IN THE HIGH COURT OF BOMBAY AT GOA.

TAX APPEAL NO. 64/2016

M/s Pentair Water India Private Limited
A Company incorporated under the Companies
Act, 1956, Having its registered office at
L/2/55, Verna Industrial Estate,
Phase II, Verna Salcette, Goa.
Through its Director (Finance)
Shri G M K Venkata Rao,
Son of Venkata Subba Rao Gudivada,
Aged 39 years, Occupation Service,
Residing at `G6, Ashad Housing Society,
Madel, Margao- Salcete, Goa 403 602 **Appellant.**

Versus

Commissioner of Income Tax,
Aayakar Bhavan, Patto Plaza, Panjim,
Goa. **Respondent**

...

Mr. Jitendra Jain, Advocate with Ms.Sonia Shetye, Advocate for the appellant.
Ms. Asha Desai, Advocate for the respondent.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
DECIDED ON : 19/09/2016.

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

1] Heard Mr. Jitendra Jain, learned Advocate with Ms.Sonia Shetye, learned Advocate for the appellant and Ms. Asha Desai, learned Advocate for the respondent.

2] Admit, on the following substantial question of law:-

Whether on a true and proper construction of Section 254 (1) of the Act, the Tribunal has the jurisdiction to decide an issue which was not in dispute between the parties and was also not subject matter of appeal before them?

3] Ms. Asha Desai, learned Advocate waives notice on behalf of the respondent.

4] Upon hearing the learned counsel appearing for the appellant and learned counsel appearing for the respondent, the main grievance of the appellant is that the learned Tribunal while disposing of the appeal has considered grounds which were not raised in the appeal memo. It is further pointed out on behalf of the appellant that the issues which were raised based on the grounds of appeal were not even considered nor decided by the learned Tribunal. It is also pointed out that no opportunity was given to the appellant to meet such new aspects considered by learned Tribunal while disposing of the appeal filed by the respondent. According to the learned counsel, the Tribunal is bound to decide the issues raised in the memo of appeal by the appellant. On the other hand, Ms. Asha Desai, learned Counsel appearing for the respondent, submits that in fact the issues which are raised in the memo of appeal have not been considered by the learned Tribunal. The learned counsel points out that all the issues raised in the memo of appeal are relevant to decide the matter in controversy.

5] Considering the rival contentions, the fact that the the appellant was not heard before examining the new ground dealt and considered by the learned Tribunal while disposing of the appeal filed by the respondent is not disputed. In such circumstances, on this ground alone the impugned order passed by the learned Tribunal stands vitiated and as such deserves to be quashed and set aside. The appellant are entitled to be heard on all grounds which are considered by the learned Tribunal. Consequently, the learned Tribunal would have to decide the appeal afresh after giving a hearing to the concerned parties.

6] In view of the above, the impugned order dated 3rd May, 2016 is quashed and set aside. ITA No.223/PAN/2014 is restored to file of the learned Tribunal. The learned Tribunal to decide the appeal preferred by the respondent afresh after hearing the parties in accordance with law. All contentions of the parties are left open. The appeal stands disposed of accordingly.

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

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