**IN THE HIGH COURT OF BOMBAY AT GOA**

**TAX APPEALS NO. 33, 34 & 35 OF 2015**

**TAX APPEAL NO. 33 OF 2015**

M/s. Karishma Global Mineral
Export 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.

**TAX APPEAL NO. 34 OF 2015**

AJIT RAMAKANT PHATARPEKAR.
Major of age, Indian National,
206, Kamat Towers,
Patto Plaza, Panaji, Goa. …..... Appellant.

Versus

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

**TAX APPEAL NO. 35 OF 2015**

NEELAM AJIT PHATARPEKAR.
Major of age, Indian National,
601, 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 Appellants.

Ms. Asha Desai, Advocate for the Respondent.

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

**Date : 9th April, 2015.**

**<u>ORAL JUDGMENT</u> : (F.M. REIS, J.)**

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

2. The above appeals were taken up together as it was pointed out by the learned Counsel appearing for the parties that the issues involved are identical, as also the assessment year in each of the aforesaid appeals is also the same.

3. 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 appearing for the respective parties, we find that the Income Tax Appellate Tribunal has failed to take note of the contentions of the appellants 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 Income Tax Act were not applicable to the facts of the present case. It was also contended by the learned Counsel appearing for the appellants that the judgment of the Apex Court in ***GE Technology***, reported in 327 ITR 456, as also the judgment of this Court in ***Orient Goa Co P. Ltd***. would not hold the field.

4. On going through the records, with the assistance of the learned Counsel, we find that all these contentions were raised by the appellants 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 appeals filed by the appellants, 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 orders passed by the Tribunal and remand the matter to the Tribunal to decide the appeals filed by the appellants, afresh, in accordance with law. The substantial question of law is answered accordingly.

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

(I) The appeals are partly allowed.

(II) The impugned orders dated 16th March, 2015 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji in ITA No.66/PNJ/2014 along with Cross Objection No.22/PNJ/2014, ITA No.145/PNJ/2014 along with ITA No.146/PNJ/2014, in respect of Assessment Year 2010-11, is quashed and partly set aside.

(III) ITA No.66/PNJ/2014 along with Cross Objection No.22/PNJ/2014, ITA No.145/PNJ/2014 and ITA No.146/PNJ/2014 are restored to the file of the ITAT.

(IV) The ITAT is directed to decide the appeals along with cross objections, afresh after hearing the parties, in accordance with law. All contentions of both the parties, on merits, are left open.

The appeals stand disposed of accordingly.

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

ssm.