

**IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD**  
\* \* \* \*

**W.P.No.26279 of 2021**

Between:

Mylan Laboratories Limited

Petitioner

VERSUS

The Additional/Joint/Deputy/Assistant  
Commissioner of Income Tax/income-Tax Officer  
National Faceless Assessment Centre,  
Income Tax Department, Delhi & Another.

Respondents

**JUDGMENT PRONOUNCED ON: 04.01.2022**

**HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**HON'BLE SMT. JUSTICE P. MADHAVI DEVI**

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|----|---|--------------|
| 1. | Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | : Yes        |
| 2. | Whether the copies of judgment may be<br>Marked to Law Reporters/Journals?    | : Yes        |
| 3. | Whether His Lordship wishes to<br>see the fair copy of the Judgment?          | : <b>Yes</b> |

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**UJJAL BHUYAN, J**

**\* HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**HON'BLE SMT. JUSTICE P. MADHAVI DEVI**

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Commissioner of Income Tax/income-Tax Officer  
National Faceless Assessment Centre,  
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Respondents

! Counsel for Petitioner : Sri Eashwar & Sri Durga Bose  
Gandham

^ Counsel for the respondents : Mr. J.V.Prasad (SC for Income Tax)

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> HEAD NOTE:

? Cases referred

<sup>1</sup> (2012) 348 ITR 302 (SC)

<sup>2</sup> 1961(2) S.C.R. 241

<sup>3</sup> (2021) 85 G.S.T. 399 (Bombay)

<sup>4</sup> (2013) 357 I.T.R. 357 (S.C.)

<sup>5</sup> (1911) 1 Ch. 34

<sup>6</sup> 1992 Supp (1) S.C.C. 443

<sup>7</sup> 1994 Supp (3) S.C.C. 73

<sup>8</sup> 2020 (374) ELT 552

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN****AND****THE HONOURABLE SRI JUSTICE P. MADHAVI DEVI****Writ Petition No.26279 of 2021****JUDGMENT AND ORDER:** *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Eashwar, learned Senior Counsel for the petitioner and Mr. Prasad, learned Standing Counsel for Revenue, appearing for the respondents.

**2.** The matter was heard on 23.12.2021 and yesterday was fixed for delivery of judgment. For unavoidable circumstances, judgment could not be delivered yesterday and is now being dictated in the open Court.

**3.** By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 28.09.2021 passed by respondent No.1 and further seeks a direction to respondent No.1 to pass a speaking and reasoned order dealing with all the objections raised by the petitioner.

**4.** Petitioner is a company engaged in the business of manufacturing active pharmaceutical ingredients, finished dosage formulations, injectable formulations, besides conducting research and development activities. It is an assessee under the Income Tax Act, 1961 (briefly, '**the Act**' hereinafter).

**5.** For the Assessment Year 2018-19, petitioner filed return of income on 27.11.2018 declaring loss of Rs.458,26,55,237.00. The case of the petitioner was selected for scrutiny under the Computer Aided Scrutiny Selection (C.A.S.S.) system of the Income Tax Department.

**6.** Pursuant thereto, notice dated 23.09.2019 was issued to the petitioner under Section 143(2) of the Act which was responded to by the petitioner vide its letters dated 15.10.2019 and 20.07.2020. Further, notice dated 10.12.2020 was issued by respondent No.1 to the petitioner under Section 142(1) of the Act. This was also responded to by the petitioner on 24.12.2020.

**7.** Petitioner was asked to justify liability of depreciation on goodwill by further notices dated 13.08.2021 and 24.08.2021 issued under Section 142(1) of the Act. These notices were again responded to by the petitioner vide letters dated 18.08.2021 and 26.08.2021.

**8.** Finally, show-cause notice was issued to the petitioner by the respondent no.1 on 16.09.2021 calling upon the petitioner to show-cause as to why the proposed variation should not be made as per the draft Assessment Order (copy of which was enclosed with the show-cause notice). Petitioner was asked to file its response on or before 21.09.2021.

**9.** Owing to the short period for submitting response i.e., five days, petitioner submitted executive summary of its responses on

20.09.2021 calling upon respondent No.1 to drop the show-cause notice while accepting the explanation of the petitioner. It was pointed out that in the draft Assessment Order respondent no.1 had erred in seeking to disallow depreciation on goodwill. It was further pointed out that the Transport Pricing Officer in his order for the same Assessment Year, i.e., 2018-19 had treated depreciation on goodwill as 'operative expenditure' of the petitioner, while computing the arm's length price of the international transactions undertaken by the petitioner. It was contended that if the very same depreciation on goodwill was disallowed by respondent No.1 it would lead to an anomalous situation.

**10.** Pursuant to further notice dated 21.09.2021 of respondent no.1, petitioner filed detailed submissions on 23.09.2021 and also requested for a personal hearing. Personal hearing was granted through video-conferencing on 27.09.2021 at 03:00 p.m.

**11.** Thereafter, respondent no.1 passed the impugned order dated 28.09.2021 which has been impugned in the present Writ Petition. The impugned order is a draft Assessment Order under Section 144C of the Act. It is dated 28.09.2021.

11.1 After elaborate discussion, depreciation claimed on goodwill to the extent of Rs.1247,45,31,301.00 was disallowed whereafter the total income was computed at Rs.3071,11,53,860.00, further

recording that penalty proceedings would be initiated separately under Section 270A of the Act for under-reporting of income.

**12.** The impugned challenge has been made on the ground that respondent No.1 while passing the draft Assessment Order had completely overlooked the decision in the petitioner's own case passed by the Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad in I.T.A.No.2335/HYD./2018 for the Assessment Year 2014-15 dated 13.11.2019. Further contention of the petitioner is that such disallowance of depreciation of goodwill is contrary to judgment of the Supreme Court in **C.I.T. vs. SMIFS Securities Ltd.**<sup>1</sup>.

**13.** When the matter was being heard, this Court passed an order on 29.10.2021 that the Dispute Resolution Panel shall not pass final order on the draft Assessment Order, which order has been continued since then.

**14.** Respondents have filed counter-affidavit contending that the Writ Petition is premature, it being directed against the draft Assessment Order. Even after the draft Assessment Order is finalised, there is a hierarchy of appeals for the petitioner to avail of if it is aggrieved. Interference at this stage would not be justified. That apart, disallowance of depreciation on goodwill has been justified on merit.

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<sup>1</sup> (2012) 348 ITR 302 (SC)

**15.** In the reply-affidavit, petitioner has reiterated the averments made in the Writ Petition besides contending that the impugned draft Assessment Order is in contravention of the principles of natural justice and on the face of binding judicial precedents.

**16.** Mr. Eashwar, learned Senior Counsel, appearing for the petitioner, has taken us to paragraph No.4.7.6 of the draft Assessment Order to point out that respondent No.1 has acted in a manner contrary to established norms and judicial discipline. Though he is bound by the order of the jurisdictional Income Tax Appellate Tribunal, he has deliberately decided to disregard the same. Not only that, respondent no.1 has also tried to distinguish the binding precedent of the judgment of the Supreme Court in **SMIFS** (1 supra). Referring to Article 141 of the Constitution of India, he submits that the decision of the Supreme Court is binding on all authorities within the length and breadth of the country and all such authorities are bound to give effect to the decision of the Supreme Court.

**17.** Learned Senior Counsel has submitted two volumes of case laws in support of his submissions. In particular, he has referred to the decision of the Supreme Court in **Calcutta Discount Co. Ltd. Vs. Income Tax Officer**<sup>2</sup>, more particularly, to paragraph No.26 thereof and submits that where an action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue

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<sup>2</sup> 1961(2) S.C.R. 241

appropriate orders or directions to prevent such consequences. He has also placed reliance on a recent decision of the Bombay High Court in **B.A. Continuum India Pvt. Ltd. Vs. Union of India**<sup>3</sup> and submits therefrom that violation of principles of natural justice would render an order *non est* in the eye of law. In such an eventuality, the right of appeal would not be so much a true right of appeal as a corrected remedy. In that case, Bombay High Court had not only set aside the order in original while remanding the matter back for fresh decision, but had also directed the Commissioner of Service Tax, Mumbai to assign another competent officer to deal with the matter on remand.

**18.** Mr. J.V. Prasad, learned Standing Counsel for Income Tax Department, submits that the Writ Petition is premature as it is directed only against a draft Assessment Order. The assessment proceeding has not yet attained finality. The draft Assessment Order would be subject to scrutiny by the Dispute Resolution Panel. Therefore, at this stage, no interference is called for. He has also filed a compilation of judgments wherefrom he has referred to the case of **Commissioner of Income-Tax vs. Chhabil Dass Agarwal**<sup>4</sup> to contend that the High Court would not interfere in writ jurisdiction if there is an adequate and efficacious alternative remedy available to the person aggrieved and he has approached the High Court without availing such alternative remedy.

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<sup>3</sup> (2021) 85 G.S.T. 399 (Bombay)

<sup>4</sup> (2013) 357 I.T.R. 357 (S.C.)



**19.** Responding to the above contention of Mr. J.V. Prasad, Mr. Eashwar, learned counsel for the petitioner has referred to Section 144C of the Act, more particularly, to Sub-Section (2) thereof, and submits that the Dispute Resolution Panel does not have the mandate to set aside the draft Assessment Order and remand the same to the Assessing Officer for fresh consideration. He has also highlighted what was extracted by the Bombay High Court in **B.A. Continuum** (3 supra) the observations of Megarry, J in **Leary Vs. National Union of Vehicle Builders**<sup>5</sup> that *“if the rules and the law combine to give the member the right to a fair trial and the right of appeal, why he should be told that he ought to be satisfied with an unjust trial and a fair appeal”*. He therefore submits that the present is a fit case where this Court should intervene in the matter and grant the reliefs to the petitioner.

**20.** Submissions made by learned Counsel for the parties have received the due consideration of the Court.

**21.** As noticed above, what we have before us is a draft order of assessment passed under Section 144C of the Act which is under impugnement.

**22.** Before we deal with the said order, it would be apposite to advert to the provisions of Section 144C of the Act. This provision deals with reference to Dispute Resolution Panel and was inserted in the Act by the Finance (2) Act, 2009 with retrospective effect from

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<sup>5</sup> (1911) 1 Ch. 34

01.04.2009. Since this provision is germane to the *lis* before us, the same is extracted in its entirety, as under:

**“144C.** (1) *The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.*

*(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—*

*(a) file his acceptance of the variations to the Assessing Officer; or*

*(b) file his objections, if any, to such variation with,—*

*(i) the Dispute Resolution Panel; and*

*(ii) the Assessing Officer.*

*(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—*

*(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or*

*(b) no objections are received within the period specified in sub-section (2).*

*(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or Section 153B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—*

*(a) the acceptance is received; or*

*(b) the period of filing of objections under sub-section (2) expires.*

*(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.*

*(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—*

*(a) draft order;*

*(b) objections filed by the assessee;*

*(c) evidence furnished by the assessee;*

*(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;*

*(e) records relating to the draft order;*

*(f) evidence collected by, or caused to be collected by, it; and*

*(g) result of any enquiry made by, or caused to be made by, it.*

*(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—*

*(a) make such further enquiry, as it thinks fit; or*

*(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.*

*(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.*

*[Explanation – For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]*

*(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.*

*(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.*

*(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.*

*(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.*

*(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or Section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.*

*(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.*

*[(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the [Principal Commissioner or] Commissioner as provided in sub-section (12) of section 144BA.]*

*[(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by –*

(a) *eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;*

(b) *optimising utilisation of the resources through economies of scale and functional specialisation;*

(c) *introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.*

*[(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), by notification in the Official Gazette direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification :*

**Provided** *that no direction shall be issued after the 31<sup>st</sup> day of March, 2022.*

*(14D) Every notification issued under sub-section (14B) and sub-section (14C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]*

*(15) For the purposes of this section,—*

*(a) “Dispute Resolution Panel” means a collegium comprising of three Principal Commissioners or three Commissioners of Income-tax constituted by the Board for this purpose;*

*(b) “eligible assessee” means,—*

*(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and*

*(ii) any non-resident not being a company, or any foreign company.”*

**23.** From a perusal of the above, we find that as per Sub-Section (1) the Assessing Officer shall in the first instance forward a draft of the proposed order of assessment to the eligible assessee if he proposes to make any variation which is prejudicial to the interest of such assessee.

**24.** Sub-Section (2) says that on receipt of the draft Assessment Order, the eligible assessee shall within thirty (30) days on receipt by him of the draft order either file his acceptance of the variations proposed or file his objections to the Dispute Resolution Panel or to the Assessing Officer.

**25.** As per Sub-Section (5), the Dispute Resolution Panel shall, in case where any objection is received under Sub-Section (2), issue such directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. While issuing such directions, the Dispute Resolution Panel shall consider the factors enumerated in Sub-Section (6). It can also make enquiry or further enquiry before issuing any such directions.

**26.** This brings us to Sub-Section (8), as per which, the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft assessment order. However, it shall not set aside any proposed variation or issue any direction under Sub-Section (5) for further enquiry and passing of the Assessment Order. As per the Explanation below Sub-Section (8), the power of the Dispute Resolution Panel to enhance the variation shall include and shall always be deemed to have included the power to consider any matter arising out of the assessment proceedings whether such matter was raised or not by the eligible assessee.

**27.** Sub-Section (10) makes it clear that every direction of the Dispute Resolution Panel shall be binding on the Assessing Officer. Sub-Section (13) says that upon receipt of the directions issued by the Dispute Resolution Panel under Sub-Section (5), the Assessing Officer shall in conformity with such directions complete the assessment.

**28.** “Dispute Resolution Panel” is defined in Sub-Section (15)(a) to mean, “*a collegium comprising of three Principal Commissioners or three Commissioners of Income-tax constituted by the Board for this purpose*”.

**29.** From the above, it is evident that Dispute Resolution Panel is a high-powered body constituted under the Act as an oversight body for the guidance of the Assessing Officer. The object behind constitution of Dispute Resolution Panel appears to be to ensure that the assessment proceedings are kept within the bounds of law while adhering to the principles of natural justice. Though the Assessing Officer has been empowered under Section 144C to frame draft assessment order, the same is however subject to confirmation by the Dispute Resolution Panel.

**30.** We have already noticed that under Sub-Section (5), the Dispute Resolution Panel has the mandate to issue directions for guidance of the Assessing Officer while framing the assessment and under Sub-Section (8) the Dispute Resolution Panel may confirm or

reduce or enhance the variations proposed in the draft assessment order. Both Sub-Sections (5) and (8) have to be read together, and from a conjoint reading of the two provisions it is clearly discernible that the final say, insofar assessment is concerned, rests with the Dispute Resolution Panel. This has been made further clear by Sub-Section (10) which says that every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer. The words used in Sub-Section (8), viz., *confirm, reduce or enhance* which lays down the broad framework of the power of the Dispute Resolution Panel must be given their full and complete meaning so as to give effect to the provisions of Section 144C. Giving a restricted meaning to the above words would intrude into, rather curtail, the jurisdiction of the Dispute Resolution Panel which could not have been the intent of the Legislature. While Dispute Resolution Panel shall not set aside any proposed variation, it certainly has the power and jurisdiction to reduce the variations proposed in the draft order.

**31.** Having noticed the above, we may now advert to the proposed variations made in the draft assessment order highlighted by the petitioner.

**32.** Paragraph No.4.7.6 of the draft assessment order reads as under:

*“4.7.6 Show case notice was issued to the Assessee on 16.09.2021 to which it replied on 20.09.2021 and 23.09.2021. Also since assessee had demanded*



*personal hearing, therefore the same was conducted through Video Conference on 27.09.2021. The contentions and arguments of the assessee are considered and the final order is being issued with following remarks :*

*(a) It is reiterated that since the appeal in your case is pending in Hon'ble High Court as the department has not accepted the judgment of Hon'ble ITAT, therefore the issue of addition has not yet attained finality.*

*It is contended by Assessee that the draft order disregards all the factual findings by Hon'ble Tribunal, being the highest fact finding authority. However, it is to be noted that Hon'ble ITAT in its order has only mentioned the arguments presented by Ld. DR such as those on net asset value being negative and outgo in the form of payments to Sr. Managers, however it has not specifically commented on them / gave a different finding. The arguments formed by Hon'ble ITAT in reaching a conclusion which is favourable to the assessee has been appealed before the Hon'ble High Court and hence cannot be taken as final.*

*(b) Assessee has relied on Hon'ble Supreme Court judgment in **Smifs Securities** case. However, as far as this case is concerned, the only issue for consideration was whether goodwill is an asset within the meaning of Section 32 of the Income Tax Act which the court answered in affirmative. However, it may be noted that that the decision in **Smifs Securities** was without considering the provisions which were relevant to the issue on hand, such as proviso 6 to Section 32, as the same were not argued before the Court. Hence, the decision of Hon'ble Court in **Smifs Securities** case cannot be extended on the points which were not argued or evaluated at all. In other words, while the court has decided that goodwill is a depreciable asset, it is to be noted that there was no contention before the*

*court as to whether difference arising out of amalgamation was goodwill eligible for depreciation.*

*(c) In its submissions, assessee has also relied on Hon'ble ITAT judgment in its own case for AY-2014-15. A fine reading of Hon'ble ITAT judgment in assessee's case for AY 2014-15 reveals that the Tribunal has not specifically concluded on the applicability of sixth proviso to Section 32(1) of the Act in case of goodwill arising on amalgamation. The case of United Breweries though distinguished by the Tribunal on facts but without any detailed discussion on applicability of sixth proviso to Section 32(1) of the Act.*

*(d) It is held by ITAT in assessee's case for AY 2014-15 that since the transaction was between unrelated parties and excess payment was made, therefore excess payment was towards nothing but goodwill. The Tribunal did not discuss the correct value of goodwill on which depreciation is claimed. Thus, the Tribunal has not made any comment on the valuation report of the assessee.*

*(e) It has been contended that Memorandum to Finance Act 2021 envisages disallowance of depreciation on goodwill in some situations which is not the case of taxpayer. However, it is to affirm that Finance Act, 2021 has made few amendments which clearly has the effect of disallowing depreciation in any case. Had the intent of legislature been to allow depreciation in some circumstances of goodwill, the same would have been reflected in amendments made to the Act. Anyhow, this in no way mean that the Finance Act 2021 is being made applicable to proceedings for the relevant AY. This argument is merely meant to suggest that the Amendment to Finance Act, 2021 is intending to disallow depreciation on goodwill in all cases.*

*(f) Moreover, the Income Tax Act 1961 has various provisions which, when read comprehensively, lead to the conclusion that if certain conditions are satisfied in amalgamation, it has to be treated as neutral for tax purposes. If depreciation on goodwill is allowed in tax neutral amalgamations, then the entire intent of the statute, as is evident from the comprehensive reading of the provisions, will get violated. The amalgamation will not remain tax neutral if depreciation on goodwill is allowed merely because it arises out of accounting entries as is required by the Accounting Standards.*

*(g) As regards double addition made due to TPO adjustment and disallowance made in Assessment Order, it is brought out that TP adjustment is being made on book profits after considering the depreciation that has been claimed in books. However, disallowance in Assessment Order is being made in relation to depreciation claimed by the Assessee by considering the same as intangible. Clearly, the rate of depreciation / amortisation is different as per Accounting Standards and as per Income Tax Act.*

*In view of above discussions, depreciation claimed on Goodwill at Rs.414,62,02,004.00 in respect of is disallowed.”*

**33.** The approach of the Assessing Officer, as manifest in Clauses (a) to (d) as extracted above, to our mind is problematic. Insofar the decision of the Income Tax Appellate Tribunal, Hyderabad ‘A’ Bench, Hyderabad in respect of petitioner’s own case for the Assessment Year 2014-15 is concerned, the Assessing Officer has stated that the Department has not accepted the said decision. The views of the Income Tax Appellate Tribunal is not acceptable to the Department, and therefore, it has been appealed before the High

Court. As such, the issue of addition of depreciation claimed on goodwill has not attained finality.

**34.** We are afraid such a view taken by the Assessing Officer can be justified. Rather, it is highly objectionable for an Assessing Officer to say that decision of the Income Tax Appellate Tribunal is not acceptable; and that since it has been appealed against, the issue of allowability of depreciation on goodwill has not attained finality. Unless there is a stay, order / decision of the jurisdictional Income Tax Appellate Tribunal is binding on all income tax authorities within its jurisdiction.

**35.** In **Union of India vs. Kamlakshi Finance Corporation Ltd.**<sup>6</sup>, Supreme Court held and reiterated that 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, which in itself is an objectionable phrase, and is the subject matter of an appeal can be no ground for not following the appellate order 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 the assessee and chaos in administration of the tax laws.

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<sup>6</sup> 1992 Supp (1) S.C.C. 443

36. Following the above decision, Supreme Court again in **Collector of Customs vs. Krishna Sales (P) Ltd.**<sup>7</sup>, reiterated the proposition that mere filing of an appeal does not operate as a stay or suspension of the order appealed against. It was pointed out that if the authorities were of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal.

37. Following the above decisions of the Supreme Court, a Division Bench of the Bombay High Court in **Ganesh Benzoplast Limited vs. Union of India**<sup>8</sup> held that non-compliance of orders of the appellate authority by the subordinate original authority is disturbing to say the least as it strikes at the very root of administrative discipline and may have the effect of severely undermining the efficacy of the appellate remedy provided to a litigant under the statute. Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

38. This principle has been reiterated by the Bombay High Court in **Himgiri Buildcon & Industries Limited Vs. Union of India**, decided on February 08, 2021.

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<sup>7</sup> 1994 Supp (3) S.C.C. 73

<sup>8</sup> 2020 (374) ELT 552

39. Therefore, the stand taken by the Assessing Officer that since the decision of the Income Tax Appellate Tribunal in the case of the petitioner itself for the assessment year 2014-15 has been appealed against the issue in question has not attained finality, is not only wrong but is required to be deprecated in strong terms being highly objectionable.

40. The second view expressed by the Assessing Officer *vis-à-vis* the decision of the Supreme Court in **SMIFS** (1 supra) is still more problematic. It is not open to the Assessing Officer to try to evade from the binding effect of a Supreme Court decision by trying to find out ‘distinguishing features’. Though unnecessary, we are still compelled to refer to Article 141 of the Constitution of India which says that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Therefore, it is the bounden duty of all authorities whether administrative or *quasi* judicial or judicial to follow the law declared by the Supreme Court.

41. While we agree with the learned Standing Counsel that the draft Assessment Order has not yet attained finality as it still has to be placed before the Dispute Resolution Panel and therefore, in the circumstances, we feel that interfering at this stage may not be justified as it would pre-empt decision-making by the high-powered Dispute Resolution Panel. However, we hope and trust that the Dispute Resolution Panel shall look into all aspects of the matter, more particularly, the discussions made above while passing

appropriate order(s) under Sub-Section (8) of Section 144C of the Act, and if necessary further personal hearing shall be afforded to the petitioner.

**42.** We make it clear that we have not expressed any opinion on merit. However, the Dispute Resolution Panel shall look into and consider the objections raised by the petitioner more particularly, about the decision of the Income Tax Appellate Tribunal in its own case for the Assessment Year 2014-15 and the judgment of the Supreme Court in **SMIFS** (1 supra) keeping in mind the discussions made above.

**43.** With the above observations, Writ Petition is disposed of. No costs.

**44.** As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

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**UJJAL BHUYAN, J**

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**P. MADHAVI DEVI, J**

Date : 04.01.2022

Ndr