IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 42 OF 2015

M/s. Alcon Developers,
a registred Partnership firm
registered under no. 42/95 with the
registrar of firms represented in this
act by its Partner
Mr. Nanda Sadassiva Naique Counto,
major of age, Indian National,
residing at 503, Gurudatta Complex,
Panaji, Goa. … Appellant

V e r s u s

Assistant Commissioner of Income Tax,
Circle-1(1), Aykar Bhavan,
Patto Plaza, Panaji, Goa. … Respondent

Mr. J. E. Coelho Pereira, Senior Advoca with Mr. V. Korgaonkar, Advocate for the Appellant.

Ms. Asha Desai, Advocate for the Respondent.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **28th July, 2015**

ORAL JUDGMENT *(Per F. M. Reis, J.)*

Heard Shri J. E. Coelho Pereira, learned Senior Advocate appearing for the Appellant and Ms. Asha Desai, learned Counsel appearing for the Respondent.

2. Mr. J. E. Coelho, learned Senior Advocate appearing for the Appellant, upon instructions, states that he will withdraw the application dated 10.03.2015 filed before the Income Tax Appellate Tribunal to recall the impugned Order within one

week from today. Based on the said statement of the learned Shri J. E. Coelho Pereira, learned Senior Advocate, which is accepted, the above Appeal was heard on merits.

3. Admit, on the following substantial question of law :

(1) Whether the impugned Order passed by the Income Tax Appellate Tribunal stands vitiated for not complying with the principles of natural justice ?

4. Upon hearing the learned Counsel appearing for the Appellant and the Respondents and without going in to the merits of the rival contentions raised in the proceedings before the Authorities, below the only aspect we have examined in the present Appeal is whether the impugned Order passed by the Income Tax Appellate Tribunal dated 23.01.2015 stands vitiated for breach of the principles of natural justice.

5. Shri J. E. Coelho Pereira, learned Senior Advocate appearing for the Appellant, has brought to our notice that the matter was posted for arguments on 12.01.2015 when the concerned Counsel appearing on behalf of the Appellant was unable to be present on account of some matters which were posted before the Karnataka High Court. Learned Senior Advocate further pointed out that the concerned Counsel had in fact faxed a letter dated 09.01.2015 directly to the Tribunal, inter alia, disclosing his inability to remain present for the reasons stated therein and seeking an adjournment in the matter fixed on 12.01.2015. Learned Senior Counsel further pointed out that the Tribunal without examining the said letter has taken a view that the Appellant has failed to remain present and, as such,

proceeded to decide the Appeal on merits. Learned Senior Advocate further pointed out that the Appellants have a good case on merits and as no appropriate hearing was given to the Appellants, grave injustice has occasioned to the Appellants by considering the Appeal filed by the Respondent in the absence of the Appellants. Learned Senior Advocate has also brought to out notice that written submissions were in fact filed before the Tribunal which have not been considered by the Tribunal while disposing of the above Appeal. Learned Senior Advocate on this count alone submits that the impugned Order be quashed and set aside and the Appeal be directed to be decided afresh after hearing the parties in accordance with law. Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the Appellants, has relied upon the Judgment passed on 19.02.2013 in **Writ Petition no. 293 of 2007** in the case of ***Mrs. Celina Almeida vs. Minister of Urban Development & Ors.,*** in support of his submission that oral submissions are to be advanced as in case oral arguments are not heard it would lead to the breach of the principles of natural justice.

6. Ms. Asha Desai, learned Counsel appearing for the Respondent has pointed out that the Tribunal has rightly examined the merits of the dispute and has come to the conclusion that the Respondents were entitled to the reliefs sought in an Appeal before the Tribunal. Learned Counsel further pointed out that the Appellants were given opportunities to advance their submissions and in fact even on earlier occasions, the Appellants were accommodated by the Tribunal by granting an adjournment. Learned Counsel further pointed out that even on the relevant day i.e. 12.01.2015, nobody on behalf of the Appellants was present to point out the said letter sent by the concerned Counsel referred to by the learned Senior Advocate appearing for the Appellants. Learned Counsel further pointed out

that the Tribunal has rightly exercised discretion in refusing to grant any further time to the Appellants and, as such, on account of such gross negligence on the part of the Appellants to avail of their right of hearing before the Tribunal, no relief can be granted to he Appellants. Learned Counsel as such submits that the substantial question of law is to be answered in favour of the Respondent and the Appeal be rejected.

7. We have given our thoughtful considerations to the rival contentions and have also gone through the records. We make it clear that we have not gone into the merits of the rival contentions with regard to their respective claims on merits before the learned Tribunal. The only aspect we have examined at this stage is whether the impugned Order passed by the learned Tribunal stands vitiated for not complying with the principles of natural justice. This Court in the Judgment in the case of ***Mrs. Celina Almeida vs. Minister of Urban Development & Ors.,*** (supra), relying upon the Judgment of the Apex Court has observed at para 8 thus :

> "8. …... It is now well settled by the judgments of the Apex Court reported in ***2011(2) SCC 258*** in the case of ***Automotive Tyre Manufacturers Association V/s Designated Authority & others*** and ***2009(14) SCC 690*** in the case of ***Prakash Ratan Sinha V/s State of Bihar & others,*** that in cases in which the consequences of the disposal of the dispute by the authority constituted in the Act would result in the civil consequences, a party is entitled for an adequate hearing. The Apex Court has even given observation that the written submission is not a

> substitute to oral submissions as in the course of the oral submissions a party has an opportunity to seek for clarification or clear any doubt in the disposal of the dispute. Taking note of the said observation of the Apex Court as laid down in the said judgments, I find that Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioner is justified to contend that the impugned judgment passed by the respondent no.1 stands vitiated for breach of the principle of natural justice in not giving an adequate opportunity to the petitioner of hearing the appeal preferred by the respondent no.3. … "

8. Taking note of the said observations, the importance of giving an opportunity to the parties to advance oral arguments have been duly accepted.

9. In the present case, it is not disputed that the Appellants were not given an opportunity to advance oral arguments before the Tribunal. The letter dated 08.01.2015 has also not been examined nor placed before the Tribunal whilst passing the impugned Order dated 23.01.2015. Not giving an adequate hearing to the Appellants would itself vitiate the impugned Order for breach of the principles of natural justice. In the present case, we find that even the contentions raised in the written submissions filed by the Appellants have also not been duly noted nor considered by the Tribunal whilst passing the impugned Order.

10. As such, wthout going into the merits of the rival contentions, we find it appropriate to quash and set aside the Order passed by the learned Tribunal and direct the Tribunal to decide afresh the Appeal preferred by the Respondents in accordance with law. No doubt, there is some lack of due diligence on the part of

the Appellants in not being present on the date fixed for hearing i.e. 12.01.2015 and bringing to the notice of the learned Tribunal the letter sent by the concerned Advocate. In such circumstances, we find that the Appellants would be entitled for further hearing in the Appeal subject to the Appellants paying costs quantified at Rs.15,000/- to the Respondents. The substantial question of law is answered accordingly.

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

O R D E R

(i) The impugned Order dated 23.01.2015 passed by the Income Tax Appellate Tribunal, Panaji, is quashed and set aside.

(ii) Income Tax Appeal no. 377/PNJ/2013 is restored to the file of the Income Tax Appellate Tribunal, Panaji.

(iii) The Tribunal shall proceed to decide the Appeal afresh after hearing the parties in accordance with law.

(iv) Cost of Rs.15,000/- to be paid to the Respondent as condition precedent which by consent to be deposited before the CIT.

(v) Appeal stands disposed of accordingly.

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

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