IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 30/2015

KARISHMA GOA MINERAL TRADING PVT. LTD., Through its Director
SHRI.AJIT RAMAKANT PHATARPEKAR.
206, Kamat Towers,
Patto Plaza, Panaji, Goa. .... Appellant.

Versus

COMMISSIONER OF INCOME TAX
Aayakar Bhavan, Patto Plaza,
Panaji, Goa 403001. …. Respondent.

Mr. Jitendra Jain and Mr. H. D. Naik, Advocates for the Appellant.

Ms. Asha Desai, Advocate for the Respondent.

CORAM :- F.M. REIS &
M.S. SANKLECHA, JJ.

Date : - 27th March, 2015.

ORAL JUDGMENT :- (PER F.M. REIS, J.)

Heard Shri J. Jain, learned Counsel appearing for the appellant and Ms. Asha Desai, learned Counsel appearing for the respondent.

2. Admit on the following substantial question of law :

> Whether the Tribunal was justified in relying on the judgment of this Court in the case of Orient Goa Co P. Ltd., reported in 325 ITR 554 which is no more good law after the decision of the Honourable Supreme Court in the case of GE Technology, reported in 327 ITR 456 ?

3. Upon hearing the learned Counsel, it appears that there were several contentions raised by the appellant before the ITAT, essentially on the ground that the judgment in the case of ***Orient Goa Co P. Ltd***. was not applicable to the facts of the present case in view of the findings of the Assessing Officer that the provisions of Section 172 of the Act were not applicable to the facts of the present case. It was also contended that in view of the judgment of the Apex Court in ***GE Technology***, reported in 327 ITR 456, the judgment of this Court in ***Orient Goa Co P. Ltd***. would not hold the field.

4. On perusal of the records, we find that all these contention were in fact raised by the appellant which have not been examined by the Tribunal whilst passing the impugned order. Ms. Dessai, learned Counsel appearing for the respondent fairly accepts that these contentions were not considered and is not averse that the matter may be remanded to the Tribunal to decide the appeal filed by

the appellant, afresh.

5. In such circumstances, without going into the merits of the rival contentions, we find that it appropriate, to quash and set aside the order passed by the Tribunal and remand the matter to the Tribunal to decide the appeal filed by the appellant, afresh, in accordance with law. The substantial question of law is answered accordingly.

6. In view of the above, we pass the following :

O R D E R

(I) The appeal is partly allowed.

(II) The impugned order dated 5th March, 2015 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji in ITA No.19/PNJ/2014 is quashed and set aside.

(III) Appeal, ITA No. 19/PNJ/ 2014, is restored to the file of ITAT. The ITAT is directed to decide the appeal afresh after hearing the parties, in accordance with law. All contentions of both the parties, on merits, are left open.

The appeal stands disposed of accordingly.

M.S. SANKLECHA, J. **F.M. REIS, J.**

ssm.