptable" to the department and is the subject matter of an appeal can be no ground for not following it unless its operation has been suspended by a competent court. Paragraph 6 of *Kamlakshi Finance* (Supra) 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 malafides 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."*

It is not respondents' case either that the order passed by ITAT for A.Y.-2010-2011, which "is not acceptable to department", has been stayed or suspended by a competent court.

4 Mr. Vyas states in case the department succeeds in its appeal against order of ITAT then, the department should be permitted to recover the amount or penalty against the assessee concerned. We are not inclined to

opine on this but we would only to say that it will be open to the department to take such steps as available in accordance with law.

5 In the circumstances, we have no hesitation to allow the petition in terms of prayer clause (a) as quoted above.

6 Petition disposed.

WRIT PETITION NO.1430 OF 2021

7 Counsel state that in view of the order passed in Writ Petition No.1153 of 2021, the above petition consequently be also allowed in terms of prayer clause (a) which reads as under:

> *(a) 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 petitioner's case and after examining the legality and validity thereof, quash and set aside the impugned notices dated 28th August 2015 issued by respondent no.1 (Exhibit C) and consequent proceedings including the notice dated 8th March 2021 (Exhibit F) issued by respondent no.2 under section 201 of the Act for the assessment year 2014-15 and the consequent order dated 31st March 2021 (Exhibit M) passed under section 201 or the Act by respondent no.2 for the assessment year 2014-15."*

8 Petition disposed.

WRIT PETITION (L) NO.10778 OF 2021

9 Stand over to 21st March 2022. Ad-interim relief if any to continue until the next date.

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

Meera Jadhav