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

**INCOME TAX APPEAL NO.1001 OF 2011**

Commissioner of Income Tax-4, Mumbai .. Appellant  
Vs.  
M/s.Kisan Ratilal Choksey Share & Securities .. Respondent  
Pvt.Ltd.

.....  
Mr.Arvind Pinto for the Appellant.  
Mr.Abhishek Tilak i/b Sameer G. Dalal for the Respondent.  
.....

**CORAM: S.C. DHARMADHIKARI  
AND  
GIRISH S. KULKARNI, JJ.**

**DATE :- 16<sup>th</sup> April, 2014  
&  
17<sup>th</sup> April, 2014**

PC.:

1 The present Appeal challenges the order passed by the Income Tax Appellate Tribunal, Mumbai Bench in Income Tax Appeal No.4821/Mum/2009 dated 30<sup>th</sup> September 2010. The Assessment Year in question is 2006-07.

2 The Tribunal has categorically observed that in disposing of the Revenue's Appeal and equally that of the assessee's what it has done is to follow its own view taken earlier and in the case of the very assessee. The assessee's own case namely, Income Tax Appeal No.4347/M/2009 has been referred to. The Assessment Year in that case was 2005-06. The Tribunal delivered an order dated 14<sup>th</sup> June 2010 and dealt with identical controversy. The two substantial questions of law and which are placed for our consideration were the very questions raised by the Revenue. The Revenue filed the Appeal against the order dated 4<sup>th</sup> June 2010, being

Income Tax Appeal No.6803/10. On 21<sup>st</sup> October 2011, the Revenue's Appeal has been dismissed by this Court with the following observations and conclusions:-

*“Counsel for the Revenue states that the questions raised by the revenue in this appeal are covered against the revenue by the judgment of this Court in the case of Commissioner of Income Tax (Appeals) Vs. M/s.Kotak Securities Ltd. (Income Tax Appeal No.3111 of 2009) decided by us today i.e. 21<sup>st</sup> October 2011, the decision in the case of The Income Tax Commissioner Vs. Angel Capital & Debit Market Ltd (Income Tax Appeal (L) No.475 of 2011) decided on 28<sup>th</sup> July 2011 and the decision in the case of The Commissioner of Income Tax Vs. M/s.Sykes & Ray Equities (I) Ltd. (Income Tax Appeal No.3563 of 2010) decided on 14<sup>th</sup> October 2011. For the reasons stated in the aforesaid orders, the present appeal is dismissed with no order as to costs.”*

3 In doing so, the Division Bench comprising of Their Lordships, the Hon'ble Justice Mr.J.P. Devdhar, as His Lordship then was, and Hon'ble Mr Justice A.A.Sayed followed their own order dated 21<sup>st</sup> July 2011 in Income Tax (L) No.475 of 2011.

4 When the present Appeal was called out for admission today, it was the assessee's counsel who brought to our notice the orders in Income Tax Appeal Nos.6803/10, Income Tax Appeal (Lodging) No.475/11 and Income Tax Appeal No.3563/10.

5 It is unfortunate that the Revenue insists in arguing Appeals in this manner and for subsequent Assessment Years. The Revenue ought to have been fair and brought to the notice of this Court the fact that its Appeal challenging the very findings and conclusions for prior Assessment Years has been dismissed by this Court on merits. The reasons assigned ought to have been pointed out to us and thereafter, any explanation should have been offered for admission of this Appeal. In the light of the fact that the controversy is fully covered by the orders referred above, and

particularly the findings rendered by the Division Bench in the very assessee's case that we are of the opinion that the present Appeal does not raise any substantial question of law. It is a gross abuse of the process of this Court. It is dismissed with costs quantified at Rs.1,00,000/- (Rupees One lakh). Costs be paid to the assessee within 4(four) weeks from today.

17<sup>th</sup> April, 2014:

6 This matter was mentioned on a praecipe later on by Mr.Pinto, learned counsel appearing for the Revenue and the only request is that the direction to pay the costs quantified at Rs.1 lac within four weeks to the Assessee be recalled. Mr.Pinto assures the Court that hereafter the judicial orders and directions would be abided by in all matters and if appropriate averments are not made, they would be incorporated and inserted to the effect that the orders of the Tribunal for prior Assessment Years and in the case of very Assessee have been either challenged or otherwise. If the challenge is pending even that statement would also be made. If it is decided, the outcome thereof be also indicated. The relevant explanation then would find place in each and every memo of Appeal which is filed in this Court and equally to be lodged and filed in the Court.

7 It is with this assurance from the Revenue and since the matter is left by the Assessee's counsel to the Court that we recall our direction to pay costs quantified at Rs.1 lac. No other correction or alteration is made. The Application for recall/ speaking to the minutes is, accordingly, disposed of. No costs.

**(GIRISH S. KULKARNI, J.)**

**(S.C. DHARMADHIKARI, J.)**