

(2014) 07 BOM CK 0069

Bombay High Court

Case No: Income Tax Appeal Nos. 424, 425 and 483 of 2012

Commissioner of
Income Tax

APPELLANT

Vs

Larsen and Toubro
Ltd.

RESPONDENT

Date of Decision: July 10, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 271(1)(c)

Citation: (2014) 272 CTR 336 : (2014) 366 ITR 502

Hon'ble Judges: S.C. Dharmadhikari, J; B.P. Colabawalla, J

Bench: Division Bench

Advocate: Suresh Kumar, Advocate for the Appellant; J.D. Mistry, Senior Advocate
instructed by A.K. Jasani, Advocate for the Respondent

Judgement

1. When these matters were called out, one of us Justice B.P. Colabawalla), indicated to both the assessee and the Revenue that he holds shares of the assessee, M/s. Larsen and Toubro Ltd. but both the sides fairly stated that the matter may not be removed from our Board. There is no need for Justice B.P. Colabawalla to recuse himself from this matter. It is on that agreed understanding and basis that we have heard both sides. Having heard Mr. Suresh Kumar at some length and perusing with his assistance the orders passed in these appeals by the Tribunal, we are of the opinion that the Revenue's appeal is liable to be dismissed.

2. Imposition of penalty u/s 271(1)(c) of the income tax Act, 1961, has been set aside by the Tribunal in all these matters on the findings of fact that merely because the assessee raised a claim which was eventually disallowed, does not mean that the ingredients of clause (c) are satisfied or fulfilled so as to justify imposition of penalty.

3. In doing so, the Tribunal merely followed the dictum of the Hon'ble Supreme Court in several decisions and in the case of [Commissioner of Income Tax,](#)

Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., The penalty has been, therefore/rightly deleted.

4. Such a finding essentially based on the facts and in the circumstances peculiar to the assessee, does not raise any substantial question of law. We are surprised if not shocked that such appeals are being brought before us and precious judicial time is being wasted that too by the Revenue. The least and minimum that is expected from the Revenue officers is to accept and abide by the Tribunal's findings in such matters and when they are based on settled principles of law. If they are not deviating from such principles and are not perverse but consistent with the material on record, then, we do not find justification for filing of such appeals. We have found that merely expressing displeasure orally is not serving any purpose.

5. Time and again we have to deal with such appeals. Merely because they are filed that they get listed on the daily admission board. The advocates filing them and routinely, so also those instructing them do not have authority to withdraw them. Consequently, they are pressed and argued resulting in a hearing, may be brief and an order of this court dismissing them. Some times there are at least 3-5 such cases on our daily board. We do not understand why higher officials do not have the courage to take bold decisions particularly of not pursuing such matters up to this court or higher. Because the assessee is a leading public limited company should not act as a deterrent for them to take a informed, rational decision and sub-serving larger public interest. A realization of this nature is a need of the hour as higher courts do not have to deal with tax and revenue matters only but all those involving life and liberty of citizens, their property rights, rights of children, women and senior citizens. These rights are also precious and the legitimate expectations of such persons or groups of easy and expeditious justice also have to be fulfilled by the higher judiciary. The biggest litigant, namely, the State ought to be aware of the pendency of cases in High Courts of Bombay, Madras, Calcutta and Allahabad for example. If their policies particularly on litigations are not aimed at reducing frivolous and speculative litigations then the least that can be said is that the State has failed to act for public good and in public interest. The State is expected to act as a model litigant. It must set an example for the public to follow and we hope that this order acts as a reminder for all concerned to at least now take remedial steps and measures. It is, therefore, that despite the persuasive skills of Mr. Sureshkumar, who fervently pleaded not to pass any order imposing costs, that we are constrained to impose costs.

6. The Revenue officers must realize that just like other powers a executive power conferred in them is in the nature of a trust. They hold office as trustees of the public at large. They deal with public revenue and public money and that cannot be wasted in such frivolous litigation. We, therefore, dismiss these appeals with costs quantified at Rs. 1,00,000 each. Costs shall be paid to the Maharashtra State Legal Services Authority, Mumbai, within a period of four weeks from today. It would be

open for the superior/competent authority to recover the costs personally from the officer responsible and equally take disciplinary action against him if the power to decide about filing such appeals is abused or the decision-making authority is utilized to harass innocent assesseees. Every case must be dealt with on its merit and no routine exercise ought to be undertaken merely because the revenue impact is higher or the status or financial position of the assessee is influential and strong. That cannot be the only yardstick or criteria.