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

INCOME TAX APPEAL NO.803 OF 2012

The Commissioner of Income Tax. ..Appellant

-Versus-

M/s Reliance Infrastructure Limited. ..Respondent

.....
Mr.Tejveer Singh, for the Appellant.

Mr.R.Murlidhar with Mr.Balasaheb Yevale i/by Rajesh Shah & Company,
for the Respondent.

.....
CORAM: S.C. DHARMADHIKARI

AND

A.K. MENON, JJ.

DATE :- 12th September, 2014

PC.:

1 This Appeal challenges the order passed by the Income Tax Appellate Tribunal, Mumbai Bench dated 30.08.2011 in Income Tax Appeal Nos.4718 and 4719/Mum/2010. The Assessment Years in question are 1998-1999 and 1999-2000.

2 The Revenue appealed to the Tribunal being aggrieved by the view taken by the first Appellate Authority in two separate orders dated 30.12.2009. After arguing the Appeal for sometime what the Revenue has done and in relation to the principal ground raised in the Appeal before the Tribunal and referred in paragraph 3 of the order of the Tribunal is to concede jointly with the Assessee's representative that the same stands answered in favour of the Assessee M/s Reliance Infrastructure Limited and against the Revenue. The concession is recorded after both sides stated that there is a judgment in the field and rendered by the

Honourable Supreme Court of India in the case of *Commissioner of Income Tax v/s Tulsyan NEC Limited* reported in **(2011) 330 ITR 226 (SC)**.

3 Based on this concession the Tribunal dismissed the Revenue's Appeal and affirmed the finding of the first Appellate Authority.

4 We sought from Mr. Tejveer Singh an explanation as to how in the teeth of the authoritative pronouncement of the Honourable Supreme Court of India and thereafter, nothing contrary to the legal position set out therein that Section 260A of the Income Tax Act, 1961 has been invoked by the Revenue. Mr. Tejveer Singh would submit that it is the authority of the Jurisdictional Commissioner and he certifies that an Appeal should be filed against the order of the Tribunal. Based on such an advice and opinion that the Revenue brings an appeal to this Court. All that the Advocate does is to thereafter, peruse the records and file an appeal.

5 These state of affairs can hardly be termed as satisfactory. It is unfortunate that the Revenue is unable to make any distinction with regard to the legal position noted in the judgment of the Honourable Supreme Court of India and it is bound by the said judgment of the highest court in the country. The Revenue seems to be unaware of Article 141 of the Constitution of India and mandate thereof. Once there is nothing to the contrary, then, the authoritative pronouncement should bind all. The Tribunal then cannot be approached and equally this Court to complain about an adverse order. We are shocked that when such is the concession recorded that the Appeals of this nature are brought before this Court and it's precious judicial time is wasted.

6 Let the concerned Commissioner and who advised that such Appeal should be filed before this Court, remain present before us on the next date of hearing. After giving him an opportunity we would then record our dissatisfaction and proceed to impose costs. It is only to comply with the principles of natural justice and equally fairness and equity that

we adopt this course. Let both the concerned Commissioner and the Jurisdictional Commissioner remain present in this Court on the adjourned date. List this Appeal on 01st October, 2014 under the caption “For Passing Orders”.

(A.K. MENON, J.)

(S.C. DHARMADHIKARI, J.)

Bombay High Court

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-Versus-

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..Respondent

.....
Mr. Tejveer Singh for the Appellant.

Mr. R. Murlidhar with Balasaheb Yevale i/b. Rajesh Shah & Co. for the Respondent.

.....
CORAM: S.C. DHARMADHIKARI

AND

A. K. MENON, JJ.

DATE :- 1ST OCTOBER, 2014

PC.:

1] It is very unfortunate that we had to secure the presence of the highest officers in the department of Income Tax, for seeking an explanation on the points which we have raised in our order dated 12th September, 2014.

2] Accordingly, Mr. Tejveer Singh appearing on behalf of the Revenue states that the officers are present in Court and they apologize for the lapse on their part in filing of such Appeals and which raises a question fully concluded against the Revenue by a judgment of the Hon'ble Supreme Court of India to which detailed reference has been made in our earlier order.

3] The only intent to secure personal appearance of higher officials is to impress on the Revenue that larger public interest mandates and requires it not to waste precious time of the highest Court in the State by engaging it in frivolous Appeals and applications. It may be that, at the departmental level, the officers are not satisfied with adverse orders and desire to contest the issue or raise it before the Income Tax Appellate Tribunal. However, when the Tribunal follows and applies the ratio of a judgment of the Hon'ble Supreme Court of India, then, we would expect the officers to gracefully accept an adverse verdict. Where no distinguishing feature can be pointed out, then, the law of the land must be allowed to prevail. The mandate of Article 141 of the Constitution of India is known to all. The further mandate of the Constitution as enshrined in Article 261(1) is giving of full faith and credit to public acts, records and judicial proceedings of the union and of every State. Therefore, the law declared by the Hon'ble Supreme Court binds all and cannot be brushed aside. The repeated attempts to raise the same issues and questions in relation to same Assessee and year after year results in loss of precious judicial time and public revenue. We do not expect hereafter such an irresponsible conduct from the higher officers. Ordinarily, we would have in the absence of any explanation forthcoming, passed severe structures against the department and the officers in particular but we refrain from doing so since the concerned officials

present in Court sincerely apologized for the lapse and urged that the Appeal may be disposed against the Revenue and in terms of our earlier orders so also the judgment of the Hon'ble Supreme Court of India, both of which are binding on us. Hence, the Appeal is dismissed. No costs.

(A. K. MENON, J.)

(S.C. DHARMADHIKARI, J.)

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