IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 57 of 2015

Gigabyte Technology (India)
Private Limited
B-411, BSEL Tech Park,
Sector 30A, Vashi,
Maharashtra – 400705
Presently at :-
807 & 808, 8th Floor, Naman
Midtown, B-Wing, Elphinstone
Road, Mumbai,
Maharashtra- 400013.
PAN : AABCD7556N .. Appellant

VERSUS

Assistant Commissioner of Income Tax
Circle-1, Margao, Goa .. Respondent

Mr. Vishal Kalra and Mr. Mahesh Amonkar, Advocates for the appellant.

Ms. A. Dessai, Advocate for the respondent.

CORAM :- **F. M. REIS, &**
C. V. BHADANG, JJ

DATE : **30th November, 2015**

ORAL JUDGMENT : (Per F. M. REIS, J.)

Heard Shri Vishal Kalra, the learned Counsel for the appellant and Ms. Asha Dessai, the learned Counsel for the respondent.

2. Admit on the following substantial question of law :

> "Whether the Tribunal in the fact and circumstances of the case, is justified to dismiss the appeal preferred by the appellant for non-prosecution ?"

3. Ms. Dessai, the learned Counsel appearing for the respondent waives service. Heard forthwith with the consent of the learned Counsel for the parties.

4. Upon hearing the learned Counsel for the respective parties, it appears that the short point for consideration is whether the appeal preferred by the appellant before the learned Income Tax Appellate Tribunal (Tribunal, for short) could have been dismissed for non-prosecution, without dealing with the merits of the controversy raised by the appellant before the Tribunal.

5. The learned Counsel appearing for the appellant has pointed out that the appellant diligently pursued his remedy before the learned Tribunal and in fact, on the relevant date, the appellant had produced a compilation of the documents and had sought accommodation to proceed with the hearing of the appeal. The learned Counsel further submitted that the Tribunal has erroneously proceeded to dismiss the appeal for non-prosecution, without noting that the appellant was willing to proceed with the hearing of the appeal. The learned Counsel further submitted that

in any event, the Tribunal could not have dismissed the appeal for non-prosecution as it is well settled in the judgment of the Apex Court in the case of ***Commissioner of Income Tax Vs S. Chenniappa Mudaliar***, reported in (1969)74 ITR 41 (SC) that no powers to that effect are available to the Tribunal as the Tribunal has to decide the issue on merits. The learned Counsel has also brought to our notice a judgment passed by this Court in the case of ***Khushalchand B. Daga Vs. T. K. Surendran, 4th Income-Tax Officer***, reported in (1972)85 ITR 48 (BOM).

6. Ms. Asha Dessai, the learned Counsel for the respondent has submitted that the appellant has already moved a Miscellaneous Application before the learned Tribunal to recall the said order and there is no need to proceed with the above appeal as the learned Tribunal would examine such application, in accordance with law. The learned Counsel, as such, submits that the question of proceeding with the above appeal, in such circumstances, is not at all necessary.

7. In reply to the submissions of the learned Counsel appearing for the respondent, the learned Counsel appearing for the appellant undertakes that he would withdraw the Miscellaneous Application before the Tribunal within a period of

three weeks from today.

8. Taking note of the contention of the learned Counsel appearing for the appellant that the Miscellaneous Application filed before the learned Tribunal would be withdrawn within a period of three weeks, the objection raised by the learned Counsel appearing for the respondent on that count, would not at all survive. The only aspect, as such, to be examined is whether the learned Tribunal was justified to dismiss the appeal preferred by the appellant for non-prosecution.

9. Taking note of the conduct of the appellant before the learned Tribunal the appellant admittedly had produced a paper book to proceed with the hearing of the appeal. As such, we find that the learned Tribunal in the facts of the present case was not justified to dismiss the appeal for non-prosecution. In any event, taking note of the observations in the judgment of this Court in ***Khushalchand B. Daga*** (supra) as well as the Apex Court in ***S. Chenniappa Mudaliar*** (supra), we find that the learned Tribunal was not justified to dismiss the appeal for non-prosecution. Without going into the rival contentions on merits and in the interest of justice, we find it appropriate to quash and set aside the impugned order passed by the learned Tribunal dated 12/02/2015 and remand the matter to the learned Tribunal for

fresh decision, after affording the parties an opportunity of being heard, in accordance with law. The substantial question of law is answered, accordingly.

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

ORDER

(i) The appeal is partly allowed.

(ii) The impugned order dated 12/02/2015 passed by the learned Tribunal is quashed and set aside.

(iii) ITA No. 429/PNJ/2013 is restored to the file of the learned Tribunal.

(iv) The learned Tribunal is directed to dispose of the said appeal, after hearing the parties in accordance with law.

(v) All the contentions of both the parties on merits, are kept open.

C. V. BHADANG, J. F. M. REIS, J.

SMA