IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.44 OF 2016

THE PR. COMMISSIONER OF INCOME TAX, PANAJI. ... Appellant

Versus

M/S. SESA GOA LTD., ... Respondent

Mr. Asha A. Dessai, Advocate for the appellant.

Mr. Pardiwala, Senior Advocate with Mr. R. G. Ramani and Mr. Sachit Jolly, Advocates for the respondent.

Coram :- SMT R. P. SONDURBALDOTA & C. V. BHADANG, JJ., J.

Date :- 7th December, 2016

P.C.

This appeal preferred by the Commissioner of Income Tax challenges the order dated 7th January, 2015, by which the Income Tax Appellate Tribunal, Panaji, Goa, dismissed the application, filed by the appellant under Section 254(2) of the Income Tax Act (I. T. Act, for short), for rectification of the order dated 8th March, 2013, passed by the Tribunal. The application was made on the ground that subsequent to the order of Tribunal, a survey under Section 133A of the I. T. Act, was conducted on 20th March, 2014 and it was noticed that the respondent assessee has suppressed material facts as to its eligibility for Section 10B deductions.

2. Mr. Pardiwala, the learned Senior Counsel appearing for the respondent has raised a preliminary objection to the appeal, submitting that the present appeal, as filed under Section 260A of the I. T. Act, is not maintainable. It is his submission that an order passed by the Tribunal under Section 254(2) of the I. T. Act cannot be said to be an order on appeal by the Tribunal so as to make it amenable to Section 260A of the I. T. Act. Section 260A of the I. T. Act provides for appeal to the High Court only from an order passed in appeal by the Tribunal if the High Court is satisfied that the case involves substantial question of law. Mr. Pardiwala submits that the question of maintainability of such appeals is already considered by the Division Bench of our High Court in ***CHEM AMIT VS. ACIT***; reported in 272 ITR 397. The relevant observations therein read as under :

> *"However, in section 260A, the Legislature has not provided an appeal to the High Court from every order passed under section 254 but has confined it to the order passed in appeal by the Appellate Tribunal. This is made clear by the use of the expression, "an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal". If the Legislature intended to provide an appeal to the High Court from the order*

passed by the Appellate Tribunal on the application for rectification under Section 254(2), the Legislature would not have used the expression in section 260A that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, but instead used the expression as is used in section 256 that an appeal shall lie to the High Court from every order passed under section 254. The expression, "an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal" in section 260A cannot be equated with the expression, "an appeal shall lie to the High Court from every order passed under Section 254.""

3. Ms. Dessai, the learned Counsel appearing for the appellant, however, seeks to justify the maintainability of the appeal, by placing reliance upon the decision of Single Judge of Karnataka High Court in ***Dy. CIT V. H. V. Shantharam,*** reported in (2003) 260 ITR 156 (KARN). The Karnataka High Court, by the decision cited, dismissed the petition under Articles 226 and 227 of the Constitution of India, filed by the assessee, to challenge the order granting the application filed under Section 254(2) of the I. T. Act, on the ground that there is an alternate remedy of appeal provided under Section 260A of the I. T. Act. The decision relied upon by Ms. Dessai, can be distinguished on facts.

The order impugned before the Karnataka High Court, was an order allowing an application for rectification, whereas in the case on hand, the application is rejected. In any case, we are in respectful agreement with the direct decision of our High Court in ***Chem Amit*** (supra), relied upon by Mr. Pardiwala and hold that the present appeal, as filed under Section 260A of the I. T. Act, is not maintainable. The same is dismissed in limine.

C. V. BHADANG, J. SMT R. P. SONDURBALDOTA

SMA