IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 89 AND 90 OF 2016

M/s. Teracom Limited
Plot no. 249-250,
Kundaim Industrial Estate, Kundaim,
Goa, 403 115. ...... Petitioner

V e r s u s

1. The Asst. Commissioner of Income Tax
Circle 2(1), Panaji,
having office at Ayakar Bhavan,
Patto Plaza, EDC Complex.
Panaji, Goa.

2. The Commissioner of Income Tax,
having office at Aayakar Bahawan,
EDC Complex, Patto Plaza,
Panaji, Goa. … Respondents

Mr. S. R. Rivankar and Mr. Rama Rivankar, Advocates for the Petitioner.

Ms. Asha Desai, Advocate for the Respondents.

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

Date : **3rd February, 2016**

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

Both the above Petitions are taken up together as it was not disputed that the points raised therein are similar.

2. Heard Shri S. R. Rivankar, learned Counsel appearing for the Petitioners and Ms. Asha Desai, learned Counsel appearing for the Respondents.

3. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waives service.

4. Upon hearing Shri Rivankar, learned Counsel appearing for the Petitioners and Ms. Desai, learned Counsel appearing for the Respondents, without going into the contentions on merits, the short point which comes for consideration is whether the demand notices dated 07.12.2015 and 14.12.2015 issued by the Assessing Officers under Section 226(3) of the Income Tax Act, 1961, can take effect without obtaining the consent in terms of Section 22 of the Sick Industrial Companies Act, 1985 (SICA).

5. Shri Rivankar, learned Counsel appearing for the Petitioners has pointed out that admittedly, the application of the Petitioners to be declared as a SICA unit has been registered on 12.01.2015 and the subject demand was issued by the Assessing Officer only in December, 2015. Learned Counsel has thereafter taken us through the provisions of Section 22 of the said Act to point out that even for recovery under the Income Tax Act, no coercive action can be taken against the Petitioners without obtaining the permission from the Board for Industrial and Financial Reconstruction(BIFR) in terms of the SICA Act. Learned Counsel further pointed out that in the present case, no such permission has been obtained and, as such, the impugned demand cannot be sustained. In support of his submission, the learned Counsel has relied upon the Judgment of the Gujarat High Court reported in ***(2004) 269 ITR 548 (Guj)*** in the case of ***Ezy Slide Fastners Ltd vs. Joint Commissioner of Income-tax (Assessment)***. Learned Counsel as such pointed out that the impugned demands dated 07.12.2015 and 14.12.2015 be

accordingly quashed and set aside.

6. On the other hand, Ms. Asha Desai, learned Counsel appearing for the Respondents, has pointed out that the Respondents are entitled to recover such amounts and the Petitioners have an alternate remedy to challenge the impugned Demands before the Commissioner of Income Tax. Learned Counsel further pointed out that the Assessing Officer learnt that the Petitioners were being registered as a sick unit only recently and the authorities will take necessary consent in terms of Section 22 of the SICA Act. Learned Counsel as such pointed out that the Petitions be rejected.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. On plain reading of the provisions of Section 22 of the SICA, it cannot be disputed that even coercive action to recover the dues in terms of the Income Tax Act would require the consent from BIFR in terms of the said Act as an inquiry under Section 16 of the SICA is pending. The learned Counsel appearing for the Respondents also does not dispute that the Respondents would take steps to obtain such consent. The Gujarat High Court in the case of ***Ezy Slide Fastners Ltd vs. Joint Commissioner of Income-tax (Assessment)*** (supra) has observed in the said Judgment thus :

> "In Gram Panchayat v. Shree Vallabh Glass Works Limited MANU/SC/0188/1990: [1990]1SCR966 and in Tata Davy Ltd, MANU/SC/1256/1997 : (1997)IILLJ989SC the hon'ble Supreme Court has held that arrears of taxes and the like dues from sick industrial companies that satisfy the conditions set out in Section 22(1) of the SICA cannot be recovered by coercive process unless the said BIFR gives

> its consent thereto. That is what the respondents can do in the instant case also, i.e., the respondents can obtain consent from the BIFR for recovery that they propose to make.
>
> In view of the above discussion, we grant interim relief restraining the respondent-authorities from acting upon the impugned notice dated October 20, 2000 (annexure A), and also restraining the respondent authorities from enforcing any notice under Section 226(3) of the Income Tax Act, 1961, without first obtaining consent of the BIFR as provided in Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985."

8. Taking note of the said observations and the Judgment of the Apex Court referred to therein, it cannot be disputed that without obtaining consent in terms of Section 22 of the SICA Act, the Assessing Officer cannot implement the impugned Demands dated 07.12.2015 and 14.12.2015.

9. In such circumstances, we find that the above Petitions can be disposed of by holding that the impugned demands dated 07.12.2015 and 14.12.2015 would be implemented by the Respondents upon obtaining the requisite consent in terms of Section 22 of the SICA Act.

10. With the above directions, Rule stands disposed of. Liberty to the parties to apply.

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

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