IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 24 OF 2013
AND
TAX APPEAL NO. 26 OF 2013

TAX APPEAL NO. 24 OF 2013

Shri Ajit Phatarpekar,
601, Gera Imperium, major of age,
Patto Plaza, Panaji-Goa-403 001. ….. Appellant

V e r s u s

The Commissioner of Income Tax,
Aayakar bhavan,
Patto Plaza,
Panaji-Goa-403001. …... Respondent.

TAX APPEAL NO. 26 OF 2013

Smt. Neelam Ajit Phatarpekar,
601, Gera Imperium, major of age,
Patto Plaza, Panaji-Goa-403 001. ….. Appellant

V e r s u s

The Commissioner of Income Tax,
Aayakar bhavan,
Patto Plaza,
Panaji-Goa-403001. …... Respondent.

Mr. Jitendra Jain, Advocate for the Appellants.

Ms. Asha A. Desai, Advocate for the Respondent.

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

DATE: 23RD APRIL, 2015.

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

Heard Mr. Jitendra Jain, learned counsel for the appellants and Mrs. Asha Dessai, learned counsel for the respondent.

2. These appeals relate to the Assessment Year 2009-2010.

3. These appeals were admitted on 15/10/2013 on the following substantial questions of law:

> 1) Whether the learned Tribunal was justified in confirming the disallowance of Rs.61,91,043/- (Rupees sixty one lakhs ninety one thousand forty three only) under Section 40 (a) (i) of the Act being the sum paid to the Purchaser of iron ore on account of the delay in loading the ore into the vessel?
>
> 2) Whether on a true and proper construction of Section 9(1)(i)(b) of the Act, read with the provisions of Section 195 of the Act, the learned Tribunal was justified in confirming the disallowance under Section 40(a)(i) of the Act?
>
> 3) Whether the provisions of Section 40(a) (i) of the Act are applicable to the

reimbursements by the appellant of part of the sum payable by the purchaser of the iron ore to the ship owner?

4) Whether the learned Tribunal was justified in upholding the disallowance of Rs.50,000/- (Rupees fifty thousand only) under Section 14A of the Act read with Rule 8D of the Income Tax Rules without considering the submissions of the appellant?

4. During the course of the hearing of the above appeals, the learned Counsel appearing for the appellants submits that he does not press for the substantial question of law "4".

5. The remaining substantial questions of law revolve around the issue whereby the expenses under Section 40(a)(i) of the Act have been disallowed. The learned counsel for the appellants points out that the impugned order of the Tribunal allows the appeal of the Revenue on the ground that the issue stands covered by the decision of this Court in ***CIT V. Orient Goa Co. P. Ltd.*** reported in ***325 ITR 554***. The learned Counsel further submits that this view taken by the Tribunal is without examining the written submissions filed by the appellants before the Income Tax Appellate Tribunal (ITAT) wherein it was contended by the appellants that the said

decision is no longer a good law in view of the Judgment of the Apex Court decision in ***GE Technology Centre (P) Ltd. V. C.I.T*** reported in ***327 ITR 456.*** The learned Counsel for the appellants has also brought to our notice that in similar circumstances, this Court while disposing of Tax Appeal No. 30/2015 by Judgment dated 27th March, 2015, had remanded the matter to the ITAT to decide the appeal afresh, in accordance with law.

6. Ms. Asha Desai, learned counsel for the respondent does not dispute that all these contentions were raised before the ITAT and there is no consideration on all these aspects while passing the order impugned in these appeals. It is also fairly agreed that the Judgment dated 27/3/2015 in Appeal No.30/2015 was passed in similar circumstances.

7. For the reasons stated in the said judgment dated 27/3/2015 while disposing of Tax Appeal No.30/2015, we find it appropriate to quash and set aside the order dated 14/8/2013 and remand the matter to the ITAT to decide the issue of disallowance of expenditure under Section 40(a)(i) of the Act afresh, in accordance with law.

8. The substantial questions of law are answered

accordingly.

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

<u>O R D E R</u>

(I) The appeals are partly allowed.

(II) The impugned order dated 14/8/2013 passed in Appeal ITA No.15/PNJ/2013 with Cross Objection No.16/2013 and in Appeal ITA No. 16/PNJ/2013 with Cross Objection No.17/2013, is partly quashed and set aside.

(III) The Appeals ITA No.15/PNJ/2013 with Cross Objection No.16/2013 and ITA No. 16/PNJ/2013 with Cross Objection No.17/2013 are restored to the file of the Tribunal.

(IV) The Tribunal is directed to only decide in respect of the above substantial questions of law with regard to Section 40 (a)(i) of the Act in respect of demurrage afresh, after hearing the parties in the light of the observations made herein above, in accordance with law. All contentions in that regard are left open.

Appeals stand disposed of accordingly, with no order as to costs.

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

Ap/-