IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 44 OF 2015

M/s. Chowgule Brothers Private Limited
as Successor to M/s. Chowgule Brothers,
Chowgule House, Mormugao Harbour,
Goa. ……... Appellant.

V/s.

1. Assistant Commissioner of Income Tax,
Circle 2, Margao, Goa.

2. Union of India,
through the Secretary (Revenue),
Ministry of Finance,
North Block, New Delhi. …....... Respondents.

Mr. Mihir Naniwadekar, and Mr. Purushottam R. Karpe, Advocates for the appellant.

Ms. Asha Desai, Advocate for the respondents.

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

Date : - 21 October 2015.

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

Heard Mr. Mihir Naniwadekar, learned Counsel appearing for the appellant and Ms. Asha Desai, learned Counsel appearing for the respondents.

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

> Whether in the facts and circumstances of the case, in law and on merits, the ITAT erred in setting aside the order of the CIT(A) and at the same time disallowing the appellant's claim under Section 36(1)(vii) of the Income Tax Act, 1961 ?

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

4. Mr. Mihir Naniwadekar, learned Counsel appearing for the appellant has pointed out that in the first round of disptue with regard to the subject income of the appellant, the fact finding Authority has come to the conclusion that the disputed amount was not actually received by the appellant, nevertheless, the learned Tribunal, whilst passing the impugned order dated 15/1/2015, has taken a view that such amount was actually received by the appellant. The learned Counsel further points out that there is no material on record to come to such a conclusion and the finding to that effect is based on no evidence and consequently, is a perverse finding of fact. The learned Counsel further points out that as the impugned order passed by the

learned Tribunal stands vitiated on that count, the impugned order deserves to be quashed and set aside and the matter be remanded to the learned Tribunal to examine the appeal preferred by the Respondent/Revenue afresh, in accordance with law.

5. On the other hand, Ms. Desai, learned Counsel appearing for the Revenue/Respondent, has pointed out that the appellant has also filed a miscellaneous application seeking rectification of the impugned order and, as such, the matter would be re-examined by the Tribunal, on such aspect, in accordance with law. The learned Counsel, however, points out that the material on which the learned Tribunal has based its finding that the amount was actually received by the appellant has not been spelt out in the impugned order. The learned Counsel further points out that as the miscellaneous application is pending before the Tribunal, the matter may be remanded to the Tribunal to decide the appeal preferred by the Revenue afresh, in accordance with law.

6. Without going into the merits of the rival contentions, considering the contentions raised by both the learned Counsel referred to herein above, we find it appropriate, in the interest of justice to quash and set aside the impugned Order dated 15/1/2015 passed by the

learned Tribunal and remand the matter to the Tribunal to decide the appeal preferred by the Revenue/Respondent afresh, after hearing the parties, in accordance with law. The substantial question of law is answered accordingly.

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

(I) The impugned Order dated 15/1/2015 passed by the Income Tax Appellate Tribunal, Panaji in ITA Nos. 14 & 15/PNJ/2014 is quashed and set aside.

(II) Income Tax Appeals No. 14 & 15/PNJ/2014, for the Assessment Years 2000-01 & 2001-02 are restored to the file of the learned Tribunal.

(III) The learned Tribunal shall, accordingly, dispose of the said appeals afresh, after hearing the parties, in accordance with law.

(IV) All the contentions of both the parties, on merits, are left open.

(V) The appeal stands disposed of accordingly.

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

ssm.