

adjournment on the ground that Judicial Member has recused himself from hearing the appeal which are being represented by Shri S. K. Garg, Advocate and has submitted that without any communication either to the assessee or to the undersigned counsel with reference to the petition dated 17/12/2012, the matter was listed for hearing for 05/02/2013 and on the same premise the adjournment was sought by the assessee. The appeal was again listed for hearing on 08/02/2013 despite repeated objection to the fixing of appeal for hearing before the Bench of Judicial Member. It was further contended that despite the objection raised by the learned Counsel for the assessee, the case was heard and some order was dictated in the open court which the undersigned counsel could not fully comprehend at that time.

2. It was further submitted through this application that on the following working day and also thereafter, the undersigned counsel was required by the Bench Clerk to sign the order sheet entry dated 08/02/2013. Later on the learned counsel moved an application for issuing the certified copy of the order sheet entry dated 08/02/2013. On 08/03/2013 the learned counsel got an opportunity to peruse the order sheet entry and on that date he declined to sign the said order sheet entry as the same was contrary to what had transpired at the time of hearing on 08/02/2013. On 08/03/2013, in order to convey his objection to the said order sheet entry, the undersigned counsel appeared before the Judicial Member and expressed his inability in unambiguous terms to sign the order sheet entry dated 08/02/2013, for the same reason. It was further contended that in order to put the records straight, the undersigned counsel again submitted a formal letter on the same day, to the Registry

of the Tribunal with a copy forwarded to Sr. Vice President, Shri G. D. Agarwal, Income Tax Appellate Tribunal (in short I.T.A.T.) Delhi. Later on, certified copy of the order sheet entry was made available to the undersigned by the Registry. It was further contended that the undersigned counsel had never agreed that he had no reservation with the Bench constituted by the Judicial Member either singly or with Accountant Member. He further contended that in fact there could not have been any such agreement/assertion at the part of the undersigned counsel, looking to the additional fact that for initiating criminal contempt proceedings against the undersigned and his Senior Colleague Shri S. K. Garg, Advocate, a reference had already been made by the Judicial Member to the Hon'ble Allahabad High Court which was sub judice there at that time. It was further prayed that the order sheet entry dated 08/02/2013 be recalled or expunge and to issue necessary directions for modification of the same so that the same may be brought in conformity with the facts as stated above. Along with the application, Shri Pradeep Kumar Kapoor, has filed one letter addressed to Judicial Member and another letter written by Shri S. K. Garg, Advocate addressed to the Hon'ble President, I.T.A.T.

3. This application was taken up for consideration on 10/04/2013 and copy of the said application was given to learned Sr. D.R. for filing reply to the said application. Accordingly, the hearing was adjourned to 16/04/2013 for disposal of the application. Vide order dated 10/04/2013 Shri Pradeep Kumar Kapoor, C. A. was also directed to file an affidavit stating the happening in the court on the date when the matter was argued by him since he has disputed the facts recorded in the order sheet on 08/02/2013. On 16/04/2013 adjournment application was filed on

behalf of Shri Pradeep Kumar Kapoor, C. A., and the hearing was adjourned to 25/04/2013. Again on 21/04/2013 the adjournment was sought on behalf of Shri Pradeep Kumar Kapoor, C. A. by filing adjournment application and the hearing was again adjourned to 06/05/2013 with last opportunity for filing the affidavit in support of the application. On 06/05/2013, Shri Pradeep Kumar Kapoor, C. A. has filed an affidavit along with the annexures and on perusal of the affidavit it was noticed that the affidavit was not filed as per the direction issued vide order dated 10/04/2013. Since Shri Pradeep Kumar Kapoor, C. A. has disputed the facts recorded in the order sheet, he was again asked to file the detailed/exhaustive affidavit narrating the entire incident that took place on the date of hearing. Accordingly hearing was adjourned for 14/05/2013. On 14/05/2013, Shri Pradeep Kumar Kapoor, C. A. did not appear nor any application for adjournment was filed on his behalf and hearing was adjourned to 2 P.M. but Shri Pradeep Kumar Kapoor, C. A. did not appear and the argument of Revenue was heard on the application and their reply to the application was also taken on record.

4. Vide order dated 10/04/2013 Shri Pradeep Kumar Kapoor, C. A. was asked to explain under which section the present application dated nil received by the Registry on 25/03/2013, after the disposal of the appeal is filed. Shri Pradeep Kumar Kapoor, C. A. was also asked vide order dated 06/05/2013 to advance his arguments on the point of maintainability of this application filed by him in his individual capacity after disposal of the appeal.

5. The learned Sr. D.R. Smt. Ranu Biswas, while advancing her arguments on this application, has invited our attention to the order sheet

entry dated 08/02/2013 with the submissions that though the matter was listed for disposal of the adjournment application moved on behalf of the assessee on 05/02/2013 but Shri Pradeep Kumar Kapoor, C. A. had agreed to argue the matter after making a statement that he has received instructions from his client to argue the case. It was also contended by learned Sr. D.R. that this application was filed after a gap of 22 days from the pronouncement of the order i.e. 06/03/2013. This appeal was heard on 08/02/2013 and the proceedings were recorded in the open court and this application was filed on 28/03/2013 after a gap of 48 days. Had it been any truth in the application, it would have been filed just after the conclusion of the hearing. Moreover, Mr. Kapoor has admitted in this application that some order was dictated by the Bench in the open court at the time of hearing. Therefore, this application is misconceived and deserves to be rejected outrightly. The learned Sr. D.R. has also contended that once the appeal is disposed of, the learned counsel has no *lucus standi* to move any application in his individual capacity. Therefore, this application is also not maintainable.

6. Before proceeding on merit of this application, I feel it proper to place certain relevant facts on record in order to understand the real controversy. On 17/12/2012 the learned Counsel for the assessee Shri S. K. Garg, Advocate has moved an application for transfer of his appeal on the ground that Judicial Member has recused himself from hearing the cases which are being represented by Shri S. K. Garg, Advocate vide order sheet entry dated 30th August, 2012 in I.T.A. No.472/Lkw/2011 and C.O. No.14/Lkw/2012. On receipt of this application, a judicial order was passed with the direction to place the matter before the Hon'ble Vice President, Shri G. D. Agarwal, Lucknow Zone for necessary orders with

regard to transfer of this appeal to some other Bench. Accordingly hearing was adjourned to 21/01/2013. The matter was placed before Hon'ble Vice President, Shri G. D. Agarwal, Lucknow Zone and the Hon'ble Vice President has turn down the request of transfer of appeal of Shri S. K. Garg, Advocate vide order dated 04/01/2013. Consequently, the matter was again listed for hearing before the SMC on 21/01/2013 but none appeared on behalf of the assessee and the hearing was adjourned to 05/02/2013 and on 05/02/2013 an application for adjournment was moved by Shri Pradeep Kumar Kapoor, C. A. on the same ground. Copy of this application was supplied to the learned Sr. D.R. and the hearing was adjourned for 08/02/2013 for disposal of the application. On 08/02/2013, Shri Pradeep Kumar Kapoor, C. A. appeared and agreed to argue the appeal before the Bench as he has received instructions from his client to argue the case and he has no reservation with the Bench. Accordingly, the arguments of the Shri Pradeep Kumar Kapoor, C. A. and Smt. Ranu Biswas, Sr. D.R. were heard and order was reserved. The proceedings of hearing of 08/02/2013 was dictated in the open court in the presence of Shri Pradeep Kumar Kapoor, C. A. and Smt. Ranu Biswas, Sr. D.R. Since the controversy has been raised with regard to the contents of this proceedings, I feel it proper to reproduce the same as under:

Dated 08/02/2013

*Present for the assessee : Shri Pradeep Kumar Kapoor, C. A.
Present for the Revenue : Smt. Ranu Biswas, D.R.*

On the last date of hearing i.e. 5.2.2013 the assessee moved an application for adjournment having relied upon the order of the Tribunal dated 30.8.2012 passed in ITA No. 472/LKW/2011 and CO NO.14/LKW/2012. Copy of this

application was given to the Id. D.R. The Id. D.R. strongly opposed the request for adjournment of the appeal.

The Id. counsel for the assessee, Shri. Pradeep Kumar Kapoor, C.A. has now agreed to argue the appeal before the Bench as he has received instruction from his client (assessee) to argue the case and he has no reservation with this Bench.

The aforesaid order dated 30.8.2012 in ITA No. 472/LKW/2011 and CO No.14/LKW/2012, through which I recused myself from the cases being represented by Shri. S. K. Garg, Advocate, was passed on receipt of the copy of representation addressed to the Hon'ble President, ITAT by Shri. S. K. Garg, Advocate. The said order was passed under the peculiar circumstances. Thereafter cognizance of the representation was taken and reference for criminal contempt of court against Shri. S. K. Garg, Advocate and Shri. Pradeep Kumar Kapoor, C.A. was made to the Hon'ble High Court of Allahabad and the matter is sub judice before the Hon'ble High Court of Allahabad.

Now under the changed circumstances, I have no reservation in hearing the appeal of any assessee being represented by any Advocate/C.A. including Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. Decision in this regard is left upon the respective assessee. Accordingly, the arguments of both the parties to this appeal are heard and the order is reserved.

Sd/.
(Judicial Member)

7. Thereafter on 06/03/2013, the order allowing the appeal was pronounced in the open court in the presence of Shri Pradeep Kumar Kapoor, C. A. and Shri Praveen Kumar, CIT, D.R. On 06/03/2013, Shri Pradeep Kumar Kapoor, C. A. applied for certified copy of the proceedings dated 08/02/2013. Consequently, the copy was supplied as per Rules. Thereafter on 08/03/2013 an application is filed by Shri Pradeep Kumar Kapoor, C. A. containing therein that he has appeared before the SMC on

08/02/2013 under protest and sent a copy of the same to Shri G. D. Agarwal, Hon'ble Sr. Vice President, Lucknow Zone sitting at Delhi. The application along with the report was referred to Shri G. D. Agarwal, Hon'ble Sr. Vice President and Hon'ble Vice President has disposed of the matter by observing that it is the judicial matter, let learned Judicial Member do the needful in accordance with law. Thereafter, Shri Pradeep Kumar Kapoor, C. A. again filed the impugned application on 28/03/2013 with a request to recall/expunge the order sheet entry dated 08/02/2013, copy of which was supplied to Sr. D.R. and she has filed the reply to this application contending therein that after disposal of the appeal, these type of applications are not at all maintainable.

8. So far as issue of recusal of the Judicial Member from hearing of the case of Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. is concerned, I would like to place certain facts on record in order to understand the real controversy arisen in this Bench.

9. On filing of copy of representation made by Shri S. K. Garg, Advocate to the Hon'ble President of I.T.A.T. in the case of Sumit Kumar Rastogi in I.T.A. No.472/Lkw/2011 and C.O. No.42/Lkw/2012 on 30th August, 2012 containing contemptuous and scurrilous allegations against the Judicial Member, the Judicial Member recused himself from hearing of those cases which were being represented by Shri S. K. Garg, Advocate by passing a speaking order. Copies of the proceedings were duly sent to the Hon'ble President of the I.T.A.T. with a request to issue necessary instructions as to how to deal with the situation but the Hon'ble President instead of issuing necessary instructions in this regard, has chosen to remain silent on the subject. In order to maintain the dignity of the

Institution, the Judicial Member took cognizance of the representation made by Shri S. K. Garg, Advocate to the Hon'ble President, I.T.A.T. and made a reference on 19/10/2012 for criminal contempt of court u/s 15(2) of the Contempt of Court Act, 1971 against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. to the Hon'ble High Court of Allahabad and consequent thereto the Hon'ble High Court has taken a cognizance of the same and criminal contempt case against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. has been registered vide Contempt No. 310 of 2013 and now the matter is sub judice before the Hon'ble High Court Allahabad at Lucknow Bench in the case styled as State of U.P. vs. Shri S. K. Garg, Advocate and Another.

10. It was brought to the notice of Judicial Member in the administrative capacity that almost 25% of the appeal pending before the I.T.A.T., Lucknow Bench are being represented by Shri S. K. Garg, Advocate, therefore, it would not be fair to keep all the appeals in abeyance as substantial amount of revenue is involved therein and Revenue is pressing hard for its fixation. Having realized these facts, the Judicial Member, in the administrative capacity, has directed the Registry to list all the appeal for hearing vide order dated 15/10/2012. Thereafter, in the instant case which was listed for hearing on 08/02/2013 it was categorically observed by the Tribunal that the reclusal of the Judicial Member from hearing the case being represented by Shri S. K. Garg, Advocate was made in a peculiar circumstances. Later on a cognizance of the representation was taken and reference for criminal contempt of court was made against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. to the Hon'ble High Court of Allahabad and the matter is subjudice before the Hon'ble High Court, therefore, the Judicial Member has no reservation in hearing

the appeals of any assessee being represented by any Advocate/Chartered Accountant including Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. Thereafter, the appeal was argued by Shri Pradeep Kumar Kapoor, C. A. and the appeal was disposed of vide order dated 16/04/2013. The order passed by the Judicial Member in SMC has not been challenged by the assessee. Therefore, once it has been made clear by passing a judicial order vide order dated 08/02/13 in the instant case that the Judicial Member has no reservation in hearing the appeals of any assessee being represented by Shri S. K. Garg, Advocate or Shri Pradeep Kumar Kapoor, C. A. after making a reference of criminal contempt of court against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. to the Hon'ble High Court, the controversy with regard to the reclusal of Judicial Member from hearing cases of Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. no longer subsists.

11. It is pertinent to mention here that I.T.A.T. is creation of Income Tax Act through section 252 of the Income Tax Act (hereinafter called as "Act") and u/s 252 the Central Government shall constitute an Appellate Tribunal to adjudicate the issues raised between the assessee and the Income-tax Department. The professionals either Advocates or Chartered Accountants can be engaged to prosecute the appeals on behalf of the assesseees in a manner in which the assessee wants. In fact after filing the Power of Attorney, the professionals (Advocate or Chartered Accountant) will step into the shoes of the assessee and they will represent the case in a manner beneficial to the assessee. If a particular Advocate or a Chartered Accountant is not comfortable or has reservation with a particular judicial forum, it is his sweet will for making a representation before the said judicial forum but for that reason the judicial forum cannot

be forced to adjourn all the matters for an unlimited period where the stakes of the revenue are substantially involved. Similar is the position for the assessee also as he has to take a final decision with regard to the appointment of his advocate or representative to represent his case before the judicial authority but the judicial authority cannot be forced to adjourn the hearing on the ground that advocate engaged by the assessee does not want to appear before the said judicial authority/forum. The judicial authority, be it may be the Tribunal are concerned about the material placed before them while adjudicating the issues involved irrespective of the personalities of the Advocates appearing before him representing the case of the parties.

12. The conduct of the Advocates with regard to the representation on behalf of its clients was examined by the Apex Court in various judgments. In the case of Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra Bombay & Others 1984 (2) SCC 556, their Lordships have observed that an advocate stands in a loco parentis towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment. It was further observed that no advocate can take it for granted that he will appear in the court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings.

13. In the case of Common Cause A Registration. Society vs. Union of India & Ors. 1994 (5) SCC 557, it was observed that since litigants have a fundamental right to speedy justice it is essential that cases must proceed when they appear on board and should not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so. If cases get adjourned time and again due to cessation of work by lawyers it will be in the end result in erosion of faith in the justice delivery system which will harm the image and dignity of the court as well.

14. Noting casual and indifferent attitude of some of the lawyers and expecting improvement in quality of service the Hon'ble Apex court in the case of Sanjiv Datta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi etc. 1995 (3) SCC 619 held as under:

"Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hand to improve the quality of the service they render both to the litigant-public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many time even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realize the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system."

15. In the case of Mahabir Prasad Singh vs. Jacks Aviation Pvt. Ltd. 1999 (1) SCC 37, the Hon'ble Apex court has held; "Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology,

whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar or tactics of filibuster adopted by any member thereof.” High Courts are duty bound to insulate judicial functionaries within their territory from being demoralized due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court.

16. Their Lordships further held in the aforesaid cases that if any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

17. In the case of Lt. Col. S. J. Chaudhary vs. State (Delhi Admn) 1984 (1) SCC 722, it was held that it is the duty of every Advocate who accepts a brief to attend the trial and such duty cannot be overstressed. It was further reminded that having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. A lawyer is under obligation to do nothing that shall detract from the dignity of the court of

which he is himself a sworn officer and assistant. He should at all times pay differential respect to the judge and scrupulously observe the decorum of the courtroom.

18. In the case of Ramon Services Pvt. Ltd. vs. Subhash Kapoor and Others, Appeal No. 6385 of 2000, vide judgment dated 14/11/2000, their Lordships of Apex Court have made a reference to Warvelle's Legal Ethics at page 182 where it has been stated "of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

19. In the case of Ramon Services Pvt. Ltd. (supra), their Lordships of Apex Court having examined various judgments on this aspect have concluded as under:

"Some courts might have conducted the cases even during the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the lis in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in Mahabir

Singh's case(supra). Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court."

20. So far as the merit of this application is concerned, this application is filed by Shri Pradeep Kumar Kapoor, C. A. in his individual capacity and not on behalf of the assessee as stated by him during the course of hearing on 06/05/2013 and ignorance shown by the assessee through his letter dated 06/05/2013. Shri Pradeep Kumar Kapoor, C. A. was also asked to specify under which section he has filed this application but he could not furnish any specific reply in this regard. Under section 255(2) of the Act, the I.T.A.T. is created to adjudicate the issue between the assessee and the Department. The Advocates or Chartered Accountants are being engaged by the assessee to prosecute their appeals as per their instructions. After filing the Power of Attorney, the professionals / Authorized Representative step into the shoes of the assessee to prosecute their appeals before the Tribunal on their behalf. Once the appeal is disposed, the power conferred upon the professionals or the Authorized Representative by virtue of the Power of Attorney by the assessee, comes to an end. The professionals or the Authorized Representatives do not have any locus standi to file any application before the Tribunal in his individual capacity because the Tribunal is not created to redress the grievances of the professionals. Its function is to adjudicate the disputes between the assessee and the Department. Since the appeal is allowed in favour of the assessee, the assessee has no grievance against the order passed by the Tribunal but this application is filed by Shri Pradeep Kumar Kapoor, C. A. with an ulterior motive for the reasons best known to him after 48 days from the

hearing, disputing the facts recorded in the order sheet dated 08/02/2013. Moreover, there is no provision under the Act which entail the professionals to move any application in their individual capacity without obtaining the consent of the assessee before the Tribunal after disposal of the appeal. After disposal of the appeal, an application can only be filed on behalf of the assessee u/s 254(2) of the Act for seeking rectification in the order passed under 254(1) of the Income Tax Act. But there is no provision under the Act in which an application can be filed by any Advocate/Chartered Accountant/ Authorised Representative in his individual capacity for seeking rectification in the proceedings of the hearing, without the consent of the assessee. In fact it is not only misuse of process of the law but it is sear abuse of process of law.

21. No professional has any right to invoke the judicial machinery for his own interest without any reasons. If he does so it would amount to professional misconduct on the part of the professional. Moreover, to dispute the proceedings of the court, without any cogent material, is also an attempt to scandalize the court and also to create hindrance in the proper judicial functioning of the court which cannot be permitted under any circumstances. If it is allowed to be done, the judicial system will collapse. There is hierarchy in the judicial system. If someone is aggrieved with the judicial order passed by any judicial forum, he may approach the higher forum against that order and get the redressal of his grievance but he has no right to make an attempt to scandalize the court by moving such a frivolous application.

22. Turning to the facts of the case, this appeal was disposed of vide order dated 06/03/2013 and order was pronounced in the open court

allowing the appeal of the assessee. Shri Pradeep Kumar Kapoor, C. A. has moved this application with a request to either recall or expunge the order sheet entry dated 08/02/2013 but he could not identify the particular observations of the Tribunal which are injurious to the interest of the assessee or even to him. It is contended through this application that he has argued the matter under protest and he never agreed that he has no reservation with the Bench on 08/02/2013. In this regard it is stated that on 08/02/2013 when the matter was taken up for disposal of the application for adjournment, Shri Pradeep Kumar Kapoor has made a statement at the Bar that he has got the instructions from his client (assessee) to argue the case and he has no reservation with this Bench. On the face value of statement of Shri Pradeep Kumar Kapoor, he was allowed to advance his arguments on the grounds raised in this appeal. The Revenue was also heard and the order was reserved. The order with regard to the proceedings was dictated in the open court in the presence of Shri Pradeep Kumar Kapoor and Smt. Ranu Biswas, Sr. D.R. The factum of dictation of order in the open court is also admitted by Shri Pradeep Kumar Kapoor in the impugned application against column No. 7 of the chart. Thereafter the appeal was disposed of vide order dated 06/03/2013 and the order was pronounced in the open court in the presence of Shri Pradeep Kumar Kapoor, C. A. and Shri Praveen Kumar, CIT, D.R.

23. Till the disposal of the appeal Shri Pradeep Kumar Kapoor remained silent with regard to the facts recorded in the order sheet dated 08/02/2013. He has raised the dispute first time with regard to the facts recorded in the order sheet through an application dated 08/03/2013

contending therein that he has appeared before the SMC Bench under protest. Thereafter on 28/03/2013, the present application is filed disputing the contents of the order sheet with the submission that he had never agreed that he has no reservation with the Bench constituted by Judicial Member as singly or with Accountant Member. He has not furnished any explanation as to why he remained silent with regard to the facts recorded in the order sheet dated 08/02/2013 till the disposal of the appeal or upto 28/03/2013 when the present application was filed. I am also unable to understand as to what benefit Shri Pradeep Kumar Kapoor will get by moving such type of application as this application has been filed by him in his individual capacity and without the consent of the assessee. It is unheard in the judicial system that some professional can appear before the judicial forum under protest and argue his case. It is for the professional to take a decision in this regard whether he wants to appear before a particular court or judicial forum or not.

24. In the foregoing paras we have referred number of judicial pronouncements through which it has been held by the Apex Court that no advocate can take it for granted that he will appear in the court according to his whim or convenience. If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause

because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating. It was further held by the Apex Court that at any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.

25. In the light of above judicial pronouncements Shri Pradeep Kumar Kapoor has no right to argue any case under protest even if his contention is accepted. It is for him to take a decision whether he wants to appear before a particular court or not but the court is not obliged to adjourn the hearing only for the reason that he does not want to appear before it.

26. Moreover, during the course of hearing of appeal on 08/02/2013, Shri Pradeep Kumar Kapoor has not shown any resentment or reservation with the Bench in arguing his case. He happily made the statement that he has no reservation with the Bench and he is ready to argue the case as per instructions from his client. Accordingly, the appeal was heard. Now after the disposal of appeal or even after 48 days from the disputed date of hearing the present application is moved disputing the facts recorded in the order sheet dated 08/02/2013 without any corroborative evidence. Even Shri Pradeep Kumar Kapoor has not filed the affidavit in support of his contentions despite the repeated directions of the Tribunal. Whenever the proceedings of the court are disputed, it should be supported by an affidavit as there is presumption u/s 114(e) of the Indian Evidence Act that judicial act have been regularly performed. Since the facts recorded in the

order sheet have not been controverted by filing an affidavit, the judicial proceedings recorded on 08/02/2013 are correct in view of the provisions of section 114(e) of the Indian Evidence Act, 1872 and the contentions raised in the application are highly misconceived, wrong and contemptuous. Therefore, I have no hesitation in holding that this application is highly misconceived, contemptuous and is moved with the intention to browbeat and scandalize the court. Since the action of Shri Pradeep Kumar Kapoor is gross abuse of process of law, I dismiss the application with the cost of ₹5,000/- to be recovered as arrear of income tax from Shri Pradeep Kumar Kapoor, C. A. as this application was filed in his individual capacity and not on behalf of the assessee. This tough stand is being taken only to maintain the dignity and decorum of the institution and justice delivery system so that it may not be misused by any professional to settle their personal score. If they have any grievance against any judicial forum they may approach the higher forum instead of scandalizing the concerned court/judicial body.

27. Though an action for scandalizing the court can be taken under the Contempt of Court Act but I refrain myself from doing so as I have already made reference to the Hon'ble High Court Allahabad against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. for Criminal Contempt of Court and the Hon'ble High Court has already taken cognizance thereof and the matter is sub judice before the Hon'ble High Court of Allahabad at Lucknow Bench. But I would like to make a reference to the President of Institute of Chartered Accountants with a request to take necessary action as per law against Shri Pradeep Kumar Kapoor for his professional misconduct and also to take corrective

measures and necessary steps to educate its members to behave with the judicial authorities befitting to their status and should not be engaged in scandalizing the judicial authority/courts. Accordingly, the Registry is directed to send the copy of this order to the President - ICAI, Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi-110 002 for necessary action in this regard. Copies of the order be also sent to Shri Pradeep Kumar Kapoor, C. A., the assessee and the Revenue/Department for compliance of the order.

28. In the result, the application of Shri Pradeep Kumar Kapoor, C. A. is dismissed with cost of ₹5,000/- to be recovered as arrear of income tax.

(Order pronounced in the open court on 18/06/2013)

Sd/.

(SUNIL KUMAR YADAV)
Judicial Member

Dated:18/06/2013

*Singh

Copy forwarded to the:

1. Appellant.
2. Respondent.
3. CIT (A)
4. CIT
5. DR.

Assistant Registrar