

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2270 OF 2009

M/s. Shivshahi Punarvasan Prakalp Ltd. ..Appellant.

V/s.

Union of India & Ors. ..Respondents.

Mr. B.V. Jhaveri for appellant.

Mr. J.S. Saluja for respondent Nos.1 to 4.

Mr. D. J. Khambata, Additional Solicitor General with A.M. Sethna for respondent No.5.

**CORAM : DR. D.Y.CHANDRACHUD
AND J.P.DEVADHAR, JJ.**

DATED : 5TH JANUARY, 2010

P.C. :-

1. Rule. With the consent of learned counsel, Rule is made returnable forthwith and on the request of the learned counsel, rule is taken up for final hearing.

2. An appeal was filed before the Income Tax Appellate Tribunal at Mumbai pertaining to assessment year 2003-04 by the petitioner against the order dated 8th March, 2009 passed by the Commissioner of Income Tax (A)-X, Mumbai. The Tribunal dismissed the appeal by its judgment dated 7th July, 2009 on the ground that no approval was obtained of the Committee on Disputes constituted in pursuance to the judgment of the Supreme Court in

ONGC V/s. Collector of Central Excise [1992 Suppl (2) Supreme Court Cases 432].

3. The Tribunal, in the course of its judgment noted that the assessee is an undertaking owned by the Government of Maharashtra and then proceeded on the basis that "admittedly approval has to be obtained from Committee on Disputes in order to prefer an appeal before the Appellate Tribunal".

4. Counsel appearing on behalf of the revenue has stated before the Court that it was not and is not the contention of the revenue that the approval of the Committee on Disputes was required in order to prefer an appeal before the Income Tax Appellate Tribunal in a matter relating to an adjudication of a dispute relating to exaction of revenue under the Income Tax Act, 1961. Learned counsel appearing on behalf of the assessee has also adopted the same contention. In that view of the matter, the basis on which the Tribunal dismissed the appeal namely, on the footing that approval had to be obtained from the Committee on Disputes appears to be fallacious.

5. During the course of this proceeding, we have requested the Additional Solicitor General to assist the Court. The learned Additional Solicitor General submitted that the earlier judgment in the case of ONGC pertained to a dispute between a public sector undertaking of the Central Government and Union of India. Subsequently, directions were issued by the Supreme Court in its judgment of **Oil & Natural Corporation Ltd. V/s. City and Indust. Dev. Corpn., Maharashtra & Ors.** reported in **2007 (7) SCC 39** by which a Committee was directed to be constituted to sort out differences

between the Central Government and State Government entities. The Committee inter alia is to consist of the Cabinet Secretary to the Union of India; the Chief Secretary of the State concerned; Secretaries of the concerned departments of the Union and the State and Chief Executive Officers of the concerned undertakings involved in the dispute. The Additional Solicitor General informed the Court that the curative petition filed by the Union of India against the judgment was disposed of on 7th July, 2007. The Additional Solicitor General states that the Union of India would be ready and willing to constitute a Committee to look into a dispute between the Central Government and State Government entities, on a case to case basis if so directed by the Court, but this would not be necessary in a matter such as the present, which relates to the adjudication of a dispute under the Income Tax Act, 1961.

6. Since we have come to the conclusion that the basis on which the appeal was dismissed by the Tribunal was erroneous, it would be only appropriate and proper to set aside the order of the Tribunal in order to facilitate an adjudication on merits. In the circumstances, the order of the Tribunal dated 7th July, 2009 is set aside and I.T.A. No.3486/Mum/2007 is restored to the file of the Tribunal for a decision on its merits.

7. Rule is made absolute in aforesaid terms. There shall be no order as to costs.

(J.P.DEVADHAR, J.)

(DR. D.Y.CHANDRACHUD, J.)