IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEALS NO. 18 & 19 OF 2016

The Principal Commissioner of
Income Tax, having Office at
Aayakar Bhavan,
Patto Plaza, Panaji, Goa. …..... Appellant.

V/s.

M/s. Chowgule & Company Pvt. Ltd.,
Chowgule House, Mormugao Harbour,
Goa 403803 PAN AAACC5479J …..... Respondent.

Ms. Asha Desai, Advocate for the Appellant.

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

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date : - 30 MARCH 2016.

ORAL ORDER : (PER F.M. REIS, J.)

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

2. The above appeal challenges the orders passed by the Authorities below, whereby additional depreciation under Section 32(1)(iia) of the Income Tax Act, came to be allowed though the respondents/assessees were carrying out processing of iron ore.

3. Ms. Asha Desai, learned Counsel appearing for the appellant submits that such activities cannot be considered to be "production" as, according to her, the respondent is carrying out only processing and not extraction of iron ore. The learned Counsel has, thereafter, taken us through the findings of the Assessing Officer to point out that the explanation given by the respondent was not accepted as the respondents were carrying out processing activities. The learned Counsel has, thereafter, pointed out that as there is no material on record to suggest that the respondents were carrying out extraction of iron ore, there is no question of allowing any additional depreciation for the equipments used for such purpose in terms of the provisions of the Income Tax Act. The learned Counsel, as such, submits that there are substantial questions of law which arise for consideration in the present appeal.

4. On the other hand, Mr. Mihir Naniwadekar, learned

Counsel appearing for the respondent, has pointed out that the orders of the learned Income Tax Appellate Tribunal (ITAT), as well as the Commissioner of Income Tax (Appeals) clearly point out that additional depreciation was allowed to the respondent for the previous Assessment Years by the ITAT on the ground that the respondent/assessee was carrying out activities of extraction, as well as processing of iron ore. The learned Counsel further points out that as such, it is late in the day for the appellant to now contend that the respondents were not carrying out extraction of iron ore and consequently, not doing any production activities. The learned Counsel further submits that this aspect is no longer *res integra* in view of the Judgment of this Court reported in **[2014] 47 taxmann.com 21 (Bombay)** in the case of ***Commissioner of Income-tax, Goa vs. Salgaonkar & Brothers (P.) Ltd.,*** wherein relying upon a Judgment of the Apex Court in the case of ***CIT Vs. Sesa Goa Ltd.,*** reported in **[2005] 142 Taxman 16,** this Court has taken a view that additional depreciation is permitted in terms of Section 32(1)(iia) of the Income Tax Act when the assessee is carrying out extraction and processing of iron ore activities. The learned Counsel, as such, submits that there are no substantial questions of law which arise in the present appeal.

5. We have considered the submissions of the learned Counsel and we have also gone through the record. On perusal of the order passed by the CIT(A) we find that it is clearly noted therein that the ITAT while allowing the additional depreciation for the Assessment Year 2002-03 had clearly considered that the respondent/ assessee was engaged in the business of extraction and processing of iron ore. It is also not in dispute that even for the relevant Assessment Years 2006-07 and 2007-08, the same activities were being carried out by the respondents/assessees. In such circumstances, the contention of Ms. Asha Desai, learned Counsel appearing for the appellant that the respondent/assessee were carrying out only processing of the iron ore and not carrying out extraction and processing of the iron ore cannot be accepted.

6. In the case of ***Commissioner of Income-tax, Goa vs. Salgaonkar & Brothers (P.) Ltd.,*** **(supra),** wherein one of us (F.M. Reis, J.) was a party, this Court has observed at para 7, thus :

> " **7.** Considering the said observations, as it is not disputed by the appellant that the respondents are engaged in the business of processing of iron ore in the plant and generation of windmill energy which is held to be a manufacturing activity within the said provision of Section 32(1)(iia) of the Income Tax Act, the

observations of the Apex Court in the decision cited supra, are thus clearly applicable to the facts of the present case. The ITAT in the impugned order dated 8th August, 2013 has rightly observed at para 8 thus :

> "8. We are of the opinion that the AO has examined the claim of assessee regarding additional depreciation on machinery and windmill and allowed the claim in the year under consideration. We are of the opinion that the ITO acted in accordance with the law and makes an assessment the same cannot be branded as erroneous by CIT simply because according to him the order have been not written elaborately. This view is also supported by the decision of Bombay High Court in the case of Gabriel Indian Limited 203 ITR 108. We are also of a view that when AO has made the inquiry and allowed the additional depreciation on machinery and windmill. An order cannot be termed as erroneous unless it is not in accordance with the law. We find that assessee is entitle to additional depreciation on machinery as per the decision of Hon'ble Supreme Court in the case of CIT vs. Sesa Goa Ltd, 271 ITR 331 as well as assessee is entitle additional depreciation on windmill operation as per the decision of Madras High Court in the case of CIT vs. V T M Limited, 319 ITR 336. When AO has taken one of the possible view the power of revision u/s. 263 cannot be exercised. This view is supported by the decision of Hon'ble Supreme Court in the case of Max India Ltd, 295 ITR 282. In view of these decisions we allow the appeal of the assessee in the year under consideration."

Taking note of the said observations and the undisputed facts in the present case, we find that the substantial questions of law proposed by the appellant would no longer survive for the reasons recorded in the case of ***Commissioner of Income-tax, Goa vs. Salgaonkar & Brothers (P.) Ltd.,*** (supra). We find that there are no substantial questions of law which arise in the appeal in terms of the provisions of the Income Tax Act. Consequently, the appeal stands rejected.

NUTAN D. SARDESSAI, J. **F.M. REIS, J.**

ssm.