

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

INCOME TAX APPEAL NO.370 OF 2016

The Pr.Commissioner of Income Tax-14 ... Appellant

Vs

International Biotech Park Ltd. ... Respondent

Mr.Suresh Kumar for the Appellant.

Mr.Niraj Seth a/w Mr. Atul K. Jasani for the Respondent.

**CORAM : S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

THURSDAY, 23RD AUGUST, 2018

P.C. :

1 Mr.Suresh Kumar, during the course of his argument stated that in the impugned order, the Tribunal has followed its view for the Assessment Year 2009-2010 and applied it for the Assessment Year under consideration, namely, 2010-2011.

2 Mr.Suresh Kumar fairly says that Income Tax Appeal (L) No.199 of 2015 for the Assessment Year 2009-2010 was

filed in this Court on 17th February 2015.

3 Though the Registry reminded the Department/Revenue that it should attend the matter and remove all office objections, none attended it. The result is that on 9th July 2015, the Appeal stood rejected for non-compliance of the Bombay High Court (Original Side) Rules, 1980.

4 Mr.Suresh Kumar submits that the larger public interest would suffer grossly in the event we do not allow him to point out the legal errors in the order passed by the Tribunal for the Assessment Year 2009-2010. That order has been followed in the Assessment Year under consideration and that would enable the Tribunal to go on following the said order for subsequent years. Though the principle of res-judicata is not applicable to the Revenue/Tax proceedings, but the rule of consistency would be invoked is the apprehension of Mr.Suresh Kumar. Though we accede to his request and bring that Appeal as well and would hear Mr.Suresh Kumar on that Appeal, it is for the purposes of our Registry taken to be

rejected. Still we have a word or more to say about this conduct of the Revenue.

5 On numerous occasions, this Court has brought to the notice of the Department of Revenue, Ministry of Finance, Government of India through the Commissionerates that the Revenue has been selective in its approach. It picks either the assessee or the assessment years pertaining to that assessee for challenging the orders in relation to them, before the higher forums. This results in revenue leakage or perpetuation of wrongs affecting adversely the collection of revenue. The public at large is at a loss to understand as to why the Department/Revenue consistently loses the battle in the higher Courts. This could be then termed as a deliberate or intentional act.

6 If the Department of Revenue, Ministry of Finance, Government of India is going to conveniently overlook this and not bring the guilty persons to book by initiating disciplinary measures against them, then, no purpose will be served at all. We know that the Appeal for the prior Assessment Year may

not be properly drafted or does not contain the relevant details, much less the precise question of law and if that is dismissed, there will be definitely an impact on the Appeal relating to the Assessment Year under consideration. Hence, this is not a short term exercise, but a major surgery which will have to be performed. If the Revenue Officials are prepared to take some bold decisions, then, only these state of affairs will improve and not otherwise.

7 Purely to accommodate Mr.Suresh Kumar, we post both these matters on 5th September 2018. The cases be listed as Part Heard.

B.P .COLABAWALLA, J.

S.C. DHARMADHIKARI, J.