IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 81 OF 2006

The Commissioner of Income Tax,
Having office at Aayakar Bhavan
Patto Plaza, Panaji, Goa **… Appellant.**

V/S

Sesa Goa Ltd.,
Having office at Sesa Ghor,
Patto Plaza, Panaji Goa. **… Respondent.**

Ms. Asha Desai, Advocate for the Appellant.
Mr. P. J. Pardiwala, Sr. Advocate with Mr. R. G. Ramani, Advocate for the Respondent.

Coram :- F. M. REIS AND
M. S. SANKLECHA, JJ.

Reserved on :- 30th April, 2015

Pronounced on :- 7th May, 2015

ORDER :

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Revenue challenges the order dated 4 April 2006 passed by the Income Tax Appeal Tribunal (hereinafter referred to as 'the Tribunal').

2. The assessment year involved is 1996-1997.

3. This appeal was admitted on 26 March 2007 on the following substantial question of law.

Whether on the facts and in the circumstances of the case, the Tribunal was justified in directing the Assessing

> *Officer to recompute the deduction u/s 80 HHC, by excluding 90% net profit on account of hire of barge charges, Machinery and Shipping agency fees, when the Explanation (baa) to Section 80 HHC explicitly refers to 90% of the receipts by way of brokerage, commission, interest, rent, charges or any other receipts of the similar nature included in such profit ?*

The counsel for both sides state that the aforesaid question now stands concluded against the revenue and in favour of the assessee by the decision of the ***Supreme Court in ACG Associated Capsules (P) Ltd. vs. Commissioner of Income Tax, 243 ITR 89.***

4. However, we must record the caveat put forth by Mr. Pardiwala, the learned counsel for the respondent that this agreement is without prejudice to the contentions taken in the appeal filed by the assessee for the assessment (Assessment Year 1996-1997) from the order of the Tribunal being Tax Appeal No.53 of 2006.

5. In view of above agreed position, the substantial question of law is answered in the affirmative i.e. in favour of the respondent – assessee and against the revenue.

6. Appeal dismissed. No order as to costs.

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

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