IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEALS NO.45 & 60 OF 2014

TAX APPEAL NO.45 OF 2014

Mrs. Neena Kiran Padiyar
major, herein represented by
her duly constituted attorney
Mr. Kiran Gajanan Padiyar,
having office at 12, 2nd floor,
Sapana Chambers, Varde Valaulikar,
Margao, Goa-403601. …. Appellant

V/s

1. Commissioner of Income Tax,
   having office at Patto Aayakar Bhavan,
   Panjim-403001.

2. Asst. Commissioner of Income Tax,
   Circle-1, having office at Margao-403 001. …. Respondents

AND

TAX APPEAL NO.60 OF 2014

Mr. Kiran Gajanan Padiyar,
major of age, having office at 12,
2nd floor, Sapana Chambers,
Varde Valaulikar, Margao, Goa-403601. …. Appellant

V/s

1. Commissioner of Income Tax,
   having office at Patto Aayakar Bhavan,
   Panjim-403001.

2. Asst. Commissioner of Income Tax,
   Circle-1, having office at Margao-403 601. …. Respondents

Shri D.E. Robinson, Advocate for the Appellants.
Ms. Asha Desai, Advocate for the Respondents.

CORAM : F.M. REIS &
K.L. WADANE, JJ.

DATE : 20th JANUARY, 2015

ORAL JUDGMENT :

Heard Shri D.E. Robinson, learned Counsel for the appellant and Ms. Asha Desai, learned Counsel for the respondents.

2. Admit on the following substantial question of law:

> Whether the order passed by the Income Tax Appellate Tribunal stands vitiated for failure to give adequate hearing after calling for additional evidence to be produced before such Tribunal.

3. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents waives service.

4. During the course of hearing of the above appeals, the undisputed facts disclose that the Income Tax Appellate Tribunal heard the arguments in connection with the appeal preferred by the respondents on 1/08/2013. The appellant/Assessee was directed to produce some additional documents which were referred to in the agreements relied upon by such respondents. As such, documents

were produced on 2/08/2013. After the said date, the Tribunal disposed of the appeal preferred by the respondents in favour of the Revenue by an order dated 23/08/2013. The learned Counsel appearing for the appellant has relied upon Rule 29 of the Appellate Tribunal Rules of 1963 in support of his contention that no reasons have been recorded by the Tribunal whilst examining such additional documents. As such, according to him the order passed by the Tribunal itself stands vitiated.

5. Upon hearing the learned Counsel, the fact that the Tribunal did not give an opportunity of hearing based on such additional documents has not been fairly disputed by the learned Counsel appearing for the respondents/Revenue. Without going into the merits of the rival contentions and in the interest of justice, we find it appropriate to quash and set aside the order passed by the Tribunal and direct the Tribunal to decide the appeal preferred by the respondents/Revenue afresh after giving the appellant and respondents an opportunity of being heard with regard to the additional documents. The substantial question of law is answered accordingly.

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

O R D E R

(i) The impugned order dated 23/08/2013 passed by the Income Tax Appellate Tribunal is quashed and set aside.

(ii) Income Tax Appeal is restored to the file of the Tribunal.

(iii) The Tribunal is directed to decide the appeal preferred by the respondents afresh in the light of the observations herein above after hearing the parties in accordance with law.

(iv) All the contentions of the parties on merits are left open.

(v) Records and proceedings be sent back to the respective Authorities.

(v) Both the appeals stand disposed of accordingly.

K.L. WADANE, J. **F.M. REIS, J.**

NH/-