THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 274 OF 2017

WITH

WRIT PETITION NO.278 OF 2017

WRIT PETITION NO. 274 OF 2017

M/s. Zuari Global Ltd.,
Jai Kissan Bhawan,
Zuarinagar, Goa
PAN.: AAACZ0306P …. Petitioner

V e r s u s

1. The Assistant Commissioner of
   Income-Tax-Circle-2(1),
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

2. Joint Commissioner of Income Tax,
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

3. Principal Commissioner of Income Tax
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

4. Union of India- Ministry of Law,
   4th floor, "A" Wing, Shashtri Bhavan,
   Rajendra Prasad Road,
   New Delhi, 11001. … Respondents

(The addresses of the parties are
registered addresses)

WRIT PETITION NO.278 OF 2017

M/s. Zuari Global Ltd.,
Jai Kissan Bhawan,
Zuarinagar, Goa
PAN.: AAACZ0306P .... Petitioner

V e r s u s

1. The Assistant Commissioner of
   Income-Tax-Circle-2(1),
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

2. Joint Commissioner of Income Tax,
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

3. Principal Commissioner of Income Tax
   Aaykar Bhavan, EDC Complex,
   Patto Plaza, Panaji-Goa.

4. Union of India- Ministry of Law,
   4th floor, "A" Wing, Shashtri Bhavan,
   Rajendra Prasad Road,
   New Delhi, 11001. ... Respondents

Shri Vimal Gupte, Senior Advocate with Mr. Arjun Gupte and Ms. Priyanka Kamat, Advocates for the Petitioners.

Ms. Amira Razaq, Advocate for the Respondents.

CORAM: ANOOP V. MOHTA &
NUTAN D. SARDESSAI, JJ.
DATE: 16TH MARCH, 2017.

ORAL JUDGMENT:

Rule heard forthwith. Heard the parties finally by consent.

2. We are inclined to dispose of these writ petitions as all the issues and submissions are common and so also the parties concerned therefore this common order/judgment.

3. The petitioner/assessee in these petitions dated 13/2/2017 are praying to quash and set aside the separate orders dated 30/12/2016 for the assessment year 2009-2010 (A.Y. 2009-10) and 2010-2011 and further not to proceed with the recovery of tax based upon the said orders.

4. The learned Senior Counsel appearing for the petitioner has relied upon order dated 16/2/2016 passed by this Court in Tax Appeal Nos.79, 80, 81 and 82 of 2015, whereby after considering the rival contentions and specifiably the question of law so raised ultimately recorded as under:

> "i. The impugned order passed by the learned Tribunal dated 7/7/2015 is quashed and set aside.

ii. The Appeals preferred by the appellant before the learned Tribunal is restored to the file of the learned Tribunal.

iii. The learned Tribunal is directed to decide the appeals afresh after hearing the parties, in accordance with law.

iv. All the contentions of the parties on merits are left open.

v. Appeals stand disposed of accordingly."

5. Therefore taking note of the peculiar facts and circumstances it is directed that the Tribunal should decide the appeals after hearing the parties afresh in accordance with law.

6. However, by impugned order dated 30/12/2016, the Assessing Officer (A.O) inspite of the above order proceeded with the matter to dispose off cases prior to prescribed date, and passed the order under section 143(3) read with section 147 and 254 of the Income Tax Act (The Act) and computed the tax and ordered to issue demand notice for the amount so assessed.

7. The question is not of availability of appeal against the impugned orders. The issue is that once this Court after considering the rival contentions directed the Tribunal to deal with the issue afresh, there was no

reason for the A.O to proceed with the matters of same Assessment year even in the background of referring to the order passed by this Court in the four Tax Appeals. A copy of this Court's order was placed and was available with the record of the A.O. It is reflected in para 1.9 of the impugned order.

8. We are not here to discuss and decide the justification so given by the Assessing Officer while passing the impugned order. There may be justification for various reasons. However, as we are inclined to dispose of these writ petitions on the sole ground as specific directions have been issued to the Tribunal to decide the appeals afresh. The impugned order passed by the A.O inspite of the order passed by the High Court in our view is unsustainable. There is no question even accepting the submission of the learned counsel appearing for the Department that the petitioner has remedy available against it. This is also for the reason that once the High Court has passed the order directing the Tribunal to decide the appeals afresh, it is required to be followed by all concerned, apart from would be conflict and/or difficulty in passing any order by the Tribunal and/or by the other authority. The finding, therefore, given by the learned officer though on merits in the background of so reflected above, we are not dealing with the same. All contentions are left open for the parties. Therefore, the following order:

Order:

(i) Impugned orders dated 30/12/2016 passed by the A.O are quashed and set aside.

(ii) The Tribunal to deal with the appeals in accordance with law,

(iv) No costs.

N. D. SARDESSAI, J. **ANOOP V. MOHTA, J.**

Ap/