IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 117/2017

Sesa Resources Ltd.,
having its registered Office at
Sesa Ghor, 20 EDC Complex,
Patto, Panaji Goa 403001 …..... Petitioner.

V/s.

1) Asstt. Commissioner of Income-tax,
Circle 1(1), Aayakar Bhawan,
EDC Complex, Patto, Panaji, Goa.

2) Jt. Commissioner of Income-tax,
Range- 1, Aayakar Bhawan,
EDC Complex, Patto, Panaji, Goa.

3) Principal Commissioner of Income-tax,
Aayakar Bhawan,
EDC Complex, Patto, Panaji, Goa. ….... Respondents.

Mr. Balbir Singh, Senior Advocate with Mr. Sachit Jolly and Mr R.G. Ramani, Advocate for the petitioner.

Ms. S. Linhares, Junior Standing Counsel for the respondents.

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

Date : - 2 FEBRUARY 2017.

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

Heard Mr. Balbir Singh, learned Senior Counsel appearing for the petitioner and Ms. S. Linhares, learned Junior

Standing Counsel appearing for the respondents

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

3. The petitioner, *inter alia*, prays to quash and set aside the notices dated 16th January, 2017and 17th January, 2017 issued to State Bank of India, ICICI Bank Ltd., and HDFC Bank, under Section 226(3) of the Income-tax Act, 1961 and all proceedings initiated in pursuance thereto.

4. Briefly, it is the contention of the petitioner that the subject-matter of the above petition is in regard to the Assessment Years 2011-12 and 2012-13 which, according to the petitioner, were completed under Section 143(3) of the Act, raising a tax demand of Rs. 12.85 Crores and Rs.21.61 Crores receptively. The Assessment Orders were passed on 14th March, 2014 and 30th March, 2015, respectively. It is further contended that the petitioner moved a detailed application before the respondent No.1 for stay of the demand for such Assessment Years, *inter alia*, pointing out that most of the issues giving rise to the disputed demand are settled in favour of the

petitioner by various decisions of the Appellate Authorities. Subsequently, on or about 24th April, 2014, and 24thApril, 2015, for the two Assessment Years, 2011-12 and 2012-13 respectively, the petitioner preferred appeals before the CIT (Appeals) which are pending for disposal. Thereafter, according to the petitioner, on 3rd January, 2017 the respondent No.1 issued a letter to the petitioner stating that a demand of Rs.40.25 Crores is outstanding for various assessment years, which included the aforesaid demand. A detailed response was filed by the petitioner, inter alia, stating that the recovery of Rs.10.74 Crores has already been made, which, according to the petitioner is far in excess of the 15% set by the CBDT vide its Office Memorandum dated 29th February, 2016 and the decision of this Court in the case of ***Andrew Telecommunications India Pvt. Ltd. vs. Principal Commissioner of Income Tax and ors***., passed in ***Writ Petition No.1021 of 2016***. It is, however, contended by the petitioner that the petitioner filed a petition before the respondent No.2 pointing out that most of the issues giving rise to the disputed demand are settled in favour of the petitioner for which no recovery can be made and without prejudice, more than 15% of the disputed demand, in terms of the CBDT Office Memorandum dated 29/02/2016, has already been recovered for the Assessment Years 2011-12 and 2012-

13. The said petition came to be rejected by the respondent No.2 by directing the petitioner to approach the respondent No.3 though it was admitted that not more than 15% of the total demand can be recovered in terms of the Office Memorandum dated 29/02/2016 issued by the CBDT. A detailed petition was, thereafter, filed before the respondent No.3 on 18th January, 2017, disclosing the aforesaid facts. But, however, during the interregnum, somewhere on 16/01/2017 and 17/01/2017 the respondent No.1 issued the impugned notices under Section 226(3) of the Act to the Banks, attaching the Bank Accounts of the petitioners, namely Account Nos.31753129234 with the SBI, 136405000027 with the ICICI Bank Ltd., and 12130310000107 with the HDFC Bank. Being aggrieved by the said notices, the petitioner has approached this Court with the above petition.

5. Mr. Balbir Singh, learned Senior Counsel appearing for the petitioner has pointed out that the respondents are not at all justified to pass the impugned directions, attaching the accounts of the petitioner as, according to him, more than 15 % of the disputed demand has already been secured in favour of the respondents. The learned Senior Counsel further points out that though the appeal is pending before the CIT (Appeals), the respondent No.1 has erroneously

proceeded to attach the said Bank Accounts of the petitioner. The learned Senior Counsel further points out that this grievance of the petitioner is no longer res integra in view of the Judgment of this Court in the case of ***Andrew Communications India Pvt. Ltd.*** (supra).

6. On the other hand, Ms. Linhares, learned Counsel appearing for the respondents has not disputed that in fact, a sum of Rs.10.74 Crores is payable to the petitioner on account of the refund amount which comes to more than 15% of the disputed demand under the impugned attachment order. The learned Counsel also does not dispute that the facts in the present case are identical to the facts in the case of ***Andrew Communications India Pvt. Ltd. (supra).***

7. We have heard the submissions of the learned Counsel and we have also gone through the records. For the reasons stated in the said Judgment of this Court in the case of ***Andrew Communications India Pvt. Ltd. (supra)*** and as it is not in dispute that the facts therein are identical to the facts in the present case, we have no reason to take a contrary view in the present petition. Admittedly, 15% of the disputed amount has already been recovered by the respondent-Revenue and such amount is covered by the Office Memorandum dated 29th February, 2016 issued by the CBDT. In such circumstances,

we find that the respondents were not justified to pass the impugned attachment Notices under Section 226(3) of the Act. The claim of the petitioner, at this stage, seeking refund of the amounts attached pursuant to such directions, is not at all justified and cannot be granted in the present petition.

8. The learned Senior Counsel appearing for the petitioner has placed on record a Memo showing the actual amount in dispute for the subject assessment years, as well as the amounts recovered based on refund orders, which figures are not disputed by the learned Counsel appearing for the respondents. The said Memo is marked “X” for identification.

9. In view of the above, the impugned notices dated 16th January, 2017 and 17th January, 2017 issued to the State Bank of India, ICICI Bank Ltd., and HDFC Bank under Section 226(3) of the Act in respect of the Assessment Years 2011-12 and 2012-13 are quashed and set aside. Rule is made absolute in the above terms.

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

ssm.