IN THE HIGH COURT OF BOMBAY AT GOA.

Civil Application (Review) No.34 of 2017

in Writ Petition No.1087/2017

Asst. Commissioner of Income Tax,
Circle 1 (1), Panaji and another. **Applicants**

Versus

The Goa State Co-op.Bank Ltd.
Through Its Managing Director **Respondent**

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Ms. Susan Linhares, Advocate for the Applicants.
Mr. Rana Revonkar, Advocate for the Respondent.

CORAM : M.S.SONAK, J.
DATED :27th DECEMBER, 2017.

P.C.

Heard Ms. S.Linhares, learned counsel for the Income Tax Department and Mr. Rana, learned counsel for the original petitioner.

2. Though, this petition, is styled as a Review Petition, there is a common ground that what is necessary is not some review but only a clarification.

3. This Court, while disposing of Writ Petition No.1087/2017, in paragraph 2 has observed as follows:-

> *"The Petitioner will attend the hearing before the Respondents Officer on 15 December 2017 and thereupon the Respondents Officer will pass necessary orders as per law in view of the law laid down by the Hon'ble Apex Court in G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and others (2591 ITR 18SC) and Allana Cold Storage Ltd. Vs. Income Tax Officer and others 2006 287 ITR 1 (Bom)., the effect to the orders will be given after the period of four weeks as precedent"*

4. Ms. S.Linhares points out that in terms of Section 153 (2) of the Income Tax Act, 1961, no order of assessment, reassessment or recomputation shall be made under Section 147 after the expiry of nine months from the end of the financial year in which the notice under Section 148 was served. She submits that this period ends on 31st December, 2017. She submits that since, there is a direction that the Assessment Order is to be given effect to after a period of four weeks, such period, will transgress the stipulated date of 31st December, 2017. Accordingly, she requests for a suitable clarification.

5. Mr. Rivonkar points out that the relief granted to the original petitioner in terms of paragraph 2 of the order dated

13th December, 2017, is entirely inconsistent with the similar relief granted by the Division Bench in case of Allana Cold Storage Ltd. Vs. Income-Tax Officer and others (supra).

6. In any case, he submits that, even if, any clarification is received, the same ought not to prejudice the right of the petitioner to challenge the assessment order, in case, the same is unfavourable to the petitioner.

7. Upon due consideration of the matter, it transpires that neither of the parties have any serious disputes as regards the relief granted in terms of paragraph 2 of the order dated 13th December, 2017. The anxiety of the Department, however, is that no technical objection should be raised by the petitioners, since, in this case, the assessment order, will have given effect to post 31st December, 2017.

8. If the provisions of Section 153 (4) (ii) of the Income Tax Act are taken into consideration, then, there is no necessity for such anxiety. In any case, it is clarified that the period of four weeks during which, the department, is restrained from giving effect to the assessment order, will have to be excluded for the purpose of determining the limitation, as prescribed under Section 153 (2) of the Income Tax Act. This means that

the Department, will have liberty to give effect of the assessment order post 31st December, 2017, without fear of any technical objections of this score. The position is clarified accordingly.

9. It is further clarified that nothing in this clarification/order or for that matter the original order shall in any way, affect or prejudice the rights of the original petitioner to challenge the assessment order on merits in case, such assessment order is unfavourable to the petitioner. Further, nothing in this clarification, will even remotely affect or prejudice the right of the petitioner to challenge the order by which their objections may have been rejected.

10. With the clarification, as aforesaid, this petition is disposed of.

11. All concerned to act on the basis of the authenticated copy of the order.

M.S.SONAK, J.

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