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

WRIT PETITION NO. 2615 OF 2024

Supremus Lower Parel Premises Pvt. Ltd. .. Petitioner

Versus

The Principal Commissioner of Income Tax & Ors. .. Respondents

Mr. Prakash Shah, Senior Counsel *a/w Mr. Jas Sanghavi, Mr. Suyog Bhave i/b PDS Legal, Advocates for the Petitioner.*

Mr. Devrat Singh*, Advocate for the Respondents.*

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 14, 2025.

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition has been filed seeking the following reliefs:-

> *"(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside (i) the*

*impugned order dated 13.09.2023 passed by the Respondent No. 1 (**Exhibit "A"**) and (ii) the impugned order dated 28.07.2023 passed by the Respondent No. 3 (**Exhibit B**);*

> *(b) that this Hon'ble Court be pleased to issue a Writ of Prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India, prohibiting the Respondents from taking any coercive steps to recover the tax demand pursuant to the assessment order dated 28.03.2022 and the demand notice dated 28.03.2022, pending the hearing of the appeal filed before the Respondent No. 4 and eight weeks thereafter;*
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> *(c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing Respondents by themselves, their subordinate, servants and agents to forthwith refrain from acting upon or taking any further proceedings in pursuance of and/or in implementation and/or in furtherance of the impugned assessment order dated 28.03.2022 and the demand notice dated 28.03.2022 and in the meantime, direct Respondent No. 4 to decide the appeal filed by the Petitioner in an expeditious manner after complying with the principal of natural justice and in accordance with law;"*

3. The brief facts of this case are that for Assessment Year 2016–2017, the Petitioner filed its return of income returning nil income, which was duly processed under Section 143(1) of the Income Tax Act, 1961 (for short "***IT Act***").

4. Based on the assessment order dated 30th December 2016 for A.Y. 2013–2014, the Assessing Officer, vide his Notice dated 31st March 2021, proposed to re-assess the income of the Petitioner for A.Y. 2016- 17. The Notice proposed to assess Capital Gains of Rs. 12,83,31,400/- on conversion of godown land into stock-in-trade and subsequent sale of units/flats on godown solely based on the assessment order of A.Y. 2013-14.

5. By his Assessment Order dated 28.03.2022, passed under Section 143(3) read with Section 147 of the IT Act, the Assessing Officer assessed the Capital Gains of Rs.12,83,31,400/- under Section 45(2) of the Act and raised a demand of Rs.7,63,90,220/-, notwithstanding the fact that Assessment Orders for A.Y.s 2013–14 to 2015–2016 making identical addition on account of Capital Gains were set aside by the Commissioner of Income Tax (Appeals) [for short "**CIT(A)**"] and the said orders of CIT(A) were upheld by the Income Tax Appellate Tribunal (for short "**ITAT**"). The Assessing Officer did not follow the orders of the ITAT, in view of the Appeals filed by the CIT(A) in this Court against the orders of the ITAT.

6. Being aggrieved by the assessment order dated 28th March 2022, the Petitioner has filed an Appeal before Respondent No. 4. The Petitioner

has also filed written submissions before Respondent No. 4. However, the said Appeal has not been taken up for hearing by Respondent No. 4.

7. Pending the said Appeal, vide the impugned orders, the Respondents, relying upon Circular dated 29th February 2016, and revised by Circular dated 31st July 2017, have directed the Petitioner to pay Rs.1,52,78,044/-, being 20% of the demand arising out of Assessment Order dated 28th March 2022.

8. The Petitioner contends that the ITAT, in the orders passed for A.Y.s 2013–14 to 2015–16, has held that the Petitioner has neither converted the godown rights from capital asset to stock-in-trade nor has it transferred/sold the godown rights and thus, the charge under Section 45(2) of the Act cannot be sustained.

9. The Petitioner further contends that this Court in Petitioner's own case for A.Y. 2012–2013, by its judgment dated 12th April 2024 reported in 2024 (161) Taxmann.com 768, was pleased to set aside the Notice dated 29th March 2019 seeking to reopen the assessment for the said assessment year holding that the entire basis for reopening has collapsed by virtue of the ITAT decision.

10. The Petitioner further contends that the said orders of the ITAT, even though not accepted by the department and challenged before this Court by filing Appeals, would be binding in absence of any stay by this Court.

11. Accordingly, the Petitioner submits that the impugned demand is *ex-facie* contrary to orders of the ITAT and the impugned demand cannot be sustained as there is no justification on part of the Respondents in directing the Petitioner to pay a sum of Rs.1,52,78,044/- being 20% of the demand arising out of the Assessment Order dated 28th March 2022. The Petitioner contends that it has made out a strong *prima facie* case and balance of convenience is in its favour.

12. The Respondents, in its Affidavit-in-Reply dated 26th October 2023, have mainly contended that the demand is the subject matter of Appeal pending before the CIT(A). The department has not accepted the orders passed by the ITAT for earlier years and orders of ITAT are subject matter of pending Appeals before this Court. Therefore, the impugned orders directing the Petitioner to pay 20% of the disputed demand, i.e., Rs. 1,52,78,044/- requires no interference.

13. We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition.

14. Rule is made returnable forthwith, and with the consent of the parties we have finally heard the petition, considering the narrow issue involved in the present petition.

15. This Writ Petition relates to A.Y. 2016-17. The Assessing Officer has passed an order dated 29th March 2022 under Section 143(3) read with Section 147 of the IT Act. Vide the said Assessment Order, the Assessing Officer assessed a Capital Gain of Rs.12,83,31,400/- under Section 45(2) of the IT Act and raised a demand of Rs.7,63,90,220/-, solely relying upon earlier Assessment Orders for A.Y.s 2012–13 to 2015–2016.

16. We find that the CIT(A) set aside the Assessment Orders for A.Y.s 2013-14 to 2015-16 assessing the Petitioner to Capital Gain for conversion of godown. The ITAT upheld the orders of CIT(A) and held that the Petitioner has made no Capital Gains and not liable to be taxed under Section 45(2) of the IT Act in respect of the godown. The said orders of the ITAT are passed prior to the reopening of the assessment for the year under

consideration. Therefore, the entire basis for reopening cannot be sustained as being contrary to the orders of the ITAT.

17. Further, we find that this Court, in its judgment dated 12th April 2024 in Petitioner's own case for A.Y. 2012–2013, *inter alia,* has held as under:-

> *"12. Moreover, the entire basis for reopening the assessment was that assessment orders under Section 143(3) read with Section 147 of the Act were passed for Assessment Years 2011-2012 and 2013-2014 and the order under Section 143(3) of the Act for Assessment Year 2014-2015 was passed by making the following additions :*
>
> *(1) 8% profit treating contractor.*
> *(2) Addition as per A.Y. 2012-13.*
> *(3) Proportionate income.*
> *(4) Loss claimed.*
> *(5) Capital gain*
>
> *Assessee preferred an appeal before the CIT(A) and the CIT(A) deleted the following additions :*
>
> *(1) 8% profit treating contractor.*
> *(2) Addition as per A.Y. 2012-13.*
> *(3) Proportionate income.*
> *(4) Capital gain*
>
> *The Revenue preferred an appeal for Assessment Years 2011-2012, 2013-2014 and 2014-2015 before the ITAT and the same were pending. Since the issues were involved in this year also, i.e., Assessment Year 2012-2013, and the case was getting barred by limitation for reopening under Section 147 of the Act, to safeguard the interest of Revenue, this case is being proposed for reopening on the following issues :-*
>
> *(1) 8% profit treating contractor.*
> *(2) Proportionate income.*

(3) Capital gain

> *13. Admittedly, the ITAT has now held against the Revenue. Therefore, the entire basis for reopening has collapsed. The Revenue's case that an appeal has been filed in this Court challenging the orders passed by the ITAT for Assessment Years 2011-2012, 2013-2014 and 2014-2015 will not be of any help because admittedly there is no stay. As held by the Hon'ble Apex Court in Union of India v. Kamlakshi Finance Corporation Ltd. 1992 Supp. (1) SCC 433/1992 taxmann.com 16/1991 (55) E.L.T. 433 (SC), the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities and the order 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. Admittedly, the order of the ITAT, which is challenged in appeal in this Court, has not been suspended. Therefore, the order of the ITAT is certainly binding on the Revenue."*

18. Even otherwise, we find that the said orders passed by ITAT, which are subject matter of Appeals before this Court, and which are pending admission, are not stayed by this Court and are binding on the Respondents.

19. The Hon'ble Apex Court in Kamlakshi Finance Corporation Ltd. reported in 1991 (55) ELT 433 (SC) did not approve the approach of the officials of the revenue of treating decisions of the Appellate Tribunal as "not acceptable".

20. This Court in Samp Furniture (P.) Ltd. reported in 2024 (300) Taxmann 452 has categorically observed that the Revenue having not

"accepted" the judgment of the High Court would not mean that till the same is set aside in a manner known to law, it would lose its binding force.

21. In view of the aforesaid and decision of the Appellate Tribunal in Petitioner's own case, we find that the Petitioner has made out a more than strong *prima-facie* case for grant of an unconditional stay. Therefore, in the peculiar facts of the present case, we are of the opinion that the impugned orders granting stay of the disputed demand arising out of the Assessment Order dated 28th March 2022, subject to the Petitioner paying 20% thereof, pending the hearing of the Appeal before the CIT(A), cannot be sustained and is accordingly set aside.

22. Accordingly, we direct that the demand arising out of the Assessment Order dated 28th March 2022 shall remain stayed pending the hearing and final the disposal of the Appeal before the CIT(A).

23. Since, we have stayed the demand pending disposal of the Appeal, it would be in the interest of justice that the CIT(A) decides the Appeal filed by the Petitioner expeditiously, and in event not later than four months from the date of uploading of this order, on merits and in accordance with law.

24. We clarify that we have not examined the merits of the issues involved in the above Petition and the contentions regarding the same are expressly kept open to be decided in appeal by the CIT(A).

25. Rule is made absolute in the aforesaid terms, and the above Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

26. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Uday S. Jagtap